



THE FALKLAND ISLANDS GAZETTE Extraordinary

PUBLISHED BY AUTHORITY

Vol. CXV

3rd January 2006

No. 1

NOTICE

No. 1

3rd January 2006

An Environmental Impact Assessment (EIA) has been submitted to the Falkland Islands Government by Desire Petroleum Plc with regard to a planned exploration drilling programme to take place to the north of the Islands. In compliance with the Offshore Minerals Ordinance 1994, section 66(1) to (3) the Non-Technical Summary and Executive Summary are printed in full in this Gazette. In addition, copies of the Impact Assessment in its entirety can be obtained on CD ROM from the Department of Mineral Resources, Ross Road, Stanley (tel 27322 or email ablake@mineralresources.gov.fk).

Printed copies are available for reading at the Mineral Resources Department, the Environmental Planning Department and in the Public Library in Stanley.

Printed copies are also available at the following camp locations:

Fox Bay
Port Howard
Hill Cove
Goose Green

Written representations in relation to the EIA must be received within 42 days of the date of publication in the Gazette and should be sent to the **Department of Mineral Resources, Ross Road, Stanley**. The applicant, Desire Petroleum, has 28 days to respond to comments received.

P M Rendell
Director of Mineral Resources

ENVIRONMENTAL IMPACT ASSESSMENT
FOR
OFFSHORE DRILLING
THE FALKLAND ISLANDS
TO
DESIRE PETROLEUM PLC

NON-TECHNICAL SUMMARY



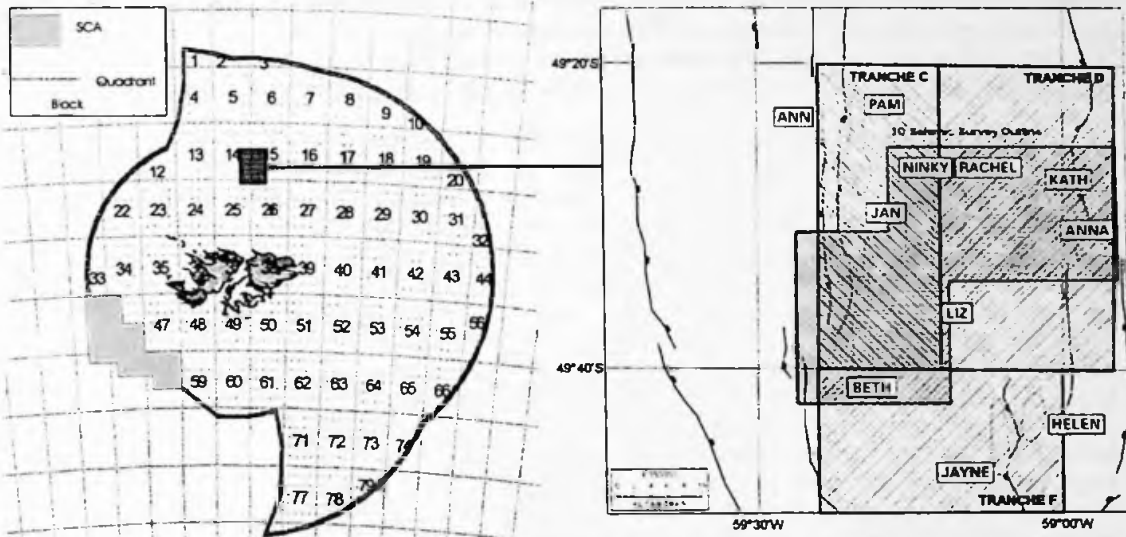
Report No. : EOE0534 - NTS
Author(s) : Jon Perry
Environmental Manager
Date : December, 2005

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1. INTRODUCTION

This non-technical summary provides an overview of the Environmental Impact Assessment (EIA) carried out on behalf of Desire Petroleum PLC (Desire), who are planning a three well drilling campaign in Tranches C and D of the North Falkland Basin.

Desire have been awarded Production Licences by the Falkland Islands Government (FIG) for exploration and production in Tranches C and D, which lie approximately 150km north of the Falkland Islands. The prime objective of the drilling programme is to evaluate the prospects identified by 3D seismic acquired in 2004. Of the prospects so far identified it is most likely that drilling will take place in three prospects out of Liz, Beth, Ninky or Ann (see below).



Falkland Islands Designated Area and Special Co-operation Area (SCA)

Tranches C, D and F showing identified prospect areas and 2004 3D seismic survey coverage.

Six wells were drilled in the North Falkland Basin by a consortium of oil companies in 1998. The EIA for these operations identified a number of environmental information gaps. As a result further environmental studies were commissioned, including:

- Seabird, penguin and cetacean studies
- Current modelling and drill cuttings dispersion modelling
- Benthic surveys (before and after drilling)
- Metocean (meteorological and oceanographic) studies
- Oil spill modelling

These studies have greatly increased the level of environmental information available for this area. No additional environmental monitoring or sampling has therefore been commissioned for the current EIA, although both information gathering and stakeholder consultation has been carried out in the Falkland Islands. A large number of publications and websites have been used for the EIA and particular recognition is extended to Falklands Conservation, both for the commissioning of seabird and marine mammal surveys and for compiling the (draft) "Falkland Islands Environmental Baseline Survey 2004". Gratitude is also expressed to the FIG for making available extensive information on the relevant legal and environmental framework.

As the choice of drilling contractor and drilling unit has not been finalised, an addendum to this EIA will be produced prior to the start of operations in order to verify the assessment is both accurate and up-to-date. Any change to the operations likely to affect the findings of the EIA will lead to a reassessment of the relevant environmental impacts.

The scope of this EIA encompasses only the proposed drilling campaign. It does not extend to potential future oil and gas activities in the Falkland Islands.

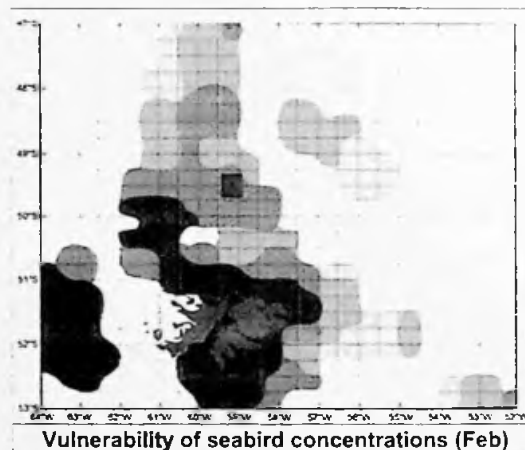
2. BASELINE ENVIRONMENT

The Falkland Islands are a United Kingdom Overseas Territory located on the edge of the Patagonian Shelf in the South Atlantic Ocean. There are two main islands, East and West Falkland, with a further 778 smaller islands forming a total land area in excess of 12,000 sq.km. There is a wide range of both flora and fauna present in the islands and the deep waters of the South Atlantic are rich in marine life, key to the survival of a wide variety of species. There are few trees, the natural vegetation being grassland with some species of heath and dwarf shrubs.

The main environmental sensitivities identified in Tranches C and D are the highly important seabird populations (including penguins), the presence of marine mammals and fisheries interests. In addition, the benthic (seafloor) habitat is considered to be sensitive to disturbance and relatively unstudied, although benthic surveys have previously been carried out in this area. Although not in the licence area, near-shore and coastal environments are also included within the EIA and are considered to be both extremely important and sensitive to pollution.

The Islands are considered to be highly significant for birdlife and over half the breeding birds on the Islands are largely dependent on the sea for food. There are five different species of breeding penguin in the Falkland Islands (rockhopper, Magellanic, gentoo, king and macaroni). The Islands are the most important world site for the endangered rockhopper penguin and are also home to 80% of the world's breeding population of black-browed albatross. Several rare and threatened species of petrel nest on offshore islands.

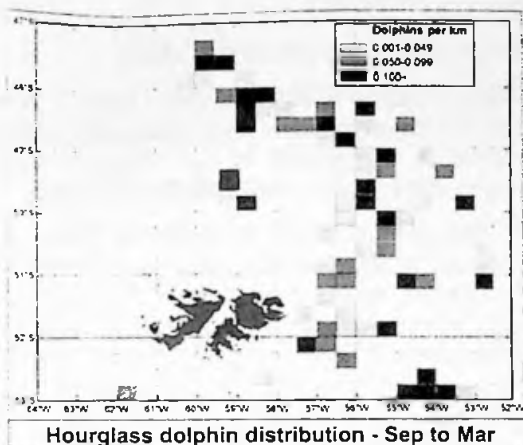
Extensive at-sea surveys commissioned by Falklands Conservation have built up a considerable level of knowledge regarding seabird distributions. In addition, a vulnerability atlas has been produced, highlighting the locations of seabird concentrations most vulnerable to the effects of surface pollution. The atlas has been adapted for Tranches C and D and an example is shown opposite, with the drilling area shown as a pink square and seabird vulnerability increasing from light to dark. In general, seabirds in coastal waters are most vulnerable to surface pollution and the deeper waters of Tranches C and D show lower vulnerability than the shallower waters to the south. The licence area shows higher vulnerability between January and March, although at no time of the year do Tranches C and D fall under the category of highest seabird vulnerability.



Both pinipeds (seals) and cetaceans (whales, porpoise and dolphins) are present in Falkland Island waters. The at-sea surveys conducted over three years from 1998 have added greatly to the level of knowledge regarding the presence of marine mammals in this area. Both Peale's dolphin and Commerson's dolphin are commonly seen from land and breed on the islands.

Over the three year at-sea survey 6,550 marine mammals were recorded, encompassing 17 different species. Of the species of cetacean likely to be present in Falkland Islands waters only hourglass dolphins were recorded within Tranches C or D. It is also possible that long-finned pilot whales and fin whales might be sighted in this area, depending on the time of year at which drilling takes place. Based on marine mammal distributions, the area for proposed drilling is not considered to be of particularly high sensitivity. As with seabird populations, the sensitivity of coastal areas is also examined within the EIA, particularly with regard to potential nearshore spills from loading and unloading operations.

Sea lions, fur seals and elephant seals breed on the islands. Breeding seals will generally rely on near-shore areas for food, although seal species may also be found in deeper waters particularly outside the breeding season. During the three year survey, only fur seals were recorded within Tranches C and D (between June and October).



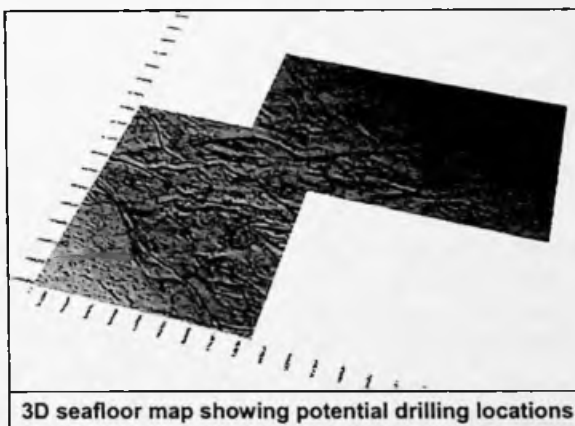
The fishing industry provides substantial income and for this reason knowledge of fish species is closely related to commercial factors. The Falkland Islands fishery is closely managed by the FIG Fisheries Department (FIFD) and is a good example of sustainable fisheries management.

Falklands Conservation Zones (FICZ and FOCZ) were introduced in 1987 and 1990 respectively to control fishing. The main fisheries resources are squid, although a finfish fishery also exists targeting predominantly hake, hoki, red cod and blue whiting. In addition to the commercial harvest, fish stocks are a major component of the diet of both seabirds and marine mammals. Due to the location and limited duration of drilling, the

impact on fisheries operations is expected to be low, however good communications with the FIFD are vital to ensure potential interference with other sea users is minimised.

Current patterns and seabed topography are important factors in the circulation of nutrients and marine productivity. The licence area lies near to the convergence zone of the Falklands currents, in the vicinity of an area of upwelling and high biological productivity. A year-long programme of meteorological and oceanographic (metocean) measurements was undertaken by Fugro to the north of the Falkland Islands from 1997. This looked at current and wave profiles, water column structure, meteorological conditions, salinity and temperature profiles. In addition, surveying was carried out by Gardline in 1998, both before and after drilling, in order to study the baseline seafloor environment and assess the seafloor impacts from drilling.

The general bathymetry of the North Falkland Basin indicates a gently sloping gradient with contours along a NW-SE direction. Seafloor surveys show a complex topography with numerous iceberg keel scars, depressions, troughs and furrows (see opposite). Although the benthic survey revealed a relatively uniform seafloor environment, with no significant pollution from previous drilling, additional knowledge of seafloor habitats would be useful, particularly to identify any unusual habitats. In order to increase understanding of the benthic environment detailed 3D maps, video footage and metocean data will be made available for further study.



Protected areas in the Falkland Islands can be designated as National Nature Reserves, National Parks and Ramsar sites. Although the FIG can designate marine reserves, as yet no marine National Nature Reserves have been created. A number of Important Bird Areas (IBAs) have also been defined, however this is a non-legal designation under the initiative of Birdlife International.

Socio-economic impacts of oil and gas exploration (both positive and negative) have been limited within the EIA at the request of the FIG to avoid overlaps with existing studies. Desire have initiated the drilling programme in an open and inclusive manner and ongoing liaison with the FIG, local people and stakeholders will help to ensure that potential impacts to shipping, fisheries, local businesses, tourism and socio-economic resources can be minimised.

3. DESCRIPTION OF OPERATIONS

Once a suitable drilling rig has been contracted, Desire plan to drill three wells, each around 3000m deep and each expected to take around 22 days to drill. The proposed drilling programme will be in water depths of 350 to 420m. It is intended to drill using a semi-submersible rig similar in type to the Borgny Dolphin (as used for the 1998 drilling campaign).

Drilling operations are being managed by Peak Well Management (Peak) on behalf of Desire. As the choice of drilling contractor and drilling unit have yet to be finalised, the EIA provides an operational description based on known details (well locations, depths, type of rig etc), established models (atmospheric emissions, sewerage discharge, volume of cuttings etc) and documented assumptions. Any subsequent alterations will be accounted for in the pre-operational addendum.

The rig will be towed from its previous commitments accompanied by a towing vessel and a large support/supply vessel. A semi-submersible drilling rig is buoyant and has to be secured in position using anchors. Detailed 3D seabed mapping has been carried out to provide an accurate 3D map of the seabed and subsurface (see previous figure). ROV (Remotely Operated Vehicle) surveys of the seafloor will also be used to assist deployment and avoid significant features or seabed obstacles.

Drilling will be undertaken using only water based muds, which are the least harmful type of drilling mud. As the well is drilled, steel casing is cemented into place in order to line the hole. This allows the drilling mud and drill cuttings (rock fragments) to be recirculated back to the rig where the mud is separated for reuse. Treated drill cuttings are then discharged to sea. Chemical additives are used to alter the properties of both the mud and cement and ensure safe operating conditions. Chemical additives are ranked by the UK Offshore Chemical Notification Scheme (OCNS) according to potential environmental impact. Only the lowest category (least harmful) chemicals will be used. Drilling in the Falkland Islands will follow the same requirements for chemical use and reporting as in the UK.

A blowout preventer (BOP) will be fixed in place and a fully documented pressure test carried out in accordance with safe operating practices. Between around 50 to 75 personnel will be present on the rig at different stages of the operation, with around a dozen shore based personnel (not including helicopter and well test personnel).

If well testing is carried out, formation fluids will be brought to the surface and tested, following which the hydrocarbons need to be flared (burnt off). Once drilling activity at each site has been completed, the wells will either be suspended or abandoned. These operations will be carried out in full accordance with UK Standards. A site (debris) survey will be undertaken prior to rig departure and once the well has been secured and equipment retrieved, the rig will be prepared for moving to the next drill location.

Two vessels capable of supply vessel and standby duties and equipped with oil spill response capability will be on hand throughout operations. In total these will be manned by 30 to 40 maritime personnel. It is expected that equipment, stores and chemicals necessary for the drilling programme will be transferred to the rig by supply vessel from Stanley. One vessel will be kept on standby with the rig, the other vessel will be available on rotation out of Stanley.

It is intended to service drilling operations from a supply base in Stanley established for the duration of the drilling programme. The Falkland Islands will also act as a transit point for the drill rig crew. Crew changes to and from the rig will take place using a dedicated helicopter.

The required helicopter services will be provided by a private contractor based at Mount Pleasant Airport (MPA), although it is likely that Stanley Airport will be used as the pick-up and drop-off point. It is expected that two scheduled flights per week will be sufficient, although additional flights will be supplied depending on operational issues. The same helicopter service will be used for emergency response duties if required.

4. ASSESSMENT OF IMPACTS

An assessment of the likely environmental impacts of drilling programme in Tranches C and D has been undertaken. Impacts have been assessed according to:

- Emissions to air
- Emissions to water
- Waste materials
- Physical presence
- Use of resources
- Socio-economic impacts

For each impact the **Scope** (area affected), **Persistence** (duration of impact), **Intensity** (the severity of the impact) and **Probability** (the likelihood of it occurring) have been assessed. Based on the assessment, the **Importance** (significance) of each impact is rated as low, medium or high. A summary of the impact assessment table for impacts of medium and high importance is shown on the following page.

The aspects of the operations that have been assessed as resulting in potential environmental impacts of high significance include the discharge of drill cuttings, the risk of offshore and near-shore hydrocarbon spills and the onshore disposal of waste material.

The quantity of drill cuttings likely to be discharged is estimated at approximately 1000m³ (based on well modelling). Post-drill benthic sampling has shown the seafloor impacts of cuttings to be localised with minimal evidence of any contamination, however there will be localised seafloor smothering around the well site with a medium to long term persistence.

Despite the very low probability, the impact of hydrocarbon spills from both near-shore and offshore operations was assessed to be of high importance due to the local to regional scope, medium to long term effect and high intensity. Any release of liquid hydrocarbons has potential for direct, indirect and cumulative effects including physical oiling and toxicity impacts to wildlife, localised mortality to krill, eggs and larvae, habitat loss, impacts to fishing and tourism, political issues from transboundary movements and accumulation of oil in the food chain and sediments. Modelling has demonstrated that the risk of an offshore spill in Tranches C and D reaching the Falklands' shoreline is negligible. Principal risks to coastal wildlife therefore arise from small to medium sized spills in the nearshore environment. These risks can be minimised through operational controls, maintenance procedures and comprehensive spill response planning.

The onshore management of drilling waste is assessed to be of medium to high importance, due primarily to the lack of suitable facilities for waste treatment and disposal in the Falkland Islands. At present there is no appropriate in-country disposal route for hazardous waste, which will need to be transferred elsewhere for appropriate disposal. The exception is waste oil, for which there is a good local facility for recycling and reuse (for heating).

Aspects assessed as resulting in potential environmental impacts of medium significance include emissions to air from routine operations and potential well tests, the risk of chemical spills during drilling, waste management options such as incineration, shipment to the UK, storage and re-use, the physical presence of the rig leading to potential for interference with other sea users and seabed disturbance from anchoring.

The potential impacts of these operations will be mitigated in a number of ways, including:

- Maintaining a spirit of openness and ongoing consultation with the Falkland Islands Government (FIG), the public and key stakeholders.
- Applying International best practice and established UK standards to operations, particularly in offshore chemical use and emissions reporting.
- Using only water based drilling muds and low toxicity chemicals approved under the UK Offshore Chemical Notification Scheme.
- Implementing a high level of environmental management offshore and applying environmental procedures for potentially impacting operations (chemical storage, bunkering, waste handling, maintenance programmes, seafloor surveys etc).

- Monitoring and reporting consumption and emission figures in accordance with the UK Environmental Emissions Monitoring System (EEMS).
- Establishing and implementing a project specific Oil Spill Response Plan and carrying out training of key personnel in spill response. Employing Oil Spill Response Ltd in the UK to provide outside assistance in the case of a major spill.
- Implementing a detailed waste management plan to minimise the quantity of waste going to landfill, prevent unsuitable disposal of waste, maximise the re-use of materials and establish the Best Practicable Environmental Option (BPEO) for storage, treatment, transfer and disposal of waste materials.
- Collecting and sharing environmental data wherever possible, for example in offshore sightings, seabed surveys and metocean conditions.

Summary of Impact Assessment Matrix showing impacts with medium to high significance

Activity	Aspect	Impacts					Description of potential impacts
		Scope:	Persistence:	Intensity:	Probability:	Importance:	
		Local Regional Contin'tal	Short Medium Long Perm't	Low Medium High	Low Medium High	Low Medium High	
Rig mobilisation	Rig engine emissions						Air pollution, emission of greenhouse gasses, ozone depleting substances, Volatile Organic Compounds (VOCs) and particulates
Drilling	Generator emissions						
Vessel use	Engine emissions						
Helicopter operations	Engine emissions						
Well testing	Flare emissions						
Top hole drilling	Cuttings discharge						Localised smothering of the seabed. Localised turbidity. Depletion of oxygen in surface sediments.
Drilling lower hole sections	Cuttings discharge						
Drilling/offshore bunkering	Large fuel / oil spill						Physical oiling and toxicity of wildlife, localised mortality to krill, eggs and larvae
Drilling/offshore bunkering	Small-med fuel/oil spill						
Near-shore loading / unloading	Small-med fuel / oil spill						Physical oiling and toxicity of wildlife, contamination of coastal habitats
Drilling	Chemical spill						Toxicity effects on marine biota.
Waste incineration	Air emissions						Air pollution
Waste incineration	Landfill of ash						Visual impact, soil and groundwater pollution
Disposal on shore	landfilling						Contamination of soil and groundwater. Amenity impacts. Air emissions.
Waste transfer to UK	Trans-frontier shipment						Impacts from long distance shipping of waste material
Waste Management	Storage & reuse						Positive effect - reduced incineration / landfilling
Rig presence	Interference						Exclusion of fisheries and shipping from drilling areas
Anchoring	Seabed disturbance						Harm to marine biota. Damage to seafloor habitats

5. CONCLUSIONS

Sufficient baseline data now exists for this part of the North Falkland Basin to carry out a comprehensive environmental impact assessment of the proposed operations. Despite this, the area remains relatively unstudied and any additional environmental data that can be gathered during these operations would be extremely worthwhile.

The proposed drilling campaign will expand on the level of environmental knowledge to the north of the Falkland Islands by facilitating seabird and marine mammal recording, providing seabed ROV footage, 3D seabed surveys and offshore meteorological data.

Impacts assessed to be of high importance are the discharge of drill cuttings, the risk of offshore and near-shore spills and the onshore disposal of waste material. Mitigation measures will be implemented to minimise these impacts and it should be possible for operations to proceed without any significant long lasting impact to the marine or coastal environment of the Falkland Islands. A number of pro-active measures have already been instigated by Desire and Peak in planning these operations, which should be commended.

In order to minimise environmental impacts it is important to ensure operations follow established procedures, training of key personnel is carried out, joint oil spill response exercises are run and contingency plans are in place to deal swiftly with any potentially polluting incidents. The production of an operations-specific addendum to this EIA will further define the environmental management, operational controls and employee training necessary to minimise potential impacts to the environment.

Both Desire and Peak maintain management systems detailing health, safety and environmental procedures. In addition, the drilling contractors will have in place operational controls and management procedures detailing how specific operations should be carried out. The application of good management and tight controls will ensure that the drilling contractor operates in accordance with all applicable laws, standards and conditions while in Falkland Island waters. It is also intended to carry out training of all key personnel in oil spill response procedures prior to drilling.

A dedicated oil spill contingency plan (OSCP) has been developed in support of the proposed drilling campaign in the North Falkland Basin. The OSCP provides for a multi-tier response depending on the scale and type of spill involved. At the most extreme end of the scale (Tier 3), the OSCP relies on mobilising specialist aircraft and personnel from Oil Spill Response Limited (OSRL) in the UK to provide aerial dispersant spraying capability. The draft OSCP will be finalised when the drilling rig, vessels and relevant personnel have been established and all necessary details within the OSCP can be completed.

Finalising the drilling unit and crew is not expected to cause a significant change in the operational aspects identified in the EIA. Any operational adjustments likely to cause a significant change to the EIA will be incorporated within the addendum.

In conclusion, despite the high sensitivity and international importance of Falkland Islands' waters, there is obvious dedication to carrying out these operations to a high environmental standard. Given the current operational commitments and proposed mitigation measures, it is considered that the proposed operations can be undertaken without significant impacts to the Falkland Islands' environment.



EXECUTIVE SUMMARY

Background and Framework

This report, also referred to as an Environmental Impact Statement (EIS), presents the findings of an Environmental Impact Assessment (EIA) conducted by RPS Energy with regard to exploratory drilling in the North Falkland Basin. The EIA has been carried out on behalf of Desire Petroleum PLC, who are planning a three well drilling campaign in Tranches C and D of the North Falkland Basin. A non-technical summary of this report has also been prepared and provides a concise version of the principal findings and recommendations presented here.

The Falkland Islands are a UK Overseas Territory located on the edge of the Patagonian Shelf in the South Atlantic Ocean. Desire Petroleum PLC (Desire) have been awarded Production Licences by the Falkland Islands Government for the exploration and production of oil and gas in Tranches C and D of the North Falkland Basin. Tranches C and D lie approximately 150km north of the main Islands, with proposed operations taking place in water depths of 350-420m.

Once a suitable drilling rig has been contracted, Desire plan to drill three wells, each +/- 3000m and each taking +/- 22 days (excluding well tests). The prime objective of the drilling programme is to evaluate the prospects identified by 3D seismic acquired in 2004. Of the prospects so far identified it is most likely that drilling will take place in three prospects out of Liz, Beth, Ninky or Ann (see **Figure 6**).

A consortium of oil companies drilled six wells in the North Falkland Basin during 1998. An EIA was carried out prior to drilling and identified significant gaps in the level of environmental data for this area. As a result of this drilling programme a number of environmental studies were commissioned, focussing primarily on the North Falkland Basin (the area of the proposed drilling campaign). Environmental studies conducted around the earlier drilling included:

- Seabird, penguin and cetacean studies
- Current modelling and drill cuttings dispersion modelling
- Benthic surveys (before and after drilling)
- Metocean (Meteorological and Oceanographic) studies
- Oil spill modelling

These studies have greatly increased knowledge of the baseline environment in this area. The proposed drilling campaign will expand on the level of environmental knowledge to the north of the Falkland Islands by facilitating seabird and marine mammal recording, providing seabed ROV footage, 3D seabed surveys and offshore meteorological data.

The significant level of baseline data now available for this area has allowed this environmental assessment to be carried out based on currently available data. No additional environmental monitoring or sampling has been commissioned for this assessment, although both information gathering and consultation exercises have been undertaken in the Falkland Islands. A large number of publications and websites have been used and referenced within this EIS and particular recognition is extended to Falklands Conservation, both for the commissioning of seabird and marine mammal at-sea surveys and for compiling the "Falkland Islands Environmental Baseline Survey 2004" (Munro 2004).

As the choice of drilling contractor and drilling unit has not been finalised, an addendum to this EIS will be produced once these are known in order to verify the assessment is both accurate and up-to-date. Any change to the proposed operations likely to significantly alter the environmental impact, will lead to a reassessment of relevant impacts. The addendum will also provide an operations-specific Environmental Management Plan and detailed mitigation measures and controls.

Operations and Impacts

The main sensitivities and environmental constraints identified in the licence area (Tranches C and D) are the highly important seabird populations, presence of marine mammals and fisheries interests. In addition, the benthic (seafloor) habitat is considered to be both sensitive to disturbance and relatively unstudied, although benthic surveys have revealed a relatively homogeneous (uniform) macrofauna in a relatively homogenous environment, with no significant indication of pollution from previous drilling.

Although not in the licence area, the near-shore and coastal environments are also included within this assessment and are considered to be both extremely important and sensitive to any forms of pollution.

An assessment of the likely environmental impacts of the three well drilling programme in Tranches C and D has been undertaken. The principal results of this assessment (Section 7 of this report) are as follows:

The environmental aspects of the operations that have been assessed as resulting in potential impacts of high significance include the discharge of drill cuttings, the risk of offshore and near-shore spills and the onshore disposal of waste material.

Environmental aspects assessed as resulting in potential impacts of medium significance include emissions to air from routine operations and potential well tests, the risk of chemical spills during drilling, waste management options other than onshore disposal (e.g. incineration, shipment to the UK, storage and re-use), the physical presence of the rig and potential for interference with other sea users and seabed disturbance from anchoring.

The potential impacts of these operations will be mitigated in a number of ways, including:

- Maintaining a spirit of openness and ongoing consultation with the Falkland Islands Government (FIG), the public and key stakeholders.
- Applying International best practice and established UK standards to operations, particularly in offshore chemical use and emissions reporting.
- Using only water based drilling muds and low toxicity chemicals approved under the UK Offshore Chemical Notification Scheme.
- Implementing a high level of environmental management offshore and applying environmental procedures for potentially impacting operations (chemical storage, bunkering, waste handling, maintenance programmes, seafloor surveys etc).
- Monitoring and reporting consumption and emission figures in accordance with the UK Environmental Emissions Monitoring System (EEMS).
- Establishing and implementing a project specific Oil Spill Response Plan and carrying out training of key personnel in spill response. Employing Oil Spill Response Ltd in the UK to provide outside assistance in the case of a major spill.
- Implementing a detailed waste management plan to minimise the quantity of waste going to landfill, prevent unsuitable disposal of waste, maximise the re-use of materials and establish the Best Practicable Environmental Option (BPEO) for storage, treatment, transfer and disposal of waste materials.
- Collecting and sharing environmental data wherever possible, for example in offshore sightings, seabed surveys and metocean conditions.

A more detailed description of recommended mitigation measures and environmental management is provided in Sections 7 and 8 of this report.



THE FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

Vol. CXV

31st January 2006

No. 2

Appointments

Edward Grimmer, Plant Operator/Handyman, Public Works Department, 01.01.06.

Shona Burns, Part-time Receptionist, Education Department, 01.01.06.

Jennifer Helen Ladron de Guevara, Part-time Receptionist, Education Department, 01.01.06.

Alison Edith Early, Teacher, Infant and Junior School, Education Department, 01.01.06.

Serena Samantha Sinclair, Observer, Falkland Islands Government Air Service, 03.01.06.

Wetjens Fritz Dimlich, Stock Assessment Scientist, Fisheries Department, 07.01.06.

Marion Elisabeth Bagley, Assistant Housekeeper, Government House, 09.01.06.

Lynette Dent, Laboratory Technician, Department of Agriculture, 14.01.06.

Helen Daws, Staff Nurse, Health Services Department, 23.01.06.

Judith Sidney Fuller, Language Support Teacher, Education Department, 25.01.06.

Fiona Margaret Didlick, House Parent, Education Department, 25.01.06.

Completion of Contract

Alison Edith Early, Teacher, Infant and Junior School, Education Department, 31.12.05.

Sarah Kathryn Crofts, Fisheries Observer, Fisheries Department, 05.01.06.

Sylvia Cole, Director of Education, Education Department, 27.01.06.

Helene Virginia Williams, Personal Assistant, Mineral Resources Department, 31.01.06.

Promotion

Dinah May Brown, from Staff Nurse, Health Services Department, to Senior Staff Nurse, Health Services Department, 01.01.06.

Katrina Stephenson, from Secretary, Infant and Junior School, Education Department to Personal Assistant, Mineral Resources Department, 23.01.06.

Resignations

Sandra Dawn Henry, Cook, Health Services Department, 28.12.05.

Nicholas Davis, HGV Driver/General Assistant, Public Works Department, 31.12.05.

Cherie Yvonne Clifford, Part-time Support Worker, Health Services Department, 06.01.06.

Rachael Freeman, Part-time Receptionist, Education Department, 08.01.06.

Rachel Ena Berntsen, Receptionist, Health Services Department, 12.01.06.

John David Cole, Materials Technician, Public Works Department, 27.01.06.

Retirement

Jeanette May MacAskill, Storesperson, Public Works Department, 18.01.06.

NOTICES

No. 2 19th January 2006

Museum and National Trust Ordinance section 4

Appointment of Trustees

IN EXERCISE of my powers under section 4(1) of the Museum and National Trust Ordinance (Title 34.2) I appoint the following person to be a Trustee of the Museum and National Trust for a period of three years from 1 December 2005 —

Lucinda Vikki May

and further I re-appoint the following persons to be Trustees of the Museum and National Trust for a period of three years from 28 July 2005 —

Vernon Robert Steen
Alison Mary Barton

Dated this 19th day of January 2006

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

No. 3

19th January 2006

APPLICATION FOR PERMANENT RESIDENCE

Notice is hereby given that Reuben Joseph HARWOOD 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 22nd February 2006.

W. REEVES,
Immigration Officer.

No. 4

27th January 2006

HEBE LIMITED Company Number: 10030

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

J.C. ROWLAND,
Registrar of Companies.



THE FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

Vol. CXV

28th February 2006

No. 3

Appointments

Helen Otley, Fisheries Observer, Fisheries Department, 30.01.06.

Gene Stanley Bermtsen, Handyman, Public Works Department, 01.02.06.

Ignacio Sergio Paya Contreras, Senior Stock Assessment Scientist, Fisheries Department, 06.02.06.

Acting Appointments

Katherine Mary Nelson, Acting Head Teacher, Education Department, 25.01.06.

Alan Purvis, Acting Director of Education, Education Department, 30.01.06.

Determination of Appointment

Alistair Daem Minto, Handyman, Public Works Department, 17.02.06.

Resignations

Jennifer Helen Ladron de Guevara, Part-time Receptionist, Education Department, 23.02.06.

NOTICES

No. 5

24th February 2006

APPLICATIONS FOR NATURALISATION

Notice is hereby given that:

Helena De Fatima SHILLITOE and
Stephen Bruce SHILLITOE

are 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 and Immigration Department, Stanley no later than 21st March 2006.

W. REEVES,
Immigration Officer.

No. 6

24th February 2006**APPLICATIONS FOR PERMANENT RESIDENCE**

Notice is hereby given that:

Cesar Andres GUERRA REYES, and
Wayne Theodore YON

have applied through the Principal Immigration Officer to
be granted Permanent Residence Permits by the Governor.

Any person who knows of any reason why permits 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 21st March 2006.

W. REEVES,
Immigration Officer.

No. 7

24th February 2006**APPLICATION FOR FALKLAND ISLANDS STATUS**

Notice is hereby given that:

Ricardo Theodore STEVENS

has applied through the Principal Immigration Officer for
Falkland Islands Status to be granted 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 and Immigration
Department, Stanley by 21st March 2006.

W. REEVES,
Immigration Officer.



THE FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

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31st March 2006

No. 4

Appointments

Roanna Eileen Lloyd, Sports Attendant, Education Department, 27.02.06.

Katja Janzen, Fisheries Observer, Fisheries Department, 01.03.06.

Marlene Barnes Avecedo, General Assistant, Health Services Department, 01.03.06.

Zulema Del Carmen Villaroel Vasquez, General Assistant, Health Services Department, 01.03.06.

Ximena Ida Minto, General Assistant, Health Services Department, 01.03.06.

Joanne Watson, Clerk, Health Services Department, 01.03.06.

Samantha Jayne Payne, Receptionist, Health Services Department, 13.03.06.

Tamara Anne McCormick, Part-time Receptionist, Education Department, 15.03.06.

Completion of Contract

George William Burroughs, Maintenance Manager, Public Works Department, 28.02.06.

Gwenyth Ann Thomson, Senior Architectural Engineer, Public Works Department, 24.03.06.

Lawrence William Gilbertson, Clerk of Works, Public Works Department, 24.03.06.

Renewal of Contract

George William Burroughs, Maintenance Manager, Public Works Department, 01.03.06.

Resignation

Wendy Jennifer Luxton, Carer, Health Services Department, 10.03.06.

Margaret Anderson, Cleaner, Secretariat, 20.03.06.

Transfer

Alastair Jaime Ceballos-Anderson, from Sports Attendant, Education Department to Apprentice Electrician, Public Works Department, 01.03.06.

NOTICES

No. 8

23rd March 2006

PLANNING ORDINANCE 1991

(section 5(2))

APPOINTMENT OF MEMBER OF THE PLANNING AND BUILDING COMMITTEE

IN EXERCISE of my powers under section 5(2) of the Planning Ordinance 1991 (Title 55.3) I, **HOWARD JOHN STREDDER PEARCE C.V.O.**, Governor of the Falkland Islands, **APPOINT LESLIE SIDNEY HARRIS** to be a member of the Planning and Building Committee for a period of three years commencing upon the date of this appointment.

Dated this 23rd day of March 2006

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

24th March 2006

**FISHERIES (CONSERVATION AND
MANAGEMENT) ORDINANCE 2005**
(section 1)

NOTICE OF COMMENCEMENT No. 2

IN EXERCISE of my powers under section 1 of the Fisheries (Conservation and Management) Ordinance 2005 and of all other powers enabling me in that behalf, I NOTIFY that —

(a) sections 14 and 15, 21, 22, 32 to 35, 37 to 39, 41 to 53, 55, 57 to 83, 88 and 89 of the Ordinance shall come into force on 1st April 2006 (but in respect of sections 21, 22 and 37 to 39 only so far as they relate to the loligo and toothfish fisheries); and

(b) sections 5, 90 to 97, 126 to 191, 194 to 198, 203, 204 (remaining provisions), 205 and 206, 207 (remaining provisions), 211, 213 and 214, 224 and Schedule 3 (so far as not already commenced) shall come into force on 1st July 2006.

Dated this 24th day of March 2006

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

No. 10

29th March 2006

APPLICATION FOR FALKLAND ISLANDS STATUS

Notice is hereby given that **Sheena Marie BENJAMIN** has applied through the Principal Immigration Officer for Falkland Islands Status to be granted 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 and Immigration Department, Stanley by 21st April 2006.

Dated this 29th day of March 2006

W. REEVES,
Immigration Officer.

No. 11

29th March 2006

APPLICATION FOR PERMANENT RESIDENCE

Notice is hereby given that **Claudia Alejandra QUIROGA BLANCO** 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 21st April 2006.

Dated this 29th day of March 2006

W. REEVES,
Immigration Officer.

No. 12

30th March 2006

HIGHWAYS (WEIGHT LIMITS) ORDINANCE 2004
(section 6(4))

PROHIBITION NOTICE

IN EXERCISE of the powers provided 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 2006 until 30th September 2006 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;

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

all roads beyond the Moody Brook Bridge as approached from the East on the Moody Brook Road,

(2) on West Falkland —

all publicly maintainable highways.

Dated this 31st day of March 2006

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



THE FALKLAND ISLANDS GAZETTE

Extraordinary

PUBLISHED BY AUTHORITY

Vol. CXV

4th April 2006

No. 5

NOTICES

No. 13

4th April 2006

**Fisheries (Conservation and Management) Ordinance
2005**
(section 19)

Notice of intention to grant Fishing Rights

Fishery: Squid – *Loligo gahi*
Period: 15 July – 30 September

Class of Right: Individual Transferable Quota (ITQ)
Date of opening of Eligibility Register: 1 January 2006

A. Applications:

Applications are now invited for the grant of ITQ in this fishery. Applications should be submitted on the prescribed form to the Director of Fisheries (at the Fisheries Department, Stanley, Falkland Islands), so as to reach him on or before 1600 on 12 April 2006. Applications will only be considered from companies whose names appear on the Eligibility Register for this fishery.

B. Procedure for the grant of ITQ:

ITQ may only be granted to applicants whose names appear on the relevant Eligibility Register. The division of ITQ amongst such applicants will be in accordance with the

proportion of fishing effort each company (and including its associate companies) was originally allocated for the *Loligo gahi* fishery, operating during the first season of 2006. In the event that this procedure fails to account for all the ITQ available in the fishery, the remaining balance of ITQ will be distributed to the successful applicants in proportion to their ITQ holdings in the fishery, subject to the prevailing aggregation limits.

C. Period:

The ITQ so granted will be in force for 25 years (to 30 June 2031), unless it is sooner cancelled or otherwise ceases to apply or have effect.

D. Right to make application for review:

Any applicant aggrieved by the grant of, or the refusal to grant, ITQ, may apply to the Disputes Commission to have the decision reviewed. (See section 108 of the Fisheries (Conservation and Management) Ordinance 2005). Any such application to the Disputes Commission should be made, in writing, within 14 days after being notified by the Director of Fisheries of the decision. Applications to the Disputes Commission should be delivered to the Registrar (Courts Administrator, Town Hall, Stanley).

Dated this 4th day of April 2006

J. BARTON,
Director of Fisheries.

**Fisheries (Conservation and Management) Ordinance
2005
(section 19)**

Notice of intention to grant Fishing Rights

Fishery: Toothfish (*Dissostichus eleginoides*) –
Longline

Period: All year

Class of Right: Individual Transferable Quota (ITQ)
Date of opening of Eligibility Register: 1 January 2006

A. Applications:

Applications are now invited for the grant of ITQ in this fishery. Applications should be submitted on the prescribed form to the Director of Fisheries (at the Fisheries Department, Stanley, Falkland Islands), so as to reach him on or before 1600 on 12 April 2006. Applications will only be considered from companies whose names appear on the Eligibility Register for this fishery.

B. Procedure for the grant of ITQ:

ITQ may only be granted to applicants whose names appear on the relevant Eligibility Register. The division of ITQ amongst such applicants will be in accordance with the proportion of catches taken by the applicant in this fishery

during the period 1 January – 31 December 2005. In the event that this procedure fails to account for all the ITQ available in the fishery, the unallocated ITQ will remain in the ownership of the Crown.

C. Period:

The ITQ so granted will be in force for 25 years (to 30 June 2031), unless it is sooner cancelled or otherwise ceases to apply or have effect.

D. Right to make application for review:

Any applicant aggrieved by the grant of, or the refusal to grant, ITQ, may apply to the Disputes Commission to have the decision reviewed. (See section 108 of the Fisheries (Conservation and Management) Ordinance 2005). Any such application to the Disputes Commission should be made, in writing, within 14 days after being notified by the Director of Fisheries of the decision. Applications to the Disputes Commission should be delivered to the Registrar (Courts Administrator, Town Hall, Stanley).

Dated this 4th day of April 2006

J. BARTON,
Director of Fisheries.



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PUBLISHED BY AUTHORITY

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25th April 2006

No. 6

NOTICES

No. 15

24th April 2006

Fisheries (Conservation and Management) Ordinance 2005

(section 20)

Notice of grant of Fishing Rights

1. Notice is hereby given that Individual Transferable Quota (ITQ) in the squid (*Loligo gahi*) fishery which operates during the period 24 February – 14 April, shall be granted to the following companies and in the fractions as set out:

Company	Fraction of Individual Transferable Quota
Argos Group Limited	18.75%
Beauchene Fishing Company Limited	12.97%
Fortuna Limited	27.53%

RBC Limited	10.45%
Seafish (Falklands) Limited	4.40%
Seaview Limited	14.34%
Southern Cross Limited	11.56%
TOTAL	100.00%

2. This notice is set out in accordance with section 20(2) of the Fisheries (Conservation and Management) Ordinance 2005. Any person aggrieved by a decision to grant or refuse an application for a grant of ITQ may apply under section 108 to the Disputes Commission to review the matter. Any such application must be submitted within 14 days of the date of this notice.

Dated this 24th day of April 2006

J. BARTON,
Director of Fisheries.

**Fisheries (Conservation and Management) Ordinance
2005***(section 20)***Notice of grant of Fishing Rights**

1. Notice is hereby given that Individual Transferable Quota (ITQ) in the Toothfish (*Dissostichus eleginoides*) longline fishery which operates throughout the year, shall be granted to the following companies and in the fractions as set out:

Company	Fraction of Individual Transferable Quota
Consolidated Fisheries Limited	100.00%
TOTAL	100.00%

2. This notice is set out in accordance with section 20(2) of the Fisheries (Conservation and Management) Ordinance 2005. Any person aggrieved by a decision to grant or refuse an application for a grant of ITQ may apply under section 108 to the Disputes Commission to review the matter. Any such application must be submitted within 14 days of the date of this notice.

Dated this 24th day of April 2006

J. BARTON,
Director of Fisheries.



THE FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

Vol. CXV

28th April 2006

No. 7

Appointments

Gail Charlotte Reid, Staff Nurse, Health Services Department, 29.03.06.
 Juan Mamerto Campos Busto, Handyman, Public Works Department, 03.04.06.
 John McLeod (Snr), Power Station Operator, Public works Department, 03.04.06.
 Jason Stephenson, Trainee Aircraft Fitter, Falkland Islands Government Air Service, 04.04.06.
 Trudi Eileen Felton, Carer, Health Services Department, 19.04.06.
 Barbara Booth, Director of Education, Education Department, 21.04.06.
 Anthony Stephen Webster, Handyman, Health Services Department, 24.04.06.

Completion of Appointment

Sandy Bridget Kelly, General Assistant, Health Services Department, 31.03.06.

Completion of Contract

Anthony David Redfern, Dental Officer, Health Services Department, 23.04.06.
 Steven William Pointing, Veterinary Officer, Department of Agriculture, 30.04.06.

Resignation

Jennifer Lorraine Smith, Clerk/Cashier, Post Office, 07.04.06.
 Terence Leslie Bonner, Power Station Operator, Public Works Department, 10.04.06.
 Margaret Mary Battersby, Vocational Training Co-ordinator, Education Department, 30.04.06.

Retirement

Richard William Browning, Tyre Fitter, Public Works Department, 26.04.06.
 Phyllis Jaffray, Cook, Education Department, 30.04.06.

NOTICES

No. 17

12th April 2006

INDEX OF RETAIL PRICES

Date	Index	Annual % Increase	Quarter % Increase
30/06/05	117.000	4.811	0.214
30/09/05	119.890	6.097	2.470
31/12/05	120.670	4.341	0.651
31/03/06	122.000	4.497	1.102

Dated this 12th day of April 2006

Financial Secretary

13th April 2006

GOLDEN FLEECE LIMITED
Company Number: 10852

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

Dated this 13th day of April 2006

J.C. ROWLAND,
Registrar of Companies

27th April 2006

HEBE LIMITED
Company Number: 10030

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 27th day of April 2006.

Dated this 27th day of April 2006

J.C. ROWLAND,
Registrar of Companies

25th April 2006

APPLICATIONS FOR
FALKLAND ISLANDS STATUS

Notice is hereby given that:-

Patricia Ann PETERS; and
Ray Allen WILLIAMS

have applied through the Principal Immigration Officer for Falkland Islands Status to be granted 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 and Immigration Department, Stanley by 21st May 2006.

Dated this 25th day of April 2006

C. W. REEVES,
Immigration Officer.

25th April 2006

APPLICATIONS FOR PERMANENT RESIDENCE

Notice is hereby given that:-

Michael Bernard MCPARTLAND;
Hugo Patricio ALVEAR DIAZ; and
Zulema Del Carmen VILLARROEL VASQUEZ

have applied through the Principal Immigration Officer to be granted Permanent Residence Permits by the Governor.

Any person who knows of any reason why such permits 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 21st May 2006.

Dated this 25th day of April 2006

C.W. REEVES,
Immigration Officer.

27th April 2006

CORRECTION OF NOTICE NO. 15

The words "24 February - 14 April" in the third line of the first paragraph of Notice No. 15 (dated 24 April 2006) which was published in the Extraordinary Gazette of 25 April 2006 (Vol. CXV No. 6)) are replaced by the words "15 July - 30 September".

Dated 27th April 2006

A. J. BARTON,
Director of Fisheries.



**THE
FALKLAND ISLANDS GAZETTE
Extraordinary**

PUBLISHED BY AUTHORITY

Vol. CXV

1st May 2006

No. 8

The following is published in this Gazette -

Register of Electors 1st May 2006.

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	Gardeners Cottage
000006	Alazia	Freda	22 Fitzroy Road
000007	Alazia	Freda Evelyn	17 Jersey Road
000008	Alazia	James Andrew	22 Fitzroy Road
000009	Alazia	Jason Neville	1a Brandon Road
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	13 Hansen Hill
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	Lookout Lodge
000037	Anderson	Tony James	8 Goss Road
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	2 Sullivan Street
000043	Arthur-Almond	Daphne 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	Barkman	Teslyn Siobahn	16 Fieldhouse Close
000048	Barnes	Karen Rose	2 Hebe Place

000049	Barnes	Marlene Estela	2a Brisbane Road
000050	Barnes	Paul	14 Murray Heights
000051	Barton	Alison Mary	6 Villiers Street
000052	Barton	Arthur John	6 Villiers Street
000053	Bates	Barbara	8 Watson Way
000054	Bates	James William	8 Watson Way
000055	Battersby	Jon Alan	16 Fieldhouse Close
000056	Battersby	Margaret Mary	16 Fieldhouse Close
000057	Beckett	Vivien Delia	2 Discovery Close
000058	Bedford	Kita Muriel	13 Jersey Road
000059	Benjamin	Robin Eric	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	7 Rowlands Rise
000064	Berntsen	Iain Kenneth	2 Dean Street
000065	Berntsen	John Alexander	7 Jeremy Moore Avenue Flat 1
000066	Berntsen	Kenneth Frederick	1 Racecourse Road East
000067	Berntsen	Matthew John	Lookout Lodge
000068	Berntsen	Olaf Christian Alexander	35 Eliza Crescent
000069	Berntsen	Patrick	10 A James Street
000070	Berntsen	Rachel Ena	15a James Street
000071	Berntsen	Saphena Anya Jane	1 Auster Place
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	Bertrand	Catherine Gladys	11 Ross Road East
000076	Besley-Clark	Barbara June	53 Callaghan Road
000077	Besley-Clark	Craig Norman Leigh	53 Callaghan Road
000078	Besley-Clark	Norman	53 Callaghan Road
000079	Betts	Arlette	Lafone House Ross Road East
000080	Betts	Donald William	7 Jeremy Moore Avenue
000081	Betts	Ellen Alma	21 Fitzroy Road
000082	Betts	George Winston Charles	35 Ross Road West
000083	Betts	Ian	1 Villiers Street
000084	Betts	Lucia Elizabeth	35 Ross Road West
000085	Betts	Michael George	35 Ross Road West
000086	Betts	Owen	14 Fieldhouse Close
000087	Betts	Peter James	10 Ian Campbell Drive
000088	Betts	Priscilla Violet Morrison	14 Fieldhouse Close
000089	Betts	Severine	19 Scoresby Close
000090	Betts	Shirley Rose	7 Jeremy Moore Avenue
000091	Betts	Stephen	7 Jeremy Moore Avenue
000092	Betts	Tyrone Trevor	7 Short Street
000093	Biggs	Ailie Christine	16 Endurance Avenue
000094	Biggs	Alastair Gordon	Trehayle 50 John Street
000095	Biggs	Althea Maria	3 Dairy Paddock Road
000096	Biggs	Betty Josephine	9 Moody Street

000097	Biggs	Christopher David	5 James Street
000098	Biggs	Coleen Margot	9 Moody Street
000099	Biggs	Daniel Craig	16 Endurance Avenue
000100	Biggs	Edith Joan	Trehayle 50 John Street
000101	Biggs	Frances	16 Endurance Avenue
000102	Biggs	Kyle Alexander	16 Endurance Avenue
000103	Biggs	Leslie Frederick	3 Dairy Paddock Road
000104	Biggs	Marian June	30 Ross Road East
000105	Biggs	Michael Elfed	21 Fitzroy Road
000106	Biggs	Patrick	30 Ross Road East
000107	Biggs	Peter Julian Basil	16 Endurance Avenue
000108	Biggs	Richard John	30 Ross Road East
000109	Biles	Kathleen Anne	14 Kent Road
000110	Biles	Keith Robert	14 Kent Road
000111	Binnie	Linda Rose	6 Fieldhouse Close
000112	Binnie	Ronald Eric	6 Fieldhouse Close
000113	Binnie	Susan	3 Brandon Road
000114	Birmingham	Alexandra Sally	4 Drury Street
000115	Birmingham	John	4 Drury Street
000116	Bishop	Corina Rose	7 Eliza Crescent
000117	Bishop	Nigel Ian	7 Eliza Crescent
000118	Blackley	Candy Joy	4 Barrack Street
000119	Blackley	Maurice	The Lodge Market Garden
000120	Blackley	Shane David	4 Barrack Street
000121	Blake	Alexander Charles	38 Eliza Crescent
000122	Blake	Anthony Thomas	14 Watson Way
000123	Blake	Larissa Celly	12 Ross Road West
000124	Blake	Lionel Geoffrey	1 Ross Road
000125	Blake	Sally Gwynfa	1 Ross Road
000126	Blake	Thomas Patrick	12 Ross Road West
000127	Blizard	Malvina Mary	51 Fitzroy Road
000128	Blyth	Agnes Ruth	2 Brandon Road
000129	Blyth	Paz Neri	13 Scoresby Close
000130	Bolt	Dennis John	4 Watson Way
000131	Bonner	Alan Paul	8 Pioneer Row
000132	Bonner	Angela Jane	5a Ross Road East
000133	Bonner	Avril Margaret Rose	4 Felton Court
000134	Bonner	Donald William	Chaffeurs Cottage
000135	Bonner	Ewan Shane	28 Jersey Road
000136	Bonner	Hayley Trina	41 Ross Road West
000137	Bonner	Keith James	4 Felton Court
000138	Bonner	Linda Jane	4A Ross Road West
000139	Bonner	Lindsay Jane	4A Ross Road West
000140	Bonner	Nicholas	4A Ross Road West
000141	Bonner	Odette Ellen May	Madecosie 15 Jersey Estate
000142	Bonner	Paul Roderick	5 John Street
000143	Bonner	Richard James	8 Murray Heights
000144	Bonner	Stevie Coppel	Dolphin Cottage

000145	Bonner	Terence Leslie	Madecosie 15 Jersey Estate
000146	Bonner	Timothy	41 Ross Road West
000147	Bonner	Vera Ann	5 John Street
000148	Bonner	Vera Joan	Chaffeurs Cottage
000149	Bonner	Violet	40 Ross Road
000150	Booth	Jessie	Racecourse Cottage
000151	Booth	Myriam Margaret Lucia	7 Philomel Street
000152	Booth	Stuart Alfred	Racecourse Cottage
000153	Bound	Joan	10 Barrack Street
000154	Bowles	Norma Evangeline	1A Villiers Street
000155	Bowles	Sarah	9 Drury Street
000156	Bowles	William Edward	1A Villiers Street
000157	Bowles	William George Troyd	9 Drury Street
000158	Bragger	Edward Laurence	14 Jeremy Moore Avenue
000159	Bragger	Stacey John	14 Jeremy Moore Avenue
000160	Brickle	Paul	32 Fitzroy Road
000161	Brock	Juanita Lois	Flat5 1 Jeremy Moore Ave East
000162	Brooks	Cheryl Rose	25 Callaghan Road
000163	Brooks	Peter William	25 Callaghan Road
000164	Brown	Dinah May	Colonial Cottage 34 John St
000165	Browning	Colin George	1 Moody Street
000166	Browning	Edwina	96 Davis Street
000167	Browning	Gavin	Lookout Lodge
000168	Browning	Henry Stanbury	Lookout Lodge
000169	Browning	Joan Lucy Ann	5 Villiers Street
000170	Browning	Nathan David	3 Dairy Paddock Road
000171	Browning	Rex	35 Davis Street
000172	Browning	Richard William	96 Davis Street
000173	Browning	Trevor Osneth	5 Villiers Street
000174	Brownlee	Andrew Samuel	19 Ross Road East
000175	Brownlee	Lynn Frances	19 Ross Road East
000176	Brownlee	Samantha Louise	19 Ross Road East
000177	Buckett	Ronald Peter	49 Fitzroy Road
000178	Buckett	Roy Peter	Lookout Lodge
000179	Buckett	Susan Vera	49 Fitzroy Road
000180	Buckland	Darlene Joanna	5 James Street
000181	Buckley-Whitney	Helena Jane	2 Pioneer Row
000182	Budd	Dennis Raymond	5 Ian Campbell Drive
000183	Budd	Pamela Joan	5 Ian Campbell Drive
000184	Burnett	Robert Southern	9 Philomel Street
000185	Burns	Mary Anne	34 Davis Street
000186	Burston	Catherine	91 Davis Street
000187	Burston	Stephen Leslie	91 Davis Street
000188	Bury	Ian Thomas	63 Davis Street
000189	Butcher	Michael George	3A Dairy Paddock Road
000190	Butcher	Trudi	3A Dairy Paddock Road
000191	Butler	Elsie Maud	10 Thatcher Drive
000192	Butler	Frederick Lowther Edward	10 Thatcher Drive

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

000241	Clarke	David James	17 Ross Road West
000242	Clarke	Derek Simon	23 Jeremy Moore Avenue
000243	Clarke	Doreen	17 Ross Road West
000244	Clarke	Felicity Marie	7 Fitzroy Road
000245	Clarke	Gwynne Edwina	17 Jeremy Moore Avenue
000246	Clarke	Ian	Lookout Lodge Stanley
000247	Clarke	Isabel Joan	12 Fieldhouse Close
000248	Clarke	James Martin	3 'H' Jones Road
000249	Clarke	Jeremy Ian Thomas	7 Fitzroy Road
000250	Clarke	Joan Patricia Marion	Flat 6, 6 Jersey Road
000251	Clarke	Jonathan Terence	3a Fitzroy Road
000252	Clarke	Joseph Gwyn	Lookout Lodge
000253	Clarke	Luke Anthony	22 Jeremy Moore Avenue
000254	Clarke	Margaret Ann	3 H Jones Road
000255	Clarke	Marvin Thomas	7 Fitzroy Road
000256	Clarke	Ronald John	17 Ross Road West
000257	Clarke	Rudy Thomas	8 Drury Street
000258	Clarke	Stephen Boyd	12 Fieldhouse Close
000259	Clarke	Terence John	17 Jeremy Moore Avenue
000260	Clarke	Tracey Clare	23 Jeremy Moore Avenue
000261	Clarke	Trudi Ann	7 Fitzroy Road
000262	Clarke	Violet Rose	8 Ian Campbell Drive
000263	Clasen	Wayne Ian Summers James	17 Davis Street
000264	Clausen	Andrea Patricia	3 St Marys Walk
000265	Clausen	Denzil	Cottage St Mary's Walk
000266	Clausen	Denzil George Gustavius	3 St Marys Walk
000267	Clausen	Melanie	54 Davis Steet
000268	Claxton	Margaret	28 Ross Road East
000269	Clayton	Brian	Dorada
000270	Clayton	Jade Anne	16 St Mary's Walk
000271	Clement	Gary	9 Snake Street
000272	Clement	Jane	9 Snake Street
000273	Clement	Lee	9 Snake Street
000274	Clement	Sara Jane	10 Snake Street
000275	Clement	Wayne	10 Snake Street
000276	Cletheroe	Kenneth Stanley	45 Fitzroy Road
000277	Clifton	Darwin Lewis	53 Davis Street
000278	Clifton	Marie	10 Police Cottages
000279	Clifton	Melvyn	9 Fitzroy Road East
000280	Clifton	Neil	11 Hansen Hill
000281	Clifton	Stephen Peter	61 Fitzroy Road
000282	Clifton	Terence Charles	3 Ross Road West
000283	Clifton	Teresa Ann	12 Callaghan Road
000284	Clifton	Valerie Ann	61 Fitzroy Road
000285	Cockwell	Jennifer Marie	90 Davis Street
000286	Cockwell	John Richard	14 Ross Road West
000287	Cockwell	Maurice Adam	90 Davis Street
000288	Cockwell	Samuel George	14 Ross Road West

000289	Cofre	Elvio Miguel	41 Eliza Crescent
000290	Collins	Brian Richard	41 Davis Street
000291	Collins	Hazel	41 Davis Street
000292	Collins	Shiralee	14 Jersey Road
000293	Collins	Steven Paul	7 John Street
000294	Connolly	Kevin Barry	1 King Street
000295	Coombe	Robert Dean	1a Capricorn Road
000296	Cotter	Caroline Jane	9 Jeremy Moore Avenue
000297	Cotter	Jacqueline Ann	9 Jeremy Moore Avenue
000298	Cotter	Mary Jane	9 Jeremy Moore Avenue
000299	Cotter	Timothy Stewart	9 Jeremy Moore Avenue
000300	Courtney	Anthony Clive	30 Goss Road
000301	Courtney	Julie	30 Goss Road
000302	Cousins	Juliet Ann	F I G O
000303	Coutts	Charles Lindsay	33 Ross Road
000304	Coutts	John	36 Ross Road West
000305	Coutts	Olga	33 Ross Road
000306	Crabb	Elizabeth Ann	34a Davis Street
000307	Crowie	Alan John	72 Davis Street
000308	Crowie	Ana Bonita	72 Davis Street
000309	Crowie	Clare Frances	6 Rowlands Rise
000310	Crowie	David Martin	Lookout Lodge
000311	Crowie	David Sean	51 Callaghan Road
000312	Crowie	Michelle	1 Discovery Close
000313	Crowie	Nicola Jane	35 Callaghan Road
000314	Crowie	Peter James	Lookout Lodge
000315	Crowie	Robert John	35 Callaghan Road
000316	Crowie	Roxanne	72 Davis Street
000317	Curtis	Alfred William Hamilton	6 Brandon Road West
000318	Curtis	Barbara Joan	6 Brandon Road West
000319	Curtis	Bonnie Elizabeth Hamilton	6 Brandon Road West
000320	Curtis	James William Hamilton	6 Ross Road
000321	Davies	Anthony Warren	7 Callaghan Road
000322	Davies	Christine Susan	F I G O
000323	Davies	Colin George	15 Ross Road West
000324	Davies	Eileen Wynne	15 Ross Road West
000325	Davies	Jacqueline Nancy	7 Callaghan Road
000326	Davies	Richard Andrew	4 Fitzroy Road East
000327	Davies	Samantha	7 Callaghan Road
000328	Davies	Sarah	4 Fitzroy Road East
000329	Davies	Sian Karen	7 Callaghan Road
000330	Davies	William	F I G O
000331	Davis	Ellen Rose	39 Davis Street
000332	Davis	Maurice	39 Davis Street
000333	Davis	Roy George Victor	6 Narrows View
000334	Davis	Stacey Elizabeth	14 Murray Heights
000335	Davis	William James	4 Yates Place
000336	Davis	Yona	40 Ross Road

000337	Davy	Patrick Alex Field	Flat3 3 Jeremy Moore Ave East
000338	Dent	Janice Vanessa	16 Scoresby Close
000339	Dent	Stephen John	16 Scoresby Close
000340	Desborough	Gladys Malvina	14 Allardyce Street
000341	Dickson	Iris	2 Dairy Paddock Road
000342	Dickson	Michael Keith	12 Dairy Paddock Road
000343	Dickson	Ronald Edward	2 Dairy Paddock Road
000344	Didlick	Fiona Margaret	Lady Hunt House
000345	Didlick	Graham John	Lady Hunt House
000346	Didlick	Imogen Fiona	13 Jeremy Moore Avenue
000347	Diggle	Jean Katherine	12 Jersey Road
000348	Diggle	Roger John	12 Jersey Road
000349	Dobbys	Kathleen Gay	60 Davis Street
000350	Dodd	Alison	1 Pioneer Row
000351	Dodd	Nigel Keith	1 Pioneer Row
000352	Doherty	Ian	6a Gleadell Close
000353	Duncan	Doreen	Tenacres
000354	Earnshaw	Jacqueline Elizabeth	37 Ross Road West
000355	East	Justin Clive Richard	1 Fieldhouse Close
000356	East	Michelle Jane	36 Ross Road East
000357	Eccles	Bernard Leslie	18 Jeremy Moore Avenue
000358	Eccles	Matthew James	18 Jeremy Moore Avenue
000359	Eccles	Moirra Cameron	18 Jeremy Moore Avenue
000360	Edwards	Emma Jane	41 Ross Road East.
000361	Ellick	Joanne Marie	11 McKay Close
000362	Ellick	Nicholas Charles	11 McKay Close
000363	Elliot	Elizabeth Rose	15 Callaghan Road
000364	Elliot	Henry James	15 Callaghan Road
000365	Ellis	Cyril	24 Ross Road East
000366	Ellis	Lucy	11 James Street
000367	Ellis	Paul	43 John Street
000368	Ellis	Sally Jean	43 John Street
000369	Ellis	Valerie	24 Ross Road East
000370	Elsby	Barry	Moody Brook House
000371	Eriksen	Fiona Alison	5 Racecourse Road
000372	Evans	Gladys Alberta	6 Barrack Street
000373	Evans	Michelle Paula	Murray Heights
000374	Evans	Susan Maureen	45 Ross Road East
000375	Ewing	Gordon	4 Jeremy Moore Avenue
000376	Ewing	Irene	4 Jeremy Moore Avenue
000377	Eynon	Carol	8 Villiers Street
000378	Eynon	David John	8 Villiers Street
000379	Faria	Basil Harry	3a Brisbane Road
000380	Faria	Maria Anne	3a Brisbane Road
000381	Faria	Mary Ann	6a St Mary's Walk
000382	Faria	Paul	22 Hansen Hill
000383	Faria	Susana Caroline Bermtsen	22 Hansen Hill
000384	Felton	Faith Dilys	41 Callaghan Road

000385	Felton	Ronald	KEMH
000386	Felton	Sonia Ellen	14 Scoresby Close
000387	Felton	Violet Regina Margaret	German Camp Callaghan Road
000388	Ferguson	Ellen Rose	51 Callaghan Road
000389	Ferguson	Finlay James	51 Callaghan Road
000390	Ferguson	John William	47 Ross Road East
000391	Ferguson	Marie Anne	36 Ross Road West
000392	Ferguson	Robert John	4a St Mary's Walk
000393	Ferguson	Robert John Andrew	47 Ross Road East
000394	Ferguson	Rose	6 Thatcher Drive
000395	Ferguson	Sian Yvonne	Flat 5, Waverley House
000396	Ferguson	Stephanie Janet	47 Ross Road East
000397	Ferguson	Thelma	4a St Mary's Walk
000398	Fiddes	Douglas Graham	The Brook, Moody Brook
000399	Fiddes	Gardner Walker	3 Watson Way
000400	Fiddes	Mary McKinnon Livingstone	28 Davis Street
000401	Fiddes	Melody Christine	3 Watson Way
000402	Fiddes	Robert	28 Davis Street
000403	Finlayson	Iris Heather	3 Capricorn Road
000404	Finlayson	Kimberly Elizabeth	26 Ross Road East
000405	Finlayson	Marc Ian	22 Murray Heights
000406	Finlayson	Marilyn Christine	24 James Street
000407	Finlayson	Peter	24 James Street
000408	Finlayson	Phyllis	6 Brandon Road
000409	Finn	Natalie Anne	11 Fitzroy Road East
000410	Fisher-Smith	Julie Anne	8 Fieldhouse Close
000411	Floyd	Amanda Susan	4b Ross Road West
000412	Floyd	Michael	7 Pitaluga Place
000413	Floyd	Michael Anthony	7 Pitaluga Place
000414	Floyd	Steven Paul	26 Hansen Hill
000415	Fogerty	Richard Edwin John	Stone Cottage By-Pass road
000416	Ford	Alison Jane Marie	9 Jersey Road
000417	Ford	Arthur Henry	6 Drury Street
000418	Ford	Cara Michelle	5 Philomel Street
000419	Ford	Christopher James	6 Felton Court
000420	Ford	Colin Stewart	15 Kent Road
000421	Ford	Colleen Mary	12 Davis Street
000422	Ford	Daniel Timothy	15 Kent Road
000423	Ford	Darrel Michael	54 Davis Street
000424	Ford	David	3 Beaver Road
000425	Ford	Donna Marie	Flat 5, Waverley House
000426	Ford	Frederick James	12 Davis Street
000427	Ford	Gerard Allan	Flat 1 3 Jeremy Moore Avenue
000428	Ford	Jonathan	3 Pitaluga Place.
000429	Ford	Julie Ann	3 Pitaluga Place.
000430	Ford	Leann Caroline	15 Kent Road
000431	Ford	Leonard	9 Jersey Road
000432	Ford	Mandy	1 James Street

000433	Ford	Marvyn Neil	Lookout Lodge
000434	Ford	Michael	82 Davis Street
000435	Ford	Neil Fraser	6 Drury Street
000436	Ford	Paul Edward	2 Sullivan Street
000437	Ford	Robert	1 Davis Street
000438	Ford	Simon	1 James Street
000439	Ford	Tanya Louise	24 James Street
000440	Forrest	Jennifer Carol	16 Kent Road
000441	Forrest	Michael John	16 Kent Road
000442	Forster	Amanda	9 Fieldhouse Close
000443	Forster	Lynne	16 Jersey Road
000444	Fowler	Alan Claude	34 Fitzroy Road
000445	Fowler	Daniel Martin	2 Glasgow Road
000446	Fowler	John Andrew Thomas	9 Philomel Street
000447	Fowler	Vanessa Kay	34 Fitzroy Road
000448	Fowler	Veronica Mary	2 Glasgow Road
000449	France	Graham Brian	7 Snake Hill
000450	France	Ian Peter	7 Snake Street
000451	France	Jane Aileen Marie	7 Snake Street
000452	Freeman	Carl Francis	10 James Street
000453	Freeman	Dianne May	10 James Street
000454	Freeman	Rachael	10 James Street
000455	Freeman	Tracy	26 Hansen Hill
000456	Freer	Pamela Jane	56 John Street
000457	Freer	Stephen Paul James	56 John Street
000458	French	Breda Marie	33 Eliza Crescent
000459	French	Robert Alan	33 Eliza Crescent
000460	Fullerton	Mary Ellen	1 Yates Place
000461	George	Kevin Charles	26 Ross Road East
000462	Gilbert	Christopher Paul	11 Campbell Drive
000463	Gilbert	Judith Elizabeth	22 Jeremy Moore Avenue
000464	Gilbert	Mark Ian	22 Jeremy Moore Avenue
000465	Gilbert	Neil Robert	22 Jeremy Moore Avenue
000466	Gilbert	Robert Ernest	22 Jeremy Moore Avenue
000467	Gilbert	Sharon	11 Campbell Drive
000468	Gilson-Clarke	Dustin James	26 Endurance Avenue
000469	Gisby	Annie	33 Fitzroy Road
000470	Gleadell	Ian Keith	4 Philomel Place
000471	Goodwin	Bonita Colleen	21 Eliza Crescent
000472	Goodwin	Christopher Sturdee	Lookout Lodge
000473	Goodwin	Colin Valentine	86 Davis Street
000474	Goodwin	Derek Samuel	21 Eliza Crescent
000475	Goodwin	Emily Rose	7 Brisbane Road
000476	Goodwin	Gareth Kevin	13 Murray Heights
000477	Goodwin	Hazel Rose	7 Thatcher Drive
000478	Goodwin	June Elizabeth	86 Davis Street
000479	Goodwin	Mandy Hazel	45 Callaghan Road
000480	Goodwin	Margaret Ann	3 'H' Jones Road

000481	Goodwin	Rachel Karen	45 Callaghan Road
000482	Goodwin	Robin	45 Callaghan Road
000483	Goodwin	Robin Christopher	27 Callaghan Road
000484	Goodwin	Simon James	8 Hansen Hill
000485	Goodwin	Una	27 Callaghan Road
000486	Goodwin	William John Maurice	7 Brisbane Road
000487	Gordon	Robert James Alexander	16 Hansen Hill
000488	Goss	Annagret	16 Jeremy Moore Avenue
000489	Goss	Dorothy Ellen	4 Discovery Close
000490	Goss	Eric Miller	2 Fitzroy Road East
000491	Goss	Ian Ernest Earle	98 Davis Street
000492	Goss	Michael Peter	11 Beaver Road
000493	Goss	Morgan Edmund	16 Jeremy Moore Avenue
000494	Goss	Roy Shepherd	8 Police Cottages
000495	Goss	Sandra Kathleen	11 Kent Road
000496	Goss	Shirley Ann	2 Fitzroy Road East
000497	Goss	Simon Peter Miller	11 Kent Road
000498	Goss	Susan Diann	98 Davis Street
000499	Goss	William Henry (jnr)	7 Brandon Road
000500	Gough	Ivan	8 John Street
000501	Gough	Phyllis Candy	8 John Street
000502	Grant	Milly	3 Moody Street
000503	Gray	David Edward	22 Ross Road West
000504	Gray	Patricia May	22 Ross Road West
000505	Green	David William	Lois Cottage John Street
000506	Greenland	James Andrew William	24 Murray Heights
000507	Greenough	Geoffrey	50a Davis Street
000508	Greenough	Wanda Rose	50a Davis Street
000509	Grimmer	Edward	21 Hansen Hill
000510	Hadden	Alexander Burnett	27 Fitzroy Road
000511	Hadden	Sheila Peggy	27 Fitzroy Road
000512	Halford	Rodney John	Tenacres
000513	Halford	Sara Jayne	Tenacres
000514	Halford	Sharon	Tenacres
000515	Hall	Greg Allan	39 Ross Road
000516	Halliday	Cathy Anne	5 Drury Street
000517	Halliday	Jeffrey James	2 Philomel Place
000518	Halliday	Priscilla Alison	9 Villiers Street
000519	Halliday	Raynor	9 Brisbane Road
000520	Hancox	Rachel Mary	5 McKay Close
000521	Hancox	Robert James	9 Ross Road West
000522	Hansen	Douglas John	6 Fitzroy Road
000523	Hansen	Keva Elizabeth	1 Dairy Paddock Road
000524	Hansen	Terence Joseph	41 Eliza Crescent
000525	Hardcastle	Simon Brook	7 Ross Road East
000526	Harris	Anna Vladimirovna	Lookout Lodge
000527	Harris	Christopher James	5 Ross Road East
000528	Harris	Dennis Sefton	19 Callaghan Road

000529	Harris	Heather	3 Ross Road East
000530	Harris	Jill Yolanda Miller	19 Fitzroy Road
000531	Harris	Karl Henry	5a Ross Road East
000532	Harris	Leeann Watson	10 Dairy Paddock Road
000533	Harris	Leslie Sidney	19 Fitzroy Road
000534	Harris	Michael Ronald	3 Ross Road East
000535	Harris	Ralph Aaron	10 Dairy Paddock Road
000536	Harris	Wendy Ann	19 Callaghan Road
000537	Harvey	Muriel Elizabeth Elsie	2 King Street
000538	Harvey	Sheila	8 Barrack Street
000539	Harvey	William	21 Fitzroy Road
000540	Hawksworth	Christopher	6b Gleadell Close
000541	Hawksworth	Mary Catherine	5A Brisbane Road
000542	Hawksworth	Pauline May	29 Fitzroy Road
000543	Hawksworth	Ryan	29 Fitzroy Road
000544	Hawksworth	Terence	5A Brisbane Road
000545	Hayward	Marjorie	30 Eliza Cove Road
000546	Hayward	Neville	4 Biggs Road
000547	Hayward	Peter Dennis	30 Eliza Cove Road
000548	Hazell	Lee Felton	7 Rowlands Rise
000549	Heathcock	Andrew James	12 St Mary's Walk
000550	Heathman	Malcolm Keith	15 Eliza Cove Road
000551	Heathman	Mandy Gail	15 Eliza Cove Road
000552	Heathman	Nyree	16 Hansen Hill
000553	Heathman	Tara	7 Allardyce Street
000554	Henry	Alan Richard	8 Beaver Road
000555	Henry	Patricia Denise	8 Beaver Road
000556	Hernandez Manterola	Miguel Angel	3 Murray Heights
000557	Hernandez Trevello	Maria Elena	3 Murray Heights
000558	Hewitt	Frances Agnes	5 Thatcher Drive
000559	Hewitt	Gary George	3 Hebe Place
000560	Hewitt	Margaret Ann	3 Hebe Place
000561	Hewitt	Robert John David	3 Thatcher Drive
000562	Hewitt	Tara Marie	3 Hebe Place
000563	Hills	Richard William	5 Davis Street
000564	Hirtle	Christine	5 Capricorn Road
000565	Hirtle	Debbie Ann	2b Capricorn Road
000566	Hirtle	Leonard Lloyd	2 Ian Campbell Drive
000567	Hirtle	Michael Barry	2 Ian Campbell Drive
000568	Hirtle	Rose Ann Shirley	4 Villiers Street
000569	Hirtle	Shirley	2 Ian Campbell Drive
000570	Hirtle	Zane Eric	12 Drury Street
000571	Hobman	Anilda Marilu	5 Police Cottages
000572	Hobman	Luis Alfonzo	5 Police Cottages
000573	Hoggarth	Agnes Christina	2 James Street
000574	Howatt	Derek Frank	4 Racecourse Road
000575	Howatt	Suzanna Margaret	4 Racecourse Road
000576	Howe	Alexander Luke Desmond	36 Davis Street

000577	Howe	Alison Delia	36 Davis Street
000578	Howe	Paul Anthony	36 Davis Street
000579	Howells	Anne Stephanie	Flat 2 5 Jeremy Moore Avenue
000580	Howells	Roger	Flat 2 5 Jeremy Moore Avenue
000581	Hoy	Dawn	2 Dean Street
000582	Humphreys	Hannah Elaine	7 Dean Street
000583	Humphreys	Margaret Anne	6 Yates Place
000584	Hutton	Elizabeth Isabella	3 John Street
000585	Hutton	Philip	3 John Street
000586	Igao	Alejandro Neri	13 Scoresby Close
000587	Igao	Noel Neri	10 Goss Road
000588	Igao	Pauline Lynx	10 Goss Road
000589	Inglis	Alison Anne MacKenzie	9 Short Street
000590	Irvine	Andrew Grant McKenzie	9 McKay Close
000591	Jackson	Kathleen	23 Fitzroy Road
000592	Jackson	Malcolm	23 Fitzroy Road
000593	Jackson	Mark Malcolm	5 Drury Street
000594	Jacobsen	Alistair	1A Philomel Street
000595	Jacobsen	Catherine Joan	1A Philomel Street
000596	Jacobsen	Cathy	1a Philomel Street
000597	Jacobsen	Tanzi	Flat 1, 6 Jersey Road
000598	Jaffray	Arlette Sharon	7 Jersey Road
000599	Jaffray	Catriona Mhari	24 Hansen Hill
000600	Jaffray	Derek Charles	2 Arch Green
000601	Jaffray	Elaine Michele	8 Discovery Close
000602	Jaffray	Estelle Anita	11 Snake Street
000603	Jaffray	Eva Lynn	47 Callaghan Road
000604	Jaffray	Frank Alexander	8 Discovery Close
000605	Jaffray	Gerard Alan	47 Callaghan Road
000606	Jaffray	Helen Rose	84 Davis Street
000607	Jaffray	Jacqueline Ann	17 Watson Way
000608	Jaffray	Janet	3 Fitzroy Road East
000609	Jaffray	John	3 Fitzroy Road East
000610	Jaffray	John Summers	84A Davis Street
000611	Jaffray	John Willie	21 Watson Way
000612	Jaffray	June Elizabeth	17 Ross Road East
000613	Jaffray	Kenneth Ian	7 Jersey Road
000614	Jaffray	Lisa Jane	5 Hebe Street
000615	Jaffray	Phyllis	21 Watson Way
000616	Jaffray	Shaun Melvin	24 Endurance Avenue
000617	Jaffray	Stephen James	5 James Street
000618	Jaffray	Tanya Fiona	5 Hebe Street
000619	Jaffray	Terence Roy	24 Hansen Hill
000620	Jaffray	Terri-Ann	24 Endurance Avenue
000621	Jaffray	Tony	84 Davis Street
000622	Jaffray	Tracy	3 Fitzroy Road East
000623	Jennings	Neil	K E M H
000624	Jennings	Stephen	5 Fitzroy Road

000625	Johnson	Lily Ann	5 Hebe Street
000626	Johnson	Michael Neil	5 Kent Road
000627	Jones	Alan Smith	26 Ross Road West
000628	Jones	David Richard	6 Allardyce Street
000629	Jones	Doreen Evelyn Margaret	6 Allardyce Street
000630	Jones	Evan Glynn	8 Anderson Drive
000631	Jones	Jennifer	26 Ross Road West
000632	Jones	John Hugh	8 Anderson Drive
000633	Jones	Kevin Richard	19 Biggs Road
000634	Jones	Mark Henry	2 Murray Heights
000635	Jones	Michelle	8 Anderson Drive
000636	Jones	Yvonne Malvina	6 Racecourse Road Flat 1
000637	Jonson	Amy Elizabeth	3 Davis Street
000638	Jordan	Cara Jane	12 Goss Road
000639	Jordan	Ian Phillip	12 Goss Road
000640	Joshua	Josephine Mary	7 Gleadell Close
000641	Joshua	Larry Arthur	7 Gleadell Close
000642	Keane	Alva Rose Marie	18 Davis Street
000643	Keane	Olaf James	18 Davis Street
000644	Keane	Thomas James	18 Davis Street
000645	Keenleyside	Charles Desmond	3 Pioneer Row
000646	Keenleyside	Dorothy Maud	3 Pioneer Row
000647	Keenleyside	Manfred Michael Ian	2 Snake Street
000648	Keenleyside	Nanette Barbara	2 Snake Street
000649	Kenny	Erling	20 James Street
000650	Kidd	John Nathan	1 Hebe Street
000651	Kidd	Lillian Rose Orissa	1 Hebe Street
000652	Kiddle	Robert Karl	Flat 2 1 Moody Street
000653	Kilmartin	Claire Elfreda	34 John Street
000654	King	Anna Constance Eve	34 Ross Road
000655	King	Cherilyn Julie	4 Biggs Road
000656	King	Desmond George Buckley	38 Davis Street
000657	King	Glynis Margaret	20 Hansen Hill
000658	King	Michelle Beverley	51 Ross Road East
000659	King	Peter Thomas	10 Jeremy Moore Avenue
000660	King	Robert John	22/24 Davis Street
000661	King	Rosemarie	10 Jeremy Moore Avenue
000662	King	Roxanne	10 Jeremy Moore Avenue
000663	Kirkham	Campbell Joseph	5 Capricorn Road
000664	Kultschar	John William	4 Davis Street East
000665	Kultschar	Richard Paul	4 Davis Street
000666	Kultschar	Yvonne Rosina	4 Davis Street East
000667	Ladron De Guevara Vilches	Carmen Benilda	22/24 Davis Street
000668	Ladron Guevara	Simon	22/24 Davis Street
000669	Laffi	Atilio Segundo	3 Brisbane Road
000670	Laffi	Kathleen Mary	3 Brisbane Road
000671	Lang	Colin David	2 Brisbane Road
000672	Lang	David Geoffrey	28 Goss Road

000673	Lang	James Patrick	2 Davis Street
000674	Lang	Marie-Bernard Therese	13 Murray Heights
000675	Lang	Patrick Andrew	8a Moody Street
000676	Lang	Phillippa Josephine	19 Murray Heights
000677	Lang	Sandra Shirleen	3 Yates Place
000678	Lang	Theresa Margaret	28 Goss Road
000679	Lang	Velma Emily	8a Moody Street
000680	Lang	Wendy Diane	2 Brisbane Road
000681	Larsen	Ellen	74 Davis Street
000682	Lazo	Javier Waldemar Sanchez	80 Davis Street
000683	Lazo	Joanna Rose	80 Davis Street
000684	Lee	Alfred Leslie	11 Drury Street
000685	Lee	Beverley Christina	10 Allardyce Street
000686	Lee	Gladys	11 Drury Street
000687	Lee	Karen Jane	14 Davis Street
000688	Lee	Leslie James	10 Allardyce Street
000689	Lee	Mandy John	15 James Street
000690	Lee	Nicola Ruth	3 Davis Street
000691	Lee	Owen Henry	4 Pioneer Row
000692	Lee	Tanya	5 Discovery Close
000693	Lee	Trudi Dale	10 Allardyce Street
000694	Lee	Victoria Jane	Y.M.C.A
000695	Legg	Robert Keith	Lookout Lodge
000696	Lennie	Elane Maria	9 Narrows View
000697	Lennie	Gordon Carnie	9 Narrows View
000698	Lewis	David James	3 Ian Campbell Drive
000699	Lewis	James	2b St. Marys Walk
000700	Lewis	Jason	9 Short Street
000701	Lewis	Jean	2b St. Marys Walk
000702	Lewis	Pamela Irene	3 Ian Campbell Drive
000703	Leyland	Frank	10 Brandon Road
000704	Leyland	Vera	10 Brandon Road
000705	Liddle	Alison Catherine	7 Fitzroy Road East
000706	Liddle	Gordon Malcolm	7 Fitzroy Road East
000707	Limburn	Monica	1 Moody Street Flat 3
000708	Livermore	Anton	14 Allardyce Street
000709	Livermore	Isla Karen	Flat 3, 6 Racecourse Road
000710	Llamosa	Theresa Kathleen	25 Shackleton Drive
000711	Lloyd	Christopher Sturdee	11 Fitzroy Road East
000712	Lloyd	Roanna Eileen	6 Police Cottages
000713	Lloyd	Valerie Ann	31 Ross Road West
000714	Loftus	Geoffrey	1 Hebe Place
000715	Loftus	Sara	1 Hebe Place
000716	Loveridge	Daniel Nolan	11 Short Street
000717	Loveridge	Marie Pearl	11 Short Street
000718	Lowe	Anthony Trevor	54 Davis Street
000719	Lowe	Katrina Louise	5 McKay Close
000720	Luxton	Jennifer Mary	4 Hebe Place

000721	Luxton	Michael	1A Pioneer Row
000722	Luxton	Nicola	1A Pioneer Row
000723	Luxton	Robin	1 Jersey Road
000724	Luxton	Stephen Charles	7 Narrows View
000725	Luxton	Sybil Grace	38 John Street
000726	Luxton	Wendy Jennifer	1 Jersey Road
000727	Luxton	Winifred Ellen	15 Fitzroy Road
000728	Lyse	Linda Margaret	65 Fitzroy Road
000729	Macaskill	Angus Lindsay	8 Jeremy Moore Avenue
000730	Macaskill	Jeanette May	8 Jeremy Moore Avenue
000731	Macaskill	John	34 Ross Road West
000732	Macaskill	Robert John	1 Brisbane Road
000733	Macaskill	Tracey Jayne	1 Brisbane Road
000734	MacDonald	Andrew James	29 Callaghan Road
000735	MacDonald	Colin George	Flat 2 6 Jersey Road
000736	MacDonald	Derek George	Flat 6 7 Jeremy Moore Avenue
000737	MacDonald	Irene	Flat 2 6 Jersey Road
000738	Maddocks	Robert Charles	11 Murray Heights
000739	Marrow	Elizabeth Alice	13 Jeremy Moore Avenue
000740	Marsh	Karen Diana	4 Murray Heights
000741	May	Angela Jane	11 Jersey Road
000742	May	Brian Roy	21 Jeremy Moore Avenue
000743	May	Bruce Raymond	9 Kent Road
000744	May	Connie	9 Kent Road
000745	May	Donna Monica	17 Davis Street
000746	May	Heather	1 Glasgow Road
000747	May	Jonathan Roy	12 Jeremy Moore Avenue
000748	May	Lindsey Olga	9 Callaghan Road
000749	May	Lucinda Vikki	12 Jeremy Moore Avenue
000750	May	Monica	21 Jeremy Moore Avenue
000751	May	Roger	11 Jersey Road
000752	May	William Albert	1 Glasgow Road
000753	McBain	Arthur	29 Goss Road
000754	McBain	Rhoda Margaret	29 Goss Road
000755	McCallum	Bettina Kay	14 Drury Street
000756	McCallum	Christopher John	8A Jeremy Moore Avenue
000757	McCallum	Tanya	8a Jeremy Moore Avenue
000758	McCallum	Timothy Andrew	14A Drury Street
000759	McCormick	Dale Ronald	24 Eliza Crescent
000760	McCormick	Richard Paul	29 Callaghan Road
000761	McCormick	Wayne Stanley James	12 Endurance Avenue
000762	McGill	Cara Jane	6a Jeremy Moore Avenue
000763	McGill	Coral Elizabeth	3 Allardyce Street
000764	McGill	Darrel Ian	20 Jeremy Moore Avenue
000765	McGill	David William	17 James Street
000766	McGill	Derek Gary	12 Scoresby Close
000767	McGill	Diane Beverley	2 James Street
000768	McGill	Doris Mary	32 Davis Street

000769	McGill	Gary	15 Brandon Road
000770	McGill	Glenda	1c Capricorn Road
000771	McGill	Heather Margaret	17 James Street
000772	McGill	Ian Peter	1c Capricorn Road
000773	McGill	Len Stanford	2 James Street
000774	McGill	Teresa Rose	26 Ross Road East
000775	McKay	Christine	6 Drury Street
000776	McKay	Clara Mary	20 Ross Road West
000777	McKay	Georgina Rose	2 Rowlands Rise
000778	McKay	Heather Valerie	16 Eliza Crescent
000779	McKay	Jeannie Paullina	64 Davis Street
000780	McKay	Jennifer Coral	24 Eliza Cresnet
000781	McKay	John David Toby	51 Callaghan Road
000782	McKay	Leona Ann	5 Kent Road
000783	McKay	Mandy Rose	51 Callaghan Road
000784	McKay	Melvyn Andrew	55 Davis Street
000785	McKay	Michael John	64 Davis Street
000786	McKay	Neil	60 Davis Street
000787	McKay	Paul Anthony	16 Eliza Crescent
000788	McKay	Peter John	21 Ross Road West
000789	McKay	Rex	16 Eliza Crescent
000790	McKay	Roy Derek	55 Davis Street
000791	McKay	Roy Derek	29 Callaghan Road
000792	McKay	Shelley Jane	7 Villiers Street
000793	McKay	Trudi Ann	10 Ian Campbell Drive
000794	McKay	William Robert	20 Ross Road West
000795	McKee	Miranda	12 Watson Way
000796	McKee	Richard Buick	12 Watson Way
000797	McKenzie	Alice Maude	Moody Brook Homestead
000798	McKenzie	Charles Alexander Albert John	Moody Brook Homestead
000799	McLaren	Caroline Mary	12 Allardyce Street
000800	McLaren	Kevin Derek Charles	3d Jeresy Road
000801	McLaren	Tony Eugene Terence	12 Allardyce Street
000802	McLeod	David	49 Callaghan Road
000803	McLeod	Glenda Otadoy	49 Callaghan Road
000804	McLeod	Ian	9 Fitzroy Road
000805	McLeod	Ian James	30 Endurance Avenue
000806	McLeod	Jane Elizabeth Diana	5 Pitaluga Place
000807	McLeod	Janet Wensley	75 Davis Street
000808	McLeod	Janice	2 Ross Road West
000809	McLeod	Joan May	1a Moody Street
000810	McLeod	John (1)	1 Campbell Drive
000811	McLeod	John (2)	23 Hansen Hill
000812	McLeod	Louise	1 Campbell Drive
000813	McLeod	Madeline Jean	1 Campbell Drive
000814	McLeod	Mally	9 Fitzroy Road
000815	McLeod	Margaret Ann	13 Fitzroy Road East
000816	McLeod	Michael William	5 Short Street

000817	McLeod	Pearl Mary Ann	3 Brisbane Road
000818	McLeod	Robert	75 Davis Street
000819	McLeod	Robert John	2 Ross Road West
000820	McLeod	Valorie Marcela	30 Endurance Avenue
000821	McMullen	June	8 Brandon Road
000822	McMullen	Lucille Anne	6a John Street
000823	McMullen	Matthew John	5 Fieldhouse Close
000824	McMullen	Tony	8 Brandon Road
000825	McPhee	Denise	4 Brandon Road West
000826	McPhee	Justin Owen	4 Brandon Road West
000827	McPhee	Patrick	31 Ross Road East
000828	McRae	Charlotte Melize	28 Jersey Road
000829	McRae	David Michael	13 Jeremy Moore Avenue
000830	McRae	Elvis Richard	Lookout Lodge
000831	McRae	Gloria Linda	2 H Jones Road
000832	McRae	Kerry Jane	10 Watson Way
000833	McRae	Michael	10 Watson Way
000834	McRae	Richard Winston	6 Jersey Road
000835	Medforth	Natasha Bonita	Flat 4, 30 Jersey Road
000836	Middleton	Brian	13 McKay Close
000837	Middleton	Caren	5 Beaver Road
000838	Middleton	Caroline Ann	7 James Street
000839	Middleton	Dennis Michael	Dolphin Cottage
000840	Middleton	Graham Cyril	50 Davis Street
000841	Middleton	Joan Eliza	8 James Street
000842	Middleton	Kerry Ann	Dolphin Cottage
000843	Middleton	Leonard	67 Fitzroy Road
000844	Middleton	Nevin Alexander	5 Beaver Road
000845	Middleton	Phillip John	5 St Marys Walk
000846	Middleton	Sharon Elizabeth	Dolphin Cottage
000847	Middleton	Stephanie Anne	13 McKay Close
000848	Middleton	Yvonne Allison	50 Davis Street
000849	Miller	Andrew Nigel	Marine Cottage, Moody Brook
000850	Miller	Bruce Graham	10 Pioneer Row
000851	Miller	Carol	Marine Cottage, Moody Brook
000852	Miller	Gail Marie	6a Brisbane Road
000853	Miller	Janet Mary	Market Garden Hse Airport Rd
000854	Miller	Jayne Elizabeth	27 Davis Street
000855	Miller	Jeanette	10 Pioneer Row
000856	Miller	Simon Roy	Marine Cottage, Moody Brook
000857	Miller	Steven Geoffrey	Flat 7 1 Jeremy Moore Avenue
000858	Miller	Timothy John Durose	Market Garden Hse Airport Rd
000859	Mills	Terence Kenneth	43 Callaghan Road
000860	Minnell	Adrian James	Flat 4 30 Jersey Road
000861	Minnell	Michelle Rose	1 Brandon Road
000862	Minnell Goodwin	Joanne Hazel Rose	31 Ross Road West
000863	Minto	Alistair Daen	15 Brandon Road
000864	Minto	Barbra Pennisi	9 Fitzroy Road

000865	Minto	Dilys Rose	18 Endurance Avenue
000866	Minto	Graham Stewart	15 James Street
000867	Minto	Patrick Andrew	3b Jersey Road
000868	Minto	Timothy Ian	18 Enurance Avenue
000869	Miranda	Augusto	31 Davis Street
000870	Miranda	Carmen	11 Hansen Hill
000871	Miranda	Ramon	3 Drury Street
000872	Miranda	Winifred Dorothy	3 Drury Street
000873	Mitchell	Leon John	10 Police Cottages
000874	Moffatt	Angela	20 Ross Road East
000875	Moffatt	James	20 Ross Road East
000876	Moffatt	Jay	20 Ross Road East
000877	Moffatt	Kelly	20 Ross Road East
000878	Moffatt	Sean	20 Ross Road East
000879	Molkenbuhr	Lee Charles	19 Sullivan Street
000880	Morris	Alana Marie	4 Callaghan Road
000881	Morris	David	4 Callaghan Road
000882	Morris	Jason Paul	59 Fitzroy Road
000883	Morris	Pamela Ruth	7 John Street
000884	Morris	Trevor Alan	17 Brandon Road
000885	Morrison	Doreen	82 Davis Street
000886	Morrison	Edgar Ewen	15 Murray Heights
000887	Morrison	Fayan	54 John Street
000888	Morrison	Graham Stewart	34a Davis Street
000889	Morrison	Jacqueline Denise Anita	13 Ian Campbell Drive
000890	Morrison	Joan Margaret	3 Felton Court
000891	Morrison	Joanne Elizabeth	61 Fitzroy Road
000892	Morrison	Joleen Coleen	3 Felton Court
000893	Morrison	Kenneth	13 Ian Campbell Drive
000894	Morrison	Lewis Ronald	12 Callaghan Road
000895	Morrison	Marcus Lewis	82 Davis Street
000896	Morrison	Michael John	10 Fitzroy Road East
000897	Morrison	Nanette Rose	46 Davis Street
000898	Morrison	Nichola Jane	13 Jeremy Moore Avenue
000899	Morrison	Nigel Peter	3 Felton Court
000900	Morrison	Patrick	1 Brandon Road West
000901	Morrison	Paul Roderick	3 Racecourse Road East
000902	Morrison	Ronald Terence	5 Racecourse Road
000903	Morrison	Roxanne	13 Ian Campbell Drive
000904	Morrison	Russell John Allan	9 Discovery Close
000905	Morrison	Stewart	46 Davis Street
000906	Morrison	Susan Margaret	10 Fitzroy Road East
000907	Morrison	Tamara	21 Hansen Hill
000908	Morrison	Timothy	YMCA
000909	Morrison	Violet Sarah	5 Racecourse Road
000910	Morrison	William Roderick Halliday	54 John Street
000911	Munro	Grant Mackintosh	69 Fitzroy Road
000912	Murphy	Andrew	6 Pioneer Row

000913	Murphy	Ann Susan	2 King Street
000914	Murphy	Bessie	4a St Mary's Walk
000915	Neilson	Barry Marwood	23 Ross Road
000916	Neilson	Edward Sydney	23 Ross Road
000917	Neilson	Harold Ian	6a Moody Street
000918	Neilson	Margaret	23 Ross Road
000919	Newell	Joseph Orr	3 Villiers Street
000920	Newell	Paula Michelle	Felton Stream Cottage
000921	Newell	Trudi Malvina	3 Villiers Street
000922	Newman	Andrew Raymond	51 Ross Road East
000923	Newman	Marlene	11 Jeremy Moore Avenue
000924	Newman	Raymond Winston	2 Yates Place
000925	Newman	Tansy Fiona	5 Jersey Road
000926	Newman	Terence	24 Endurance Avenue
000927	Nutter	Arthur Albert	9 Brandon Road
000928	Nutter	Josephine Lesley	9 Brandon Road
000929	O'Dean	Barry Charles	YMCA
000930	Ojeda Gallardo	Roberto Miguel Alejandro	9a Sullivan Street
000931	Olmedo	Alex	6 Anderson Drive
000932	Ormond	Christina Helen	6 Goss Road
000933	Ormond	Kevin Michael Patrick Joseph	6 Goss Road
000934	Ormond	Terrianne Helen	6 Goss Road
000935	Oyarzo	Henry Herman Guala	3 Allardyce Street
000936	Paice	Corrinne	3 Racecourse Road
000937	Paice	Craig Arthur	3 Racecourse Road
000938	Parke	James Fred	8 Endurance Avenue
000939	Parke	Janet Margaret	8 Endurance Avenue
000940	Parrin	Norman George	7 Yates Place
000941	Patterson-Smith	Ian Colin	15 Watson Way
000942	Pauloni	Hilary Maud	63 Fitzroy Road
000943	Pauloni	Romolo Vittorio	63 Fitzroy Road
000944	Paver	Bernadette Marguerite	Moody Brook House
000945	Payne	Dilys Agnes	2 Racecourse Road East
000946	Payne	Joanne Francis	2 Racecourse Road East
000947	Payne	Samantha Jane	2 Racecourse Road East
000948	Payne	St.John Peter	2 Racecourse Road East
000949	Pearce	Stephen Allan	5 Jeremy Moore Avenue
000950	Pearce	Tracy	5 Jeremy Moore Avenue
000951	Peck	Burnerd Brian	22 James Street
000952	Peck	Carol Margaret	9 Rowlands Rise
000953	Peck	Christine	21 Jersey Road
000954	Peck	David John	15 Villiers Street
000955	Peck	David Patrick	78 Davis Street
000956	Peck	Eleanor Margaret	10 Davis Street
000957	Peck	Gordon Pedro James	34 Eliza Crescent
000958	Peck	Harwood John Charles	26 Eliza Crescent
000959	Peck	James	2 Barrack Street
000960	Peck	Maureen Heather	78 Davis Street

000961	Peck	Patrick William	78 Davis Street
000962	Peck	Shirley	2 Barrack Street
000963	Peck	Terence John	10 Davis Street
000964	PED		6 Beaver Road
000965	Ped	Mila Boybanting	6 Beaver Road
000966	Pennisi	Gladys Elisabeth	9 Fitzroy Road East
000967	Perkins	Vivienne Esther Mary	33 John Street
000968	Perry	Hilda Blanche	6a St Marys Walk
000969	Perry	Thora Virginia	2 Thatcher Drive
000970	Pettersson	Derek Richard	3 Anderson Drive
000971	Pettersson	Tony	30 Davis Street
000972	Pettersson	Trudi Ann	3 Anderson Drive
000973	Phillips	David Dawson	35 Fitzroy Road
000974	Phillips	Elisa	35 Fitzroy Road
000975	Phillips	Lynda	16 Brandon Road
000976	Phillips	Paul David	19 Sullivan Street
000977	Phillips	Shula Louise	19 Sullivan Street
000978	Platt	Claire	5 Villiers Street
000979	Pole-Evans	Amy Rose	4 McKay Close
000980	Pole-Evans	John	16 Ross Road East
000981	Pole-Evans	Lisa	6a Moody Street
000982	Pole-Evans	Martin	12 Murray Heights
000983	Pole-Evans	Michael Anthony	4 McKay Close
000984	Pole-Evans	Paula	5 Biggs Road
000985	Pollard	Andrew Keith	4 Hebe Place
000986	Pollard	Elizabeth Eve	23 Ross Road East
000987	Pollard	John	23 Ross Road East
000988	Pollard	Mark John	4 Hebe Place
000989	Pompert	Joost Herman Willem	11 Ross Road West
000990	Poncet	Lars Nigel	2 Brandon Road West
000991	Poole	Andrea Joan	52 John Street
000992	Poole	Christopher William	52 John Street
000993	Poole	Evelyn May	31 Fitzroy Road
000994	Poole	Juliet Hazel	Y M C A
000995	Poole	Michael James	52 John Street
000996	Poole	Nancy Margaret	52 John Street
000997	Poole	Raymond John	52 John Street
000998	Poole	Ross William	52 John Street
000999	Poole	Toby Raymond	52 John Street
001000	Poole	William John	31 Fitzroy Road
001001	Porter	Charles	11 Fitzroy Road
001002	Porter	Jean Lavinia	11 Fitzroy Road
001003	Pratlett	Patricia Carol Ann	10 A James Street
001004	Prindle-Middleton	Stella Margaret	5 St Mary's Walk
001005	Pring	Bernadette Jane Spencer	5a Ross Road West
001006	Pring	Geoffrey Alan	5a Ross Road West
001007	Purvis	Alan	3 Narrows View
001008	Reddick	Keith John	By-Pass Road

001009	Reeves	Carolyn Wendy	2 Moody Street
001010	Reeves	Jill Edith	3 Jeremy Moore Avenue
001011	Reeves	Michael	2 Moody Street
001012	Reid	Ann	Lois Cottage John Street
001013	Reid	Beverley Rose	12 James Street
001014	Reid	Colleen Rose	9 Fitzroy Road East
001015	Reid	John Alexander	41 Fitzroy Road
001016	Reid	Reynold Gus	5 Biggs Road
001017	Reid	Simon Gus	9 Fitzroy Road East
001018	Reive	Roma Endora Mary	8a St Marys Walk
001019	Rendell	Michael	8 Ross Road West
001020	Rendell	Nicholas Simon Oliver	8 Ross Road West
001021	Rendell	Phyllis Mary	8 Ross Road West
001022	Richards	Shirley	8a James Street
001023	Roberts	Cheryl Ann Spencer	49 Ross Road East
001024	Roberts	David Anthony	1 Mountain View
001025	Roberts	Laura May	7 Kent Road
001026	Roberts	Lynn	3 Gleadell Close
001027	Roberts	Peter James	49 Ross Road East
001028	Robertson	Janet	11 Ross Road West
001029	Robson	Alison Emily	15 Villiers Street
001030	Robson	Cherry Rose	5 Philomel Street
001031	Robson	Debbi Louisa	6 Felton Court
001032	Robson	Gerard Michael	1 Philomel Place
001033	Robson	Jodie	1 Philomel Place
001034	Robson	Miranda Gay	6 Brisbane Road
001035	Robson	Patricia Jayne	18 Ross Road East
001036	Robson	Phyllis Ann	1 Philomel Place
001037	Robson	Raymond Nigel	6 Brisbane Road
001038	Robson	William Charles	18 Ross Road East
001039	Rodriguez Reid	Elizabeth Jayne	33 Ross Road West
001040	Ross	Allan John	1 Short Street
001041	Ross	Andrea Joanna Ampuero	4 Rowlands Rise
001042	Ross	Claudio Javier Ampeuro	10 Murray Heights
001043	Ross	Glenn Stephen	23 Watson's Way
001044	Ross	Janet	23 Watson's Way
001045	Ross	Kerri-Anne	23 Watson Way
001046	Ross	Kevin John	3 Beaver Road
001047	Ross	Lachlan Neil	7 Discovery Close
001048	Ross	Marie	3 Beaver Road
001049	Ross	Rebecca Jane	3 Beaver Road
001050	Ross	Roy	19 Jersey Road
001051	Ross	Sheena Margaret	2 Mountain View
001052	Ross	Shirley Vyona	1 Short Street
001053	Ross	William Henry	Flat 2 Jeremy Moore Avenue
001054	Rowland	Charlene Rose	19 Jeremy Moore Avenue
001055	Rowland	John Christopher	19 Jeremy Moore Avenue
001056	Rowland	Sarah Anne	19 Jeremy Moore Avenue

001057	Rowlands	Catherine Annie	3 Hebe Street
001058	Rowlands	Daisy Malvina	39 John Street
001059	Rowlands	Dorinda Roberta	3a Hebe Street
001060	Rowlands	Jane Louise	13 Callaghan Road
001061	Rowlands	Neil	3A Hebe Street
001062	Rowlands	Robert John	13 Callaghan Road
001063	Rozee	Betty Ellen	16 Davis Street
001064	Rozee	Derek Robert Thomas	16 Davis Street
001065	Rozee	Karen Michella	16 Davis Steet
001066	Rozee	Shona Mary	5 Pitaluga Place
001067	Sackett	Albert John	25a Ross Road East
001068	Sackett	Jacqueline	11 Rowlands Rise
001069	Sackett	Michael John Carlos	25a Ross Road East
001070	Sackett	Pauline	25 Ross Road East
001071	Sanchez Ladron De Guevara	Karen Pamela	Flat 8 6 Jersey Road
001072	Sawle	Judith Margaret	Seaview Cottage Ross Road
001073	Sawle	Richard	Seaview Cottage Ross Road
001074	Seron	Jose Segundo	M/V Tamar C/o Byron Marine
001075	Shcherbich	Zhanna Nikolaevna	27 Goss Road
001076	Shepherd	Anne Jenine	Sir Rex Hunt House
001077	Shepherd	Colin David	Dolphin Cottage
001078	Shepherd	Darren Harold	Sir Rex Hunt House
001079	Shepherd	Ramsey	4 Discovery Close
001080	Short	Alison	9 Pioneer Row
001081	Short	Brenda	11 Barrack Street
001082	Short	Celia Soledad	1 Racecourse Road
001083	Short	Christina Ethel	12 Brandon Road
001084	Short	Derek Patrick	16 Ross Road West
001085	Short	Dilys Margaret Ann	30 Jersey Road
001086	Short	Emily Christina	1 Fitzroy Road East
001087	Short	Gavin Phillip	Flat 7 6 Jersey Road
001088	Short	John Mark	6 Jersey Road Flat 7
001089	Short	Marc Peter	1 Racecourse Road
001090	Short	Marlene Cindy	9 Pitaluga Place
001091	Short	Montana Tyrone	4 Dairy Paddock Road
001092	Short	Nabil George	21 Murray Heights
001093	Short	Peter Robert	1 Fitzroy Road East
001094	Short	Richard Edward	9 Pitaluga Place
001095	Short	Riley Ethroe	11 Barrack Street
001096	Short	Tamara Colette	6 Murray Heights
001097	Short	Vilma Alicia	4 Dairy Paddock Road
001098	Simmonds	Donald Rodney Falkland	48 Davis Street
001099	Simpson	Bertha Veronica	8 Rowlands Rise
001100	Simpson	James Alexander Bruce	7 Racecourse Road
001101	Simpson	James Garry	7 Racecourse Road
001102	Simpson	John Frederick	8 Rowlands Rise
001103	Simpson	Mirabel Hermione	7 Racecourse Road
001104	Sinclair	Serena Samantha	12a Brandon Road

001105	Sinclair	Veronica Joyce	21 Ross Road West
001106	Skene	Greta Winnora Miller	22 Ross Road East
001107	Smallwood	Akira Ali	105 Davis Street
001108	Smallwood	Margo Amee	105 Davis Street
001109	Smallwood	Michael Anthony	105 Davis Street
001110	Smith	Anthony David	38 Ross Road
001111	Smith	Caroline	2 Ross Road West
001112	Smith	Colin David	6 James Street
001113	Smith	Crystal Rose	1a Capricorn Road
001114	Smith	Derek	8 Eliza Crescent
001115	Smith	Eric	Flat 2 1 Moody Street
001116	Smith	Gerard Alexander	8 Barrack Street
001117	Smith	Gina Ruth Mary	20 Jersey Road
001118	Smith	Heather	19 Watson Way
001119	Smith	Ian Lars	5 Brandon Road
001120	Smith	Ileen Rose	28 Ross Road West
001121	Smith	James Terence	3 Fitzroy Road West
001122	Smith	Jennifer Ethel	6 Watson Way
001123	Smith	John	28 Ross Road West
001124	Smith	John Derek	1a Capricorn Road
001125	Smith	Julia Trinidad	8 Eliza Crescent
001126	Smith	Martyn James	6A Ross Road West
001127	Smith	Michael Edmund	39 Eliza Crescent
001128	Smith	Natalie Marianne	6 James Street
001129	Smith	Nora Kathleen	5 Fitzroy Road East
001130	Smith	Paul	2 Ross Road West
001131	Smith	Paulette Rose	KEMH
001132	Smith	Robin Charles	19 Watson Way
001133	Smith	Roy Alan	11 Brandon Road
001134	Smith	Russell James	8 Fieldhouse Close
001135	Smith	Tyssen John Richard	20 Jersey Road
001136	Socodo	Pheobe Esther	Flat 6 1 Jeremy Moore Avenue
001137	Spicer	Mark Anthony	16 St Mary's Walk
001138	Spicer	Susan	16 St. Marys Walk
001139	Spink	Roger Kenneth	43 Ross Road East
001140	Spinks	Malvina Ellen	8 Yates Place
001141	Spruce	Helena Joan	29 Ross Road West
001142	Spruce	Mark Felton	29 Ross Road West
001143	Spruce	Terence George	29 Ross Road West
001144	Steen	Barbara Ingrid	39 Ross Road West
001145	Steen	Karen Lucetta	32 Fitzroy Road
001146	Steen	Kimberley Joanna	21 St Marys Walk
001147	Steen-MacDonald	Stacey Louise	3 Auster Place
001148	Stenning	Anna Russalka	5B Ross Road West
001149	Stenning	Timothy Charles	5B Ross Road West
001150	Stephenson	Joan Margaret	Moody Valley House
001151	Stephenson	Katrina	4 Davis Street
001152	Stephenson	Zachary	4 Davis Street

001153	Stevens	Adrian John	Lady Hunt House John Street
001154	Stevens	Paul Theodore	6 Dairy Paddock Road
001155	Stevens	Valerie Ann	6 Dairy Paddock Road
001156	Stewart	Celia Joyce	14 Allardyce Street
001157	Stewart	Hulda Fraser	24 Ross Road West
001158	Stewart	Ian Bremner	34 Ross Road East
001159	Stewart	Irene Anne	Flat 3 6 Jersey Road
001160	Stewart	Kenneth Barry	3 Discovery Close
001161	Stewart	Pam Ellen	18 Endurance Avenue
001162	Stewart	Robert William	Flat 3 6 Jersey Road
001163	Stewart	Sheila Olga	34 Ross Road East
001164	Stewart	Sylvia Rose	7 Ross Road West
001165	Stewart-Reid	Carol Ellen Eva	41 Fitzroy Road
001166	Strange	Maria Marta	The Dolphins Snake Street
001167	Strange	Matthew	6b Ross Road West
001168	Strange	Shona Marguerite	6b Ross Road West
001169	Summers	Brian	1 Ross Road East
001170	Summers	Dawn Rose	6 Biggs Road
001171	Summers	Deborah	14 Pioneer Row
001172	Summers	Dorothy Constance	42 Eliza Crescent
001173	Summers	Edith Catherine	5 Dean Street
001174	Summers	Irvin Gerard	1 Anderson Drive
001175	Summers	Jacqueline	11 Pioneer Row
001176	Summers	Jonathan Derek	5 Allardyce Street
001177	Summers	Judith Orissa	1 Ross Road East
001178	Summers	Lynn Jane	20 Jeremy Moore Avenue
001179	Summers	Michael Kenneth	6A Brisbane Road
001180	Summers	Michael Victor	11 Pioneer Row
001181	Summers	Naomi Christine	6a Brisbane Road
001182	Summers	Owen William	5 Brandon Road
001183	Summers	Rowena Elsie	5 Allardyce Street
001184	Summers	Roy	32 Eliza Crescent
001185	Summers	Sheila	Sir Rex Hunt House
001186	Summers	Sybella Catherine Ann	1 Anderson Drive
001187	Summers	Sylvia Jean	8 Racecourse Road
001188	Summers	Terence	1 Ross Road West
001189	Summers	Tony	8 Racecourse Road
001190	Summers	Veronica	5 Brandon Road
001191	Sutcliffe	Lindsey Claire	3A Allardyce Street
001192	Sutcliffe	Michael Ian	Lookout Lodge
001193	Sutherland	John Gall	3 Mountain View
001194	Sytchov	Vladimir	1 Felton Court
001195	Sytchova	Natalia Mikhaylovna	1 Felton Court
001196	Taylor	Anne Louise	28/05/1967
001197	Taylor	Graham	55 Fitzroy Road
001198	Taylor	Ruth Eleanor	55 Fitzroy Road
001199	Teale	Colin Edwin	8 Brisbane Road
001200	Teale	Jeannette	8 Brisbane Road

001201	Tellez	Arturo	6a Narrows View
001202	Tellez	Jose Hector	94 Davis Street
001203	Thain	John	8 Davis Street
001204	Thain	Stephanie Ann	8 Davis Street
001205	Thom	David Anderson	47 Fitzroy Road
001206	Thom	Dorothy Irene	47 Fitzroy Road
001207	Thom	John Currie	25 Ross Road East
001208	Thom	Norma Ann	92 Davis Street
001209	Thomas	Jacqueline Joyce	11 Callaghan Road
001210	Thomas	Justin Paul	11 Callaghan Road
001211	Thorsen	Carol Margaret	17 Scoresby Close
001212	Thorsen	David Moller	17 Scoresby Close
001213	Tomlinson	Anita Helen	11 Biggs Road
001214	Triggs	David William	3 Fieldhouse Close
001215	Triggs	Diane	3 Fieldhouse Close
001216	Triggs	Donna Louise	14a Brandon Road
001217	Triggs	Michael David	3 Fieldhouse Close
001218	Tuckwood	John Rodney	1 Drury Street
001219	Tuckwood	Phyllis Majorie	1 Drury Street
001220	Turner	Melvyn George	36 John Street
001221	Tyrrell	Garry Bernard	1 Beaver Road
001222	Tyrrell	Gina Michelle	1 Beaver Road
001223	Valler	Glyndwr Huw	Flat4 8 Jersey Road
001224	Vidal Roberts	Leona Lucila	1 Mountain View
001225	Villalon	Hector Ricardo	7 McKay Close
001226	Villegas	Caroline	7 Fieldhouse Close
001227	Vincent	Janette Mary	10 Endurance Avenue
001228	Vincent	Stephen Lawrence	10 Endurance Avenue
001229	Wade	Donald Harold	Lookout Lodge
001230	Wade	June Rose Elizabeth	17 Murray Heights
001231	Wallace	Fraser Barrett	10 John Street
001232	Wallace	Helen Jean	10 John Street
001233	Wallace	Ian	23 Callaghan Road
001234	Wallace	James Barrett	38 Ross Road West
001235	Wallace	Maria Lilian	38 Ross Road West
001236	Wallace	Michael Ian	23 Callaghan Road
001237	Wallace	Stuart Barrett	38 Ross Road West
001238	Wallace	Una	23 Callaghan Road
001239	Wallace-Nannig	Fiona Alice	21 Murray Heights
001240	Ward	Alison Denise	9 Anderson Drive
001241	Ward	Dennis James	9 Anderson Drive
001242	Watson	Ben	7 Moody Street
001243	Watson	Paul	20 Endurance Avenue
001244	Watson	Ruth Jane	20 Endurance Avenue
001245	Watt	Stephen Robert	11 Narrows View
001246	Watt	Sylvia Ann	11 Narrows View
001247	Watts	Patrick James	13 Brisbane Road
001248	Webb	Gary Colin	58 Davis Street

001249	Webb	Loretta Isobel	58 Davis Street
001250	White	Judy Marie	Flat 1 3 Jeremy Moore Avenue
001251	White	Kathleen Elizabeth	9 Thatcher Drive
001252	Whitney	Frederick William	1 Police Cottages 9 Ross Road
001253	Whitney	Henry Leslie	4 Thatcher Drive
001254	Whitney	Jason	15 Ross Road East
001255	Whitney	Kurt Ian	2 Pioneer Row
001256	Whitney	Lana Rose	22 Eliza Crescent
001257	Whitney	Susan Joan	1 Police Cottages 9 Ross Road
001258	Wilkinson	Alistair Graham	5 Felton Court
001259	Wilkinson	Johan	5 Felton Court
001260	Wilkinson	Robert John	2a Brisbane Road
001261	Wilks	Bruce Allan	11 Fieldhouse Close
001262	Wilks	Susan Jean	11 Fieldhouse Close
001263	Williams	Christian Leonard Edward John	17 Ian Campbell Drive
001264	Williams	Eugene	23 Ross Road West
001265	Williams	Glen	33 Ross Road East
001266	Williams	Lee Perry Adrian John	17 Ian Campbell Drive
001267	Williams	Margaret Elizabeth	33 Ross Road East
001268	Williams	Marlene Rose	23 Ross Road West
001269	Williamson	Kathleen Laura	5 McKay Close
001270	Winter	Teresa Irene	4A Jeremy Moore Avenue East
001271	Wylie	Julian Richard	1 McKay Close
001272	Zuvic-Bulic	Kuzma Mario	Holdfast House, Holdfast Road
001273	Zuvic-Bulic	Sharon Marie	Holdfast House, Holdfast Road
001274	Zuvic-Bulic	Zoran Mario	Holdfast House

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, West Falkland
000022	Berntsen	Benjamin John	Elephant Beach, East Falkland
000023	Berntsen	Leon	Albemarle Stn, West Falkland
000024	Berntsen	Pamela Margaret	Albemarle Stn, 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, West Falkland
000034	Clark	Frederick Thomas	Hawkbit, Fitzroy East Falkland
000035	Clarke	Alan Neil	Port Howard, West Falkland
000036	Clarke	Jan Michael	Kings Ridge Farm, E.F.I
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	1 Fitzroy Farm 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	Berkeley Sound Farm

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

000097	Hawksworth	David	8 Ridge Camp, MPA Road
000098	Heathman	Ailsa	Estancia, East Falkland
000099	Heathman	Ewart Tony	Estancia, East Falkland
000100	Hemming	Graeme John	Fox Bay Village
000101	Hewitt	Sara Marie	Home Farm Douglas EFI
000102	Hill	Jennifer Eileen	Stoney Ridge, West Falkland
000103	Hirtle	Anthony	Peaks Farm, West Falkland
000104	Hirtle	Doris Linda	Port Howard, West Falkland
000105	Hirtle	Odette Susan	Port Howard, West Falkland
000106	Hirtle	Samantha	Peaks Farm, West Falkland
000107	Hirtle	Susan Mary	Peaks Farm, West Falkland
000108	Hobman	David Gonsalo	Chartres, West Falkland
000109	Hobman	John Malcolm	Saladero, East Falkland
000110	Hobman	Juan Jose Eleuterio	Goring Station West Falkland
000111	Hobman	Vivien	Saladero, East Falkland
000112	Jaffray	Alexander	Lively Island, East Falkland
000113	Jaffray	Eileen	North Arm, East Falkland
000114	Jaffray	Elliott Jessie	Lively Island, East Falkland
000115	Jaffray	Ian	North Arm, East Falkland
000116	Jennings	Hamish Warren	Johnsons Harbour
000117	Jennings	Jacqueline	Pebble Island West Falkland
000118	Jennings	Margaret Ellen	Johnsons Harbour
000119	Jones	Michael David	Head Of Bay, East Falkland
000120	Jones	Sheila Janice	Head Of Bay, East Falkland
000121	Kilmartin	Kevin Seaton	Bluff Cove, East Falkland
000122	Knight	Justin Robert Campbell	Coast Ridge, West Falkland
000123	Knight	Keith Andrew	Coast Ridge, West Falkland
000124	Knight	Nigel Arthur	Coast Ridge, West Falkland
000125	Knight	Shirley Louvain Patricia	Coast Ridge, West Falkland
000126	Larsen	Ronald Ivan	Speedwell Island, East Falkland
000127	Larsen	Yvonne	Speedwell Island, East Falkland
000128	Lee	Carole	Port Howard, West Falkland
000129	Lee	Christopher	Port Howard, West Falkland
000130	Lee	Elizabeth	Goose Green, East Falkland
000131	Lee	John Alfred	Goose Green, East Falkland
000132	Lee	Mervyn Richard	Walker Creek
000133	Lee	Myles	Port Howard
000134	Lee	Rodney William	Port Howard, West Falkland
000135	Leo	Brenda May	NAAFI, MPA, East Falkland
000136	Livermore	Darren	Fitzroy East Falkland
000137	Lloyd	Melvyn John	Point View, Goose Green
000138	Lowe	Adrian Stewart	Murrel Farm, East Falkland
000139	Lowe	Lisa Helen	Murrel Farm, East Falkland
000140	Lowe	Susan Elizabeth	Port Howard Lodge W.F.I
000141	Luxton	William Robert	Chartres, West Falkland
000142	Marsh	Alastair Roy	Shallow Harbour, WFI
000143	Marsh	Anna Dierdre	Philomel Farm, West Falkland
000144	Marsh	Gavin Nicholas	Philomel Farm West Falkland

000145	Marsh	Helen Rose	Rincon Ridge West Falkland
000146	Marsh	June Helen	Rincon Ridge, West Falkland
000147	Marsh	Kevin Roy	Shallow Harbour
000148	Marsh	Leon Peter	Rincon Ridge, West Falkland
000149	Marsh	Marlane Rose	Shallow Harbour, WFI
000150	Marsh	Patricia Ann	Lakelands, West Falkland
000151	Marsh	Robin Frank	Lakelands, West Falkland
000152	Marsh	Samantha Ann	Rincon Ridge Farm West FI
000153	May	Christopher Raymond	George Island
000154	McCormick	Pauline Margaret Ruth	North Arm East Falkland
000155	McGhie	James	Stoney Ridge, West Falkland
000156	McGhie	Jodie Kim	Port North, West Falkland
000157	McGhie	Roy	Port North, West Falkland
000158	McGhie	Thomas Forsyth	Saunders Island, West Falkland
000159	McGill	Lorraine Iris	Carcass Island, West Falkland
000160	McGill	Robin Perry	Carcass Island, West Falkland
000161	McKay	Fraser Roderick	Teal River, West Falkland
000162	McKay	Isabella Alice	Westley, West Falkland
000163	McKay	Josephine Ann	Sheffield Farm, West Falkland
000164	McKay	Kenneth Andrew	Sheffield Farm, West Falkland
000165	McKay	Penelope Rose	Goring Station, West Falkland
000166	McLeod	Albert John	Goose Green, East Falkland
000167	McLeod	Henry Donald Alexander	Goose Green 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 EF I
000174	McPhee	Terence Owen	Kingsford Valley Farm EFI
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	Glynnis Karen	Goose Green East Falkland

000193	Nightingale	Charlene	West Lagoons, West Falkland
000194	Nightingale	Karl Richard	West Lagoons Farm WFI
000195	Nightingale	Peter Richard	West Lagoons, West Falkland
000196	Norman	Heather Thelma	House 2 North Arm
000197	Peck	Davina Margaret	Shallow Bay, West Falkland
000198	Peck	Farrah Louise	Shallow Bay, West Falkland
000199	Peck	Paul	Shallow Bay, West Falkland
000200	Phillips	Carol Joan	Hope Cottage, East Falkland
000201	Phillips	Terence	Hope Cottage, East Falkland
000202	Pitaluga	Antoinette Margaretha Mary	Salvador, East Falkland
000203	Pitaluga	Jene Ellen	Gibraltar Stn East Falkland
000204	Pitaluga	Nicholas Alexander Robinson	Salvador, East Falkland
000205	Pitaluga	Robin Andreas McIntosh	Gibraltar Stn East Falkland
000206	Pitt	Myra	Goose Green East Falkland
000207	Pole-Evans	Anthony Reginald	Saunders Island, West Falkland
000208	Pole-Evans	David Llewellyn	Saunders Island, West Falkland
000209	Pole-Evans	Louise Suzan	Saunders Island, West Falkland
000210	Pole-Evans	Shirley Helen	Manybranch, West Falkland
000211	Pole-Evans	Suzan	Saunders Island, West Falkland
000212	Pole-Evans	William Reginald	Manybranch, West Falkland
000213	Poncet	Dion Michael	Beaver Island, West Falkland
000214	Poncet	Jerome Pierre	Beaver Island, West Falkland
000215	Poncet	Leiv Sigismond	Beaver Island West Falkland
000216	Poncet	Sally Elizabeth	Beaver Island
000217	Poole	Ella Josephine	Race Point, East Falkland
000218	Poole	Steven Charles	Race Point, East Falkland
000219	Porter	Joan	Shallow Harbour, WFI
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	Rozee	Fiona	Spring Point, West Falkland
000227	Rozee	Ronald David	Spring Point, West Falkland
000228	Saunders	Felicity Joan Carlie	Hawkbit, Fitzroy East Falkland
000229	Short	Andrez Peter	Swan Inlet East Falkland
000230	Short	Elaine Elizabeth	Bleaker Island
000231	Short	George Godfrey Ivan	Great Britain Hotel E.F.I
000232	Short	Isobel Rose	Mullet Creek East Falkland
000233	Short	Jason	Mullet Creek East Falkland
000234	Short	Lindsay Marie	Wineglass Stn, East Falkland
000235	Short	Marion	Great Britain Hotel
000236	Short	Patrick Warburton	Mullet Creek East Falkland
000237	Short	Robert Charles	Bleaker Island
000238	Short	Robert George	Wineglass Stn, East Falkland
000239	Sinclair	Simon Keith	19 Goose Green, East Falkland
000240	Smith	Andrew John	Port San Carlos, East Falkland

000241	Smith	Elenore Olive	Johnsons Harbour E F I
000242	Smith	George Patterson	Port Louis
000243	Smith	Jenny Lorraine	Port Louis
000244	Smith	Osmund Raymond	Johnsons Harbour E F I
000245	Smith	Robert William	Goose Green, East Falkland
000246	Smith	Susan	Blue Beach, East Falkland
000247	Smith	Terence George	North Arm, East Falkland
000248	Steen	Gail	Paragon House Lafonia East FI
000249	Steen	Vernon Robert	Paragon House Lafonia East FI
000250	Stevens	Caris Kirsten	Port Sussex East Falkland
000251	Stevens	Richard James	Port Sussex, East Falkland
000252	Stevens	Toni Donna	Port Sussex, East Falkland
000253	Strange	Ian John	New Island South West F.I
000254	Taylor	Christopher John	19 Goose Green East Falkland
000255	Tellez	Rodolfo	Walker Creek, East Falkland
000256	Thorsen	Gloria Penelope	Teal Inlet, East Falkland
000257	Thorsen	Kristiane Annergret Helena	Teal Inlet East Falkland
000258	Towersey	Diane	Port Stephens, West Falkland
000259	Turner	Arthur Leonard Pitaluga	Rincon Grande, East Falkland
000260	Turner	Elaine Ellen	Rincon Grande, East Falkland
000261	Tuson	Olwyn Carol	Saunders Island, West Falkland
000262	Velasquez	Arleen	North Arm, East Falkland
000263	Velasquez	Oscar Herman	North Arm, East Falkland
000264	Watson	Glenda Joyce	Long Island, East Falkland
000265	Watson	Neil	Long Island, East Falkland
000266	Whitney	Daneila Grace	Green Patch Farm East Falkland
000267	Whitney	Dennis	Fitzroy, East Falkland
000268	Whitney	Keith	Home Farm, East Falkland
000269	Whitney	Patrick George	Green Patch Fam, East Falkland
000270	Whitney	Tyrone	Home Farm, East Falkland
000271	Wilkinson	David Clive Walter	Dunnose Head, West Falkland
000272	Wilkinson	Rosemary	Dunnose Head, West Falkland
000273	Williams	Gillian Carol	Hope Cottage Farm
000274	Williams	John Edward	Hope Cottage Farm

Printed by the Government Printer, Printing Office, Stanley, Falkland Islands.
Price: Six Pounds & Thirty Pence.

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THE FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

Vol. CXV

31st May 2006

No. 9

Appointments

Bruce Allan Wilks, Aerodromes Manager, Civil Aviation Department, 01.05.06.
Violet Rose Clarke, Assistant Cook, Education Department, 01.05.06.
Jonathon Douglas Hollins, Veterinary Officer, Department of Agriculture, 01.05.06.
Donna Marie Doyle, Speech and Language Therapist, Health Services Department, 01.05.06.
Marc Christian Le Lec, Fishery Observer, Fisheries Department, 08.05.06.
Adrian Scollard, Design Engineer/Manager, Public Works Department, 29.05.06.
Valorie McLeod, Clerk, Secretariat, 29.05.06.

Completion of Contract

Justine Jury, Fishery Observer, Fisheries Department, 27.04.06.
Martin Fisher, Pharmacist, Health Services Department, 11.05.06.

Renewal of Contract

Justine Jury, Fishery Observer, Fisheries Department, 28.04.06.
Martin Fisher, Pharmacist, Health Services Department, 12.05.06.

Promotion

Trudi Ann McKay, from Assistant Cook to Cook, Education Department, 01.05.06.
James Patrick Lang, from Refueller/Handyman to Aircraft Fitter, Falkland Islands Government Air Service, 22.05.06.

Resignation

Clare Crowie, Dental Nurse, Health Services Department, 28.04.06.
Imogen Fiona Didlick, Assistant Printer, Printing Office, 03.05.06.
Robert John Wilkinson, Aircraft Fitter, Falkland Islands Government Air Service, 09.05.06.
Christine Susan Davies, Recruitment Officer and Officer Manager, Falkland Islands Government Office London, 12.05.06.

Retirement

Terrence Kenneth Mills, Labourer, Public Works Department, 26.05.06.

Transfer

Donna Monica May, from Assistant Printer, Printing Office to Clerk/Cashier, Post Office, 04.05.06.
David Dawson Phillips, from Plant Operator/Handyman to Handyman, Public Works Department, 15.05.06.
Melanie Clausen, from Assistant Printer, Printing Office to Operations Officer, Falkland Islands Government Air Service, 23.05.06.

NOTICES

No. 23

24th April 2006**BANKING ORDINANCE**

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 2005 are available for inspection at the bank branch office, Ross Road, Stanley or a copy will be supplied on application to the Manager.

Dated this 24th day of April 2006

N. B. KEENLEYSIDE,

Assistant Manager, Standard Chartered Bank.

No. 24

28th April 2006**MAGISTRATE'S COURT
OF THE FALKLAND ISLANDS****Notice under section 52 Police Ordinance 2000**

TAKE NOTICE that the following items have been found by members of the public and are in possession of the Royal Falkland Islands Police Force:-

<u>Date Found</u>	<u>Description</u>
14/09/2004	G Shock watch (sellotape on strap, no buckle, dead battery)
24/09/2004	1 ladies Seiko watch, gold coloured, (dead battery)
05/10/2004	White/black wallet (winnie the pooh logo)
16/10/2004	F.I. £5 note
06/10/2004	Black purse (kitten logo) with £2.45 & 1 bead bracelet
19/10/2004	1 blue football (good condition caseball)
14/11/2004	1 gold coloured Seiko ladies watch with brown leather strap
04/12/2004	£4.71 (safe)
None	1 green 'for boys' hooded jacket (fur on hood)
11/12/2004	Gold coloured 'teardrop' specs
01/01/2005	Black 'Dolcir' handbag - 6 tampax - 1 x 20 p coin - Bounty chocolate wrapper
04/01/2005	Paper bag containing red framed spectacles (suspected departed tourist)
23/01/2005	Silver coloured metal 'Eco' watch w/ blue digital face and broken wrist strap
24/01/2005	Black 6 volt AC, 3 pin mains adapter
12/02/2005	Black 'Sporty' digital watch with rubber strap
11/02/2005	Black framed reading glasses with cord
06/03/2005	3 x diesel glow plugs (new in boxes)
12/03/2005	Frosts' knife (black handle - green sheath)
01/04/2005	Tramontina' knife (brown handle - black nylon sheath)
20/04/2005	Red/Blue 'Donner' Jacket, £2 coins + Red/black 'Yamaha' wallet containing £1.82
05/05/2005	Green 'Bosch' 7.2 volt battery drill

07/05/2005	£10 (Falkland Island note)
11/05/2005	Gold coloured 9" metal bracelet
12/05/2005	Pink 'Synchrony' pedal cycle
15/06/2005	Ladies beige jacket with fur trimmed hood
02/07/2005	£15 (£10 note, £5 note - no currency details as stored in safe)
30/07/2005	Green fishing rod + reel & line
24/07/2005	Brown leather handbag, 3 pkts jelly
28/08/2005	£10 (FI note)
None	'Wulf' sport 'Beanie' woollen hat (colour black)
07/09/2005	Decorated wooden walking stick
14/09/2005	£10 note
15/09/2005	Phillips MP3 Player (256 Mb) plus JVC earbudd headphones
21/09/2005	Black nylon 'Landrover' wallet plus 12 pence
24/09/2005	Ladies Seiko oval faced brown strapped dress watch
24/09/2005	Pink 3/4 length Amarato coat
24/09/2005	Pink (size 16) wrap around cardigan
24/09/2005	Mans black 'St Michael' dinner jacket plus 2 hankies
26/09/2005	Silver coloured metal pendant (no chain) with 3 inset black stones
13/11/2005	Brown/beige 'Camo pattern' 'Swandrie' jacket, 3 B&H cigarettes in packet, 1 blue lighter, 1 £5 note
29/11/2005	£15 (£10 FI note £5 UK note)
29/11/2005	Silver coloured heart shaped locket with 2 black & white pictures inside
11/12/2005	Grey spectacle case containing gold rimmed tortoiseshell spectacles
15/12/2005	Blue rucksack with Minnie Mouse pencil case, yellow water bottle, 1 bottle 'Sunflower' perfume, various kids toys & makeup
None	Yellow & black rucksack
02/01/2006	Black 'naish' nylon wallet containing £55 (2 x £20, 1 x £10 & 1 x £5 notes)
06/01/2006	Black/grey/white 'Wulf Sport' motorcross helmet, size large
12/01/2006	Yellow/brown spectacles
16/01/2006	Pink Raleigh pedal cycle
23/01/2006	Pink & white sandals, size 2
06/02/2006	Child's light blue 'GAP' jacket (cream fleece inner), size 12 yrs

Any person who may have a claim to this property is to lodge a claim in writing to the Courts Administrator at the Town Hall, Stanley within six months from the date of the publication hereof.

The finder of any of the above named property should lodge a claim for the return of the property, or the proceeds of sale of the property, with the Chief Police Officer, in writing, at any time after three months but before six months from the date of publication of this notice.

Dated this 28th day of April 2006

C. J. KING,
Courts Administrator

No. 25

9th May 2006

SOUTH ATLANTIC RESOURCES (FI) LIMITED
Company Number: 11117

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

Dated this 9th day of May 2006

J.C. ROWLAND,
Registrar of Companies

No. 26

24th May 2006

**APPLICATION FOR
FALKLAND ISLANDS STATUS**

Notice is hereby given that **Mark Adrian STROUD** has applied through the Principal Immigration Officer for Falkland Islands Status to be granted 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 and Immigration Department, Stanley by 21st June 2006.

Dated this 24th day of May 2006

C. W. REEVES,
Immigration Officer.

No. 27

24th May 2006

APPLICATIONS FOR PERMANENT RESIDENCE

Notice is hereby given that:-

**Tara CASWELL;
Susan Rae WILLIAMS,
Sharon Ruth HENRY; and
Gavin Melvin THOMAS**

have applied through the Principal Immigration Officer to be granted Permanent Residence Permits by the Governor.

Any person who knows of any reason why such permits 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 21st June 2006.

Dated this 24th day of May 2006

C.W. REEVES,
Immigration Officer.

No. 28

24th May 2006

APPLICATION FOR NATURALISATION

Notice is hereby given that **Stephen John WILSON** 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 and Immigration Department, Stanley no later than 21st June 2006.

Dated this 24th day of May 2006

C. W. REEVES,
Immigration Officer.

No. 29

27th April 2006

**CUSTOMS RESOLUTION OF
THE LEGISLATIVE COUNCIL**
Customs Ordinance 2003 (section 113)

No: 1 of 2006

RESOLVED by the Legislative Council, under section 113 of the Customs Ordinance 2003(a), on the 24th day of May 2006, 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—

<u>Item</u>	<u>Article</u>	<u>Rate of Duty</u>
1.	Beer per litre	£0.25
2.	Wines per litre	£0.66
3.	Fortified Wines per litre	£0.78
4.	Spirituous Beverages per litre	£5.28
5.	Spirits per litre	£9.64
6.	Tobacco per kilo:-	
	(a) Cigars	£191.89
	(b) Cigarettes	£167.23
	(c) Tobacco	£126.13."

2. This Resolution may be cited as the Customs (Amendment of Import Duties) Resolution 2006 and comes into force on the 25th day of May 2006.

Dated this 24th day of May 2006

A. LIVERMORE,
Acting Clerk of Councils.

(a) No 9 of 2003

30th May 2006**STANLEY RATES ORDINANCE (TITLE 66.1)**

Notice is hereby given of increases in charges imposed under the provisions of sections 30 and 31 of the Stanley Rates Ordinance with effect from 1 July 2006 as follows:-

1. Measured water supply:-

1.1 Falkland Islands Government premises including FIPASS from £2.90 to £3.20 per tonne;

1.2 Ministry of Defence premises from £3.90 to £4.30 per tonne; and

1.3 Other non-domestic premises from £1.50 to £1.65 per tonne.

2. Minimum annual charge for measured water supply to all premises at paragraph 1 above from £20.00 to £22.00.

3. Service Charge^(a) :-

3.1 Domestic premises from £250.00 to £275.00 per annum;

3.2 Reduced charge for domestic premises occupied by persons of retirement pension age or over ^(b) from £125.00 to £137.50 per annum.

4. Refuse Charges in respect of non-domestic premises are unchanged:-

4.1 For each small bin supplied £90.00 per annum

4.2 For each large bin supplied £270.00 per annum

Dated 30th May 2006

D. F. HOWATT,
Financial Secretary.

(a) The Service Charge is payable by 30 September each year but payment can be made by 12 equal monthly instalments of £23.00 with effect from July each year (£11.50 per month for persons of retirement age or over). The payment by instalment method is applicable to tenants of Government housing by an addition to the monthly rent. To relieve tenants of Government housing on low income the Service Charge will be treated in the same manner as rent under the Rent Rebate Scheme. A Service Charge Rebate Scheme is available upon application to relieve other householders on low income. The full Service Charge is payable on all vacant properties.

(b) Age 64 or over or age 60 or over if a widow or widower



THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

Vol. 17

17th January 2006

No. 1

The following are published in this Supplement -

Employment of Children (Amendment) Bill 2006;

Employment of Women, Young Persons and Children (Amendment) Bill 2006;

Employers' Liability (Defective Equipment) Bill 2006;

Taxes (Amendment) Bill 2006, Explanatory Memorandum;

Taxes (Amendment) Bill 2006.

Employment of Children (Amendment) Bill 2006

(No: of 2006)

ARRANGEMENT OF PROVISIONS

Clause

1. Short title
2. Interpretation
3. Amendment of principal Ordinance

Schedule

EMPLOYMENT OF CHILDREN (AMENDMENT) BILL 2006

(No: of 2005)

(assented to: 2006)

(commencement: 2006)

(published: 2006)

A BILL

for

AN ORDINANCE

To amend the Employment of Children Ordinance (Title 32.1)

BE IT ENACTED by the Legislature of the Falkland Islands as follows —

Short title

1. This Ordinance may be cited as the Employment of Children (Amendment) Ordinance 2006.

Interpretation

2. In this Ordinance “the principal Ordinance” means the Employment of Children (Amendment) Ordinance (Title 32.1).

Amendment of principal Ordinance

3. The principal Ordinance is amended in the manner specified in the Schedule hereto.

SCHEDULE
Amendment of principal Ordinance.

1. Section 3(1) of the principal Ordinance is replaced by the following —

“Restrictions on employment of children

3.—(1) Subject to the provisions of this section, no child shall be employed —

- (a) so long as he is under the age of 14 years;
- (b) before the close of school hours on any day which he is required to work;
- (c) to do any work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children, or without prejudice to the generality of the foregoing, to lift, carry or move anything so heavy as to be likely to cause injury to him;
- (d) before seven a.m. or after seven p.m. on any day;
- (e) for more than two hours on any day on which he is required to attend school; and
- (f) for more than two hours on any Sunday.

2. The following subsections are inserted in section 3 immediately after subsection (1) —

“(1A) A chorister taking part in a religious service or in choir practice for a religious purpose shall, whether he receives any reward or not, be deemed for the purposes of subsection (1) not to be employed.

(1B) Nothing in subsection (1) applies to employment as a baby-sitter of a child of 14 years or over.”

3. Section 4 of the principal Ordinance is amended by replacing “£20” with “level 3 on the standard scale”.

Employment of Women, Young Persons and Children (Amendment) Bill 2006

(No. of 2006)

ARRANGEMENT OF PROVISIONS

Clause

1. Short title
2. The principal Ordinance
3. Amendment of the principal Ordinance

**EMPLOYMENT OF WOMEN, YOUNG PERSONS AND CHILDREN (AMENDMENT)
BILL 2006**

(No. of 2006)

(assented to: 2006)
(commencement: 2006)
(published: 2006)

A BILL

for

AN ORDINANCE

To amend the Employment of Women, Young Persons and Children Ordinance (Title 32.2).

BE IT ENACTED by the Legislature of the Falkland Islands as follows —

Short title

1. This Ordinance may be cited as the Employment of Women, Young Persons and Children (Amendment) Ordinance 2006.

The principal Ordinance

2. In this Ordinance “the principal Ordinance” means the Employment of Women, Young Persons and Children Ordinance (Title 32.2).

Amendment of the principal Ordinance

3. The principal Ordinance is amended in the manner specified in the Schedule.

SCHEDULE
Amendment of the principal Ordinance

1. Section 2 of the principal Ordinance is amended by omitting the definition of ship.
2. Section 3 of the principal Ordinance is amended —
 - (a) by omitting —
 - (i) the words “or in any ship” in subsection (1); and
 - (ii) the proviso to that subsection;
 - (b) by replacing subsection (3) with the following subsection —

“(3) Where any child is employed in any industrial undertaking, a register of children who are so employed, and of the dates of their birth, shall be kept and shall at all times be open to inspection.”;
 - (c) by inserting the following subsection after subsection (4) —

“(4A) No child shall be employed in any work —

 - (a) which exposes the child to physical, psychological or sexual abuse;
 - (b) underground, under water, at dangerous heights or in confined spaces;
 - (c) with dangerous machinery, equipment or tools, without adequate training and, where necessary, adequate supervision.”;
 - (d) by repealing subsections (5) and (6);
 - (e) by replacing paragraph (a) of subsection (7) with the following —

“(a) sections 21 (1) and (2) and 28(1) and (3) of the Children and Young Persons Act 1933 in their application to the Falkland Islands shall have effect in relation to the employment of a child in an industrial undertaking in contravention of this Ordinance as they have effect in relation to the employment of a child in contravention of Part II of that Act;”;
 - (f) by repealing paragraphs (b) and (d) of subsection (7); and
 - (g) by replacing “£20” in each of paragraphs (c) and (e) of subsection (7) with “not exceeding the maximum of level 3 on the standard scale”.
3. Section 4(2) of the principal Ordinance is amended by deleting the words “or ship”.

4. Section 5(2) is amended by replacing “£5” with “the maximum of level 2 on the standard scale”.

5. The Schedule to the principal Ordinance is repealed.

Employers' Liability (Defective Equipment) Bill 2006

(No: of 2006)

ARRANGEMENT OF PROVISIONS

Clause

1. Short title and commencement
2. Extension of employers' liability for defective equipment

EMPLOYERS' LIABILITY (DEFECTIVE EQUIPMENT) BILL 2006

(No: of 2006)

(assented to: 2006)

(commencement: 2006)

(published: 2006)

A BILL

for

AN ORDINANCE

To make further provision with respect to the liability of an employer for injury to his employee which is attributable to any defect in equipment provided by the employer for the purposes of the employer's business; and for purposes connected with that matter.

BE IT ENACTED by the Legislature of the Falkland Islands as follows —

Short title

1. This Ordinance may be cited as the Employers' Liability (Defective Equipment) Ordinance 2006 and shall come into force at the beginning of the third month after its publication in the Gazette.

Extension of employers' liability for defective equipment

2.—(1) Where after the commencement of this Ordinance —

- (a) an employee suffers personal injury in the course of his employment in consequence of a defect in equipment provided by his employer for the purposes of the employee's business; and

(b) the defect is attributable wholly or partly to the fault of a third party (whether identified or not),

the injury shall be deemed also to be attributable to negligence on the part of the employer (whether or not he is liable in respect of the injury apart from this subsection), but without prejudice to the law relating to contributory negligence and to any remedy by way of contribution or in contract or otherwise which is available to the employer in respect of the injury.

(2) In so far as any agreement purports to exclude or limit any liability of an employer arising under subsection (1) of this section, the agreement shall be void.

(3) In this section —

“business” includes the activities carried on by any public body;

“employee” means a person who is employed by another person under a contract of service or apprenticeship and is so employed for the purposes of a business carried on by that other person, and “employer” shall be construed accordingly;

“equipment” includes any plant and machinery, vehicle, aircraft and clothing;

“fault” means negligence, breach of statutory duty or other act or omission which gives rise to liability in tort in the Falkland Islands; and

“personal injury” includes loss of life, any impairment of a person’s physical or medical condition and any disease.

(4) This section binds the Crown and persons in the service of the Crown shall accordingly be treated as employees of the Crown if they would not be so treated apart from this section.

TAXES (AMENDMENT) BILL 2006

EXPLANATORY MEMORANDUM

GENERAL

This Bill makes miscellaneous amendments to the Taxes Ordinance 1997 ("the 1997 Ordinance").

CLAUSE 1

This clause contains the formal parts of the Bill. It provides the short title to the Bill, "the Taxes (Amendment) Ordinance 2006", and allows the use of the short form "the 1997 Ordinance" instead of the full title of the original Ordinance "the Taxes Ordinance 1997".

Subsection (2) provides that the Ordinance shall come into force on 1st March 2006, which is the date the Taxes Office may start implementing its provisions. It then specifies the tax years which will be affected by the amendments. In general the new provisions will apply, for both corporation tax and income tax, to income accruing in 2006 and later years. Although this appears to be retrospective, this provision is made to simplify the administration of the taxes. In fact the majority of the provisions in the Bill will have little effect in relation to any time before 1st March 2006. Nothing in clause 5 relating to the new fisheries regime, or in the connected amendments in clauses 2 and 7, will apply before that date as the new fisheries regime will not be effective, at least for tax purposes, before then. Clause 4, which imposes new criminal sanctions relating to late filing of accounts, is expressly stated to apply only where the default occurred on or after 1st March 2006 and therefore cannot be retrospective. Clause 8 will apply in relation to income accruing in the year 2005 but this provision is of benefit to taxpayers so the rule against retrospection does not apply. The remaining provisions of the Bill are neutral in effect being in the main clarifying amendments to improve the law.

CLAUSE 2

Clause 2 redefines "income" and introduces a new definition of "expenses" for the purposes of the Taxes Ordinance. The primary amendments are related to the new rights created under the Fisheries (Conservation and Management) Ordinance 2005. In addition minor, clarifying amendments to the definition of "income" are made.

The purpose of these amendments is to tax the proceeds of the sale of individual transferable quota (within the meaning of the Fisheries (Conservation and Management) Ordinance 2005) as income not as capital. The first part of subsection (3), which amends the definition of "income", achieves this aim.

Subsection (2) provides that expenditure incurred on acquiring any individual transferable quota will be treated as revenue expenditure for the purposes of the Taxes Ordinance. The expenditure will be deductible against income when it is incurred. Without this provision, such expenditure would be capital expenditure and therefore not deductible as a revenue item.

In consequence of these provisions, expenditure on individual transferable quota will not be eligible for capital allowances or be otherwise depreciated.

The new provision applies to acquisitions of the whole or any part of an individual transferable quota or of a charge on such a quota. Partial acquisitions and the creation of charges are permitted by the Fisheries (Conservation and Management) Ordinance 2005 and therefore need to be dealt with in the Taxes Ordinance to prevent any avoidance of the charge to tax.

Subsection (2) also inserts a definition of individual transferable quota into the Taxes Ordinance.

Subsection (3) also restates the existing definitions of "income" so clarifying the drafting by combining the definitions into one.

CLAUSE 3

Clause 3 amends section 15 of the Taxes Ordinance.

Subsection (1) repeals section 15(3)(d) which allowed any sums paid under the Old Age Pensions Ordinance to be deducted from an individual's taxable income. The Old Age Pensions Ordinance was superseded by the Retirement Pensions Ordinance 1996 as from 1 January 1998 and payments under the earlier Ordinance are no longer made. Section 15(3)(d) is therefore obsolete and is therefore being repealed.

Subsection (2) amends section 15(3)(e). This provision refers to contributions made under the Retirement Pensions Ordinance by an individual. Originally that Ordinance allowed a man to make contributions under the Ordinance in respect of his wife but since married couples have been taxed separately, that is no longer possible. The amendment makes it clear that only contributions made by an individual for his or her own benefit can be deducted from their taxable income.

CLAUSE 4

Clause 4 amends section 33(2)(c) of the Taxes Ordinance which imposes a 10% corporation tax-gearred penalty where accounts are delivered more than 6 months late but less than 12 months late but only if there is unpaid tax immediately before the accounts are delivered. The amendment changes this situation so that if both delivery of the accounts and payment of any corporation tax is unpaid more than 6 months after the due date for delivery of the accounts, a 10% tax-gearred penalty is applied, irrespective of when the accounts are delivered.

This amendment brings the penalty into line with that imposed under section 33(2)(d) which applies where both tax and accounts are more than 12 months late.

CLAUSE 5

Clause 5 inserts two new sections into the Taxes Ordinance.

The first of these sections ensures that the charge to tax on the proceeds of sale of any individual transferable quota cannot be avoided by simply selling shares in private companies owning the individual transferable quota. The section provides that the proceeds of such sales shall be taken into account for tax purposes as income not capital. When such a sale takes place, the costs of the acquisition will be deductible as expenses in the computation of taxable income. Those costs will not be deductible when incurred since the shares may never be sold or may not be sold while the company owns the individual transferable quota. These provisions are modelled on similar provisions in Chapter II of Part VI relating to disposals in shares in private companies which own oil licences.

The second section has effect where there is a transfer of any individual transferable quota. In such a case anyone who acquires or disposes of any individual transferable quota or shares in a private company must inform the Commissioner within 4 weeks of the acquisition or disposal that the transfer has taken place. Notice will be required to be given on a prescribed form.

Where notice is not given in time, the person in default will be liable to a civil penalty of £100 and to a further penalty of £50 a month for each month or part of a month the default continues. Criminal sanctions under section 189 will apply without any express application.

CLAUSE 6

Clause 6 repeals section 124 of the Taxes Ordinance. Section 124 made transitional provision for capital allowances under paragraph 3 of the Seventh Schedule to the Income Tax Ordinance. The Income Tax Ordinance has been repealed and these allowances are now all spent. Section 124 is therefore no longer needed and is being repealed accordingly.

CLAUSE 7

Clause 7 makes further provision for the disclosure of information in support of the taxation of transfers of individual transferable quota.

The clause lifts the prohibition on the disclosure of information obtained under the Fisheries (Conservation and Management) Ordinance 2005. This prohibition is contained in section 220 of that Ordinance. The effect of clause 7 will be to allow information obtained under that Ordinance to be passed to the Commissioner and his staff, but the information will not become public. Section 202 of the Taxes Ordinance will apply to this information as it applies to other information which comes into the possession of the Taxes Office.

CLAUSE 8

Clause 8 amends Rule 4 of the Income Tax (Apportionment of Deductions) Rules 1997. This Rule requires deductions under the Taxes Ordinance, in particular the personal allowance, to be apportioned by reference to the number of days the taxpayer spends in the Falkland Islands in the year in question. It is possible to be ordinarily resident in the Falkland Islands without being physically present. At present the rule applies to reduce the allowances of those who are ordinarily resident if they are technically non-resident. The amendment will allow those who are ordinarily resident, but not resident, in the Falkland Islands when taxable income accrues to them, whether in the Falkland Islands or elsewhere, not to suffer any reduction in their tax allowances under Rule 4.

The meaning of "resident" and "ordinarily resident" is to be found in section 200 of the Taxes Ordinance.

CLAUSE 9

This clause clarifies certain provisions in the Taxes Ordinance. The most important is to section 10 where the paragraph letters had gone awry. The amendment corrects this formatting error.

Taxes (Amendment) Bill 2006

(No: of 2005)

ARRANGEMENT OF PROVISIONS

1. Short title, commencement and interpretation
2. Amendments to meaning of “income” and “expenses”, including provisions bringing dealings in fishing rights within the charge to tax
3. Amendment of section 15
4. Corporation tax: late filing penalties
5. Special provisions relating to owners of fishing rights etc
6. Capital allowances: repeal of spent transitional provisions
7. Information relating to fisheries to be given to the Commissioner of Taxation
8. Apportionment of deductions for non-residents
9. Minor and clarifying amendments

TAXES (AMENDMENT) BILL 2006

(No: of 2006)

(assented to: 2006)
(commencement: in accordance with section 1)
(published: 2006)

A BILL

for

AN ORDINANCE

To amend the Taxes Ordinance 1997.

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 Taxes (Amendment) Ordinance 2006.

(2) This Ordinance shall come into force on 1st March 2006 and, subject to any provision to the contrary, shall have effect in relation to the charge to tax for corporation tax years beginning on or after 1st January 2006 and for years of assessment beginning on or after 1st January 2007.

(3) In this Ordinance “the Taxes Ordinance” means the Taxes Ordinance 1997(a).

Amendments to meaning of “income” and “expenses”, including provisions bringing dealings in fishing rights within the charge to tax

2.—(1) Section 2 of the Taxes Ordinance (interpretation) shall be amended as follows.

(2) In subsection (1) the following definitions shall be inserted in the appropriate places —

“disposal”, in relation to any individual transferable quota or charge, includes any sale or transfer of the quota or charge or of any interest in the quota or charge, whether or not registered under the Fisheries (Conservation and Management) Ordinance 2005(b);

“expenses” includes any expenditure incurred by any person in acquiring the whole or any part of an individual transferable quota, or of a charge on such a quota, (and, accordingly, the quota or charge represented by any such expenditure shall not be depreciated in the computation of that person’s chargeable income for any chargeable period);

“individual transferable quota” has the meaning given by section 17(1) of the Fisheries (Conservation and Management) Ordinance 2005.

(a) No 14 of 1997

(b) No 14 of 2005

(3) In subsection (1) the following definition shall be substituted for the definitions of “income”—

“ “income” includes —

(a) any consideration accruing to a person in respect of the disposal by that person of the whole or any part of an individual transferable quota, or in respect of the creation or transfer of a charge on such a quota, (and, accordingly, the quota or charge represented by any such expenditure shall not be depreciated in the computation of that person’s chargeable income for any chargeable period), and

(b) emoluments of an employment received otherwise than in cash and any amount in respect which an employee is chargeable to tax by virtue of section 8(1)(c)(c);

and, subject to that, references to income shall be construed in accordance with section 8;”

Amendment of section 15

3.—(1) Paragraph (d) of subsection (3) of section 15, which refers to the Old Age Pensions Ordinance which was superseded by the Retirement Pensions Ordinance(d), is hereby repealed.

(2) In section 15(3)(e), which allows contributions made under the Retirement Pensions Ordinance 1996 made by an individual to be deducted from his taxable income, after the words “made by the individual” there shall be inserted the words “in respect of himself”.

Corporation tax: late filing penalties

4.—(1) In section 33(2)(c) of the Taxes Ordinance (penalty for late filing of accounts) for the words “at the time immediately before the accounts are delivered” there shall be substituted the words “on the date immediately following the end of that 6 month period”.

(2) Subsection (1) shall apply in any case where the accounts are delivered on or after 1st March 2006.

Special provisions relating to owners of fishing rights etc

5. The following sections shall be inserted in the Taxes Ordinance after section 100 —

“Taxation of proceeds of share dealing in certain fishing companies

100A.—(1) Where a person disposes of unquoted shares which derive their value in whole or in part from any individual transferable quota, then —

(a) if the consideration for the disposal of the shares exceeds the acquisition costs of the shares, an amount equal to that excess shall be deemed to be income accruing to that person at the time of the disposal, and

(c) inserted by No 23 of 2003

(d) No 20 of 1996

(b) where the acquisition costs of the shares exceed the consideration, an amount equal to that excess shall be allowable as a deduction in the computation of that person's chargeable income for the year in which the disposal takes place.

(2) For the purposes of subsection (1) "acquisition costs" in relation to the disposal of any shares by any person, means —

(a) expenditure (in money or money's worth) incurred by that person in the acquisition of the shares, and

(b) the incidental costs incurred by him in connection with the disposal.

For this purpose "incidental costs" has the meaning given by paragraph 1(3) of Schedule 2.

(3) The following provisions of this Ordinance shall apply for the purposes of this section as they apply for the purposes of Chapter II of Part VI of this Ordinance, that is to say, sections 142(1), 144, 146 and 147(4) and (5).

(4) For the purposes of subsection (3), in Chapter II of part VI of the Taxes Ordinance —

(a) any reference to exploration or exploitation rights shall be read as a reference to individual transferable quota, and

(b) any reference to a chargeable gain shall be omitted.

Notification to Commissioner where fishing rights transferred etc

100B.—(1) Any person who acquires or disposes of the whole or any part of any individual transferable quota shall give notice in the prescribed form to the Commissioner of the acquisition or disposal not later than 28 days after the date of the acquisition or disposal.

(2) Any person who acquires or disposes of any interest in unquoted shares which derive their value in whole or in part from individual transferable quota shall give notice in the prescribed form to the Commissioner of the acquisition or disposal not later than 28 days after the date of the acquisition or disposal.

(3) Any person who fails to give notice in accordance with subsection (1) or (2) shall be liable to a penalty of £100 and to a further penalty of £50 for every month or part of a month during which the default continues."

Capital allowances: repeal of spent transitional provision

6. Section 124 of the Taxes Ordinance, which contained transitional provisions relating to allowances under the Seventh Schedule to the Income Tax Ordinance, is hereby repealed.

Information relating to fisheries to be given to the Commissioner of Taxation

7. In section 203 of the Taxes Ordinance (public officers required to disclose information to Commissioner if required except in cases within subsection (2)) after subsection (2) there shall be inserted —

“(2A) Section 220 of the Fisheries (Conservation and Management) Ordinance 2005 shall be disregarded for the purposes of subsection (2).”

Apportionment of deductions for non-residents

8.—(1) In paragraph (1) of Rule 4 of the Apportionment of Deductions Rules(e) (which provides for deductions from taxable income under the Taxes Ordinance to be apportioned in the case of non-residents according to the time spent in the Falkland Islands during the year in which the income accrues to the taxpayer) after “not resident” there shall be inserted “nor ordinarily resident”.

(2) This section shall have effect in relation to the charge to income tax for the year of assessment 2006 and subsequent years.

Minor and clarifying amendments

9.—(1) The Taxes Ordinance shall have effect subject to the following amendments.

(2) In section 10 for paragraph (a) and the first paragraph (b) there shall be substituted —

“(a) in the case of any person other than a company —

(i) on the first £12,000 of his chargeable income, at 20 per cent.; and

(ii) on the remainder, at 25 per cent.;

(3) In section 138(4) for “paragraph” substitute “section”.

(4) In section 178A(2)(a) “stating” is hereby repealed.

(5) In section 181(2)(d) “or” is hereby repealed.

(6) In section 183(12)(a)(i) the second “of” is hereby repealed.

(7) In paragraph 1(8)(b) of Schedule 1, after “that section” there shall be inserted “that other company is”.



THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

Vol. 17

8th February 2006

No. 2

The following are published in this Supplement -

**Criminal Justice Act 2003 (Sections 29 and 30)(Disapplication) Order 2006
(S.R.&O. No: 1 of 2006);**

**Falkland Islands Pensions Scheme (General Provisions)(Amendment) Regulations
2006 (S.R.&O. No: 2 of 2006);**

Criminal Justice (Amendment)(Miscarriages of Justice) Bill 2006; and

Planning (Amendment) Bill 2006.

SUBSIDIARY LEGISLATION

CRIMINAL PROCEDURE

Criminal Justice Act 2003 (Sections 29 and 30) (Disapplication) Order 2006

(S.R. & O. No: 1 of 2006)

Made: 19 January 2006

Published: 8 February 2006

Coming into force: on publication

IN EXERCISE of my powers under section 78A(2) of the Interpretation and General Clauses Ordinance(a) I make the following Order —

Citation and commencement

1. This Ordinance may be cited as the Criminal Justice Act 2003 (Sections 29 and 30) (Disapplication) Order 2006 and comes into force on publication in the *Gazette*.

Disapplication of sections 29 and 30 Criminal Justice Act 2003

2. Sections 29 and 30 of the Criminal Justice Act 2003 are disapplied as law of the Falkland Islands with effect from the date on which they come or came into force in England and Wales.

Made this 19th day of January 2006

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

(a) Title 67.2 as amended by the Interpretation and General Clauses (Amendment) Ordinance 1991 (No 18 of 1991)

EXPLANATORY NOTE
(not forming part of the above Order)

Under section 78(2) of the Interpretation and General Clauses Ordinance (Title 67.2) any provision of any English Act enacted before 31st July 2004 which “augments” the provisions of any earlier Act which has been adopted as law of the Falkland Islands is itself applied as law of the Falkland Islands. Section 1 the Magistrates’ Courts Act 1980 of England which governs the manner in which criminal proceedings are commenced in courts of summary jurisdiction, was applied, with modifications, as law of the Falkland Islands by the Administration of Justice Ordinance (Title 22.1).

Section 29 of the Criminal Justice Act 2003 of England (“the 2003 Act”) made new provision as to the manner in which criminal proceedings should be commenced and stated that criminal proceedings should no longer be commenced in the manner provided for by section 1 of the Magistrates’ Courts Act 1980 and section 30 makes further provision about the new method of commencing prosecutions. The two sections are to come into force in England and Wales on a date appointed by Order under the 2003 Act and when they come into force would, but for this Order, have effect in the Falkland Islands. Section 29 and section 30 of the 2003 Act augment the provisions of section 1 of the Magistrates’ Courts Act 1980 and, but for the above Order, would under section 78(2) of the Interpretation and General Clauses Ordinance apply as law of the Falkland Islands.

The provisions of sections 29 and 30 of the 2003 Act are purely procedural. They do not deal in any way with the merits of commencing a prosecution. Nevertheless it is necessary to ensure that those provisions shall not come into force as law of the Falkland Islands. That would not of course prevent those provisions being specifically applied at a later date, subject to the modifications which in any event would be necessary if it were decided to do so. The above Order has the effect that section 1 of the Magistrates’ Courts Act 1980, until replaced in Falkland Islands law, will continue to provide for the manner in which criminal prosecutions shall be commenced in courts of summary jurisdiction.

SUBSIDIARY LEGISLATION

PENSIONS

Falkland Islands Pensions Scheme (General Provisions)(Amendment) Regulations 2006

(S. R. & O. No: 2 of 2006)

Made: 19 January 2006

Published: 18 February 2006

Coming into force: upon publication

IN EXERCISE of my powers under section 39 of the Falkland Islands Pensions Scheme Ordinance 1997(a) and of all other powers enabling me in that behalf, I make the following Regulations —

Citation and commencement

1. These Regulations may be cited as the Falkland Islands Pensions Scheme (General Provisions)(Amendment) Regulations 2006, and shall come into force on publication.

Interpretation

2.—(1) In these Regulations —

(a) any reference to the Pensions Ordinance is a reference to the Falkland Islands Pensions Scheme Ordinance 1997; and

(b) any reference to the General Provisions Regulations is a reference to the Falkland Islands Pensions Scheme (General Provisions) Regulations 1999(b).

Ill-health or disablement of members

3. In the General Provisions Regulations the following regulation shall be inserted after regulation 3 —

“Ill-health or disablement of member

3A.—(1) Where a member is unable by reason of ill-health or disablement to perform any function imposed on the member under these Regulations, any reference in these Regulations to the member shall include a reference to any other person appointed to act on the member's behalf for the purposes of these Regulations.

(a) No 18 of 1997

(b) SR&O No 2 of 1997

(2) A person appointed to act on a member's behalf for the purposes of these Regulations shall notify the Board of that fact as soon as is reasonably practicable."

Amendment of regulation 5

4. In regulation 5(1) of the General Provisions Regulations for "Scheme" there shall be substituted "the Scheme".

Amendment of regulation 7

5. In regulation 7(3) of the General Provisions Regulations for "1998" there shall be substituted "1999".

Amendment of regulation 12

6. In regulation 12(2)(b)(ii) of the General Provisions Regulations after " in accordance with" there shall be inserted "section 18A(5) or".

Amendment of regulation 13

7. The following shall be substituted for sub-paragraph (1) of regulation 13 of the General Provisions Regulations —

"(1) The Board shall keep a register of members which shall, at any time, contain the following information in relation to each member —

(a) the information which the member is required to provide in accordance with regulation 8;

(b) a full history of the member's remuneration so far as relevant to his rights under the Scheme;

(c) a full history of contributions made by the employer on behalf or in respect of the employee or by the employee, identifying separately any additional voluntary contributions;

(d) a full history of the member's employment so far as relevant to his rights under the Scheme;

(e) an account of the financial additions to, withdrawals from and changes in value of the member's individual account;

(f) where any of the following provisions of the Pensions Ordinance applies to the member, that fact —

(i) section 27A;

(ii) sections 32A, 33A and 33B;

- (iii) paragraph 5 or 5A of Schedule 3;
- (iv) paragraph 8 of Schedule 3;
- (g) if section 33A applies to the member, whether or not the member has made an election under section 33A(5)(a) or (b) or (9); and
- (h) if the member has made an election under section 33A(5)(b) and his pension is currently abated under paragraph 4 of Schedule 5 to the Pensions Ordinance, that fact.”

Made this 19th day of January 2006

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

EXPLANATORY NOTE
(not forming part of the Regulations)

These Regulations amend the Falkland Islands Pensions Scheme (General Provisions) Regulations 1999, referred to below as the General Provisions Regulations, which were made under the Falkland Islands Pensions Scheme Ordinance, referred to below as the Pensions Scheme Ordinance. These amendments take account of changes made since 1999 to the operation of the Falkland Islands Pensions Scheme, referred to below as the Scheme. In addition some minor inconsistencies are corrected.

Regulation 1 sets out the short title for the Regulations and provides for them to come into force on publication.

Regulation 2 provides for the interpretation of the short forms “the Pensions Ordinance” and “the General Provisions Regulations” as used in the Regulations.

Regulation 3 allows other persons to act for members of the Scheme who are too ill or disabled to act for themselves. The General Provisions Regulations require information to be given to and by a member for the purposes of the Scheme but in some cases of ill-health or disablement it may be difficult for the member himself or herself to do all that is necessary. This regulation allows someone else to act for the member in such a case. Where another person is appointed to act for a member under this new provision, that appointed person must inform the Board of the appointment as soon as is reasonably practicable.

Regulations 4 and 5 correct small inconsistencies in the text of the General Provisions Regulations.

Regulation 6 amends regulation 12(2)(b)(ii) of the General Provisions Regulations so as to include a reference to deductions made in accordance with section 18A(5) of the Pensions Scheme Ordinance. Section 18A was added by the Falkland Islands Pensions Scheme (Amendment) (No 2) Ordinance 2005: under this provision FIG employees will make employee contributions to the Scheme. These contributions will be made by deductions from salary. The amendment made by regulation 6 ensures that the employer (in this case FIG) will make a return to the Pensions Board of contributions deducted from the salary of civil servants under section 18A as well as additional voluntary contributions deducted under section 22.

Regulation 7 substitutes a new paragraph (1) in regulation 13 of the General Provisions Regulations. Regulation 13(1) specifies what information must be included in the register of members kept by the Pensions Board. Subparagraph (c) of the new provision ensures that all contributions made by employees are entered in the register, and subparagraph (f) adds to the statutory provisions which, in relevant cases, must be identified as applying to the member. Subparagraphs (g) and (h) require the Pensions Board to note in the register whether or not an election has been made under section 33A and also any deferral of a pension under paragraph 4 of Schedule 5 to the Pensions Scheme Ordinance. The remaining paragraphs restate existing requirements.

The additional statutory provisions mentioned in subparagraph (f) are sections 27A, 32A, 33A and 33B of and paragraph 5A of Schedule 3 to the Pensions Schemes Ordinance. These new provisions were added to the Pensions Scheme Ordinance by the Falkland Islands Pensions Scheme (Amendment) Ordinance 2001, the Falkland Islands Pensions Scheme (Amendment) Ordinance 2004 and the Falkland Islands Pensions Scheme (Amendment) Ordinance 2005.

Criminal Justice (Amendment)(Miscarriages of Justice) Bill 2006

(No: of 2006)

ARRANGEMENT OF PROVISIONS

Clause

1. Short title
2. References to the Court of Appeal as to possible miscarriages in trials on indictment
3. Reference to the Supreme Court as to possible miscarriages of justice in summary trials
4. Conditions for making of reference
5. Further provisions about references
6. Compensation for miscarriages of justice

CRIMINAL JUSTICE (AMENDMENT) (MISCARRIAGES OF JUSTICE) BILL 2006

(No: of 2006)

(assented to: 2006)
(commencement: upon publication)
(published: 2006)

A BILL

for

AN ORDINANCE

To provide for references by the Governor to the Court of Appeal of possible miscarriages of justice in relation to convictions on indictment in the Supreme Court; to provide for references by the Governor to the Supreme Court of possible miscarriages of justice in relation to convictions in courts of summary jurisdiction; to provide a right of compensation for miscarriages of justice in relation to convictions of criminal offences, and for connected purposes.

BE IT ENACTED by the Legislature of the Falkland Islands as follows —

Short title

1. This Ordinance may be cited as the Criminal Justice (Amendment) (Miscarriages of Justice) Ordinance 2006.

References to the Court of Appeal as to possible miscarriages in trials on indictment

2.—(1) Where a person has been convicted of an offence on indictment before the Supreme Court the Governor —

(a) may at any time refer the conviction to the Court of Appeal; and

(b) (whether or not he refers the conviction) may at any time refer to the Court of Appeal any sentence (not being a sentence fixed by law) imposed on, or in subsequent proceedings relating to, the conviction.

(2) A reference under subsection (1) of a person's conviction shall be treated for all purposes as an appeal by the person under section 4(1)(c) of the Court of Appeal Ordinance (Title 22.2).

(3) A reference under subsection (1) of a sentence imposed on, or in subsequent proceedings relating to, a person's conviction on an indictment shall be treated for all purposes as an appeal by the person under section 4(1)(d) of the Court of Appeal Ordinance against —

(a) the sentence; and

(b) any other sentence (not being a sentence fixed by law) imposed on or in subsequent proceedings relating to, the conviction or any other conviction on the indictment.

(4) On a reference under subsection (1) of a person's conviction on an indictment the Governor may give notice to the Court of Appeal that any other conviction on the indictment which is specified in the notice is to be treated as referred to the Court of Appeal under subsection (1).

(5) Where a verdict of not guilty by reason of insanity has been returned in the case of a person, the Governor may at any time refer the verdict to the Court of Appeal, and a reference under this subsection shall be treated for all purposes as an appeal under section of the Court of Appeal Ordinance against the verdict.

(6) Where a jury has returned findings, or in the case of a trial before a judge sitting without a jury, the judge has found, that a person is under a disability and that he did the act or made the omission charged against him, the Governor may at any time refer either or both of those findings to the Court of Appeal; and a reference under this subsection shall be treated for all purposes as an appeal under section 4(1)(f) of the Court of Appeal Ordinance against the finding or findings referred.

Reference to the Supreme Court as to possible miscarriages of justice in summary trials

3.—(1) Where a person has been convicted of an offence by a court of summary jurisdiction, the Governor —

(a) may at any time refer the conviction to the Supreme Court; and

(b) (whether or not he refers the conviction) may at any time refer to the Supreme Court any sentence imposed on, or in subsequent proceedings relating to, the conviction.

(2) A reference under subsection (1) of a person's conviction shall be treated for all purposes as an appeal against the conviction (whether or not he pleaded guilty).

(3) A reference under subsection (1) of a sentence imposed on, or in subsequent proceedings relating to, a person's conviction shall be treated for all purposes as an appeal by the person against —

(a) the sentence; and

(b) any other sentence imposed on, or in subsequent proceedings relating to, the conviction or any related conviction.

(4) On a reference under subsection (1) of a person's conviction the Governor may give notice to the Supreme Court that any related conviction which is specified in the notice is to be treated as referred to the Supreme Court.

(5) For the purposes of this section convictions are related if they are convictions of the same person by the same court on the same day.

Conditions for making of reference

4.—(1) A reference of a conviction, verdict, finding or sentence shall not be made under either of sections 2 and 3 unless —

(a) the Governor considers that there is a real possibility that the conviction, verdict, finding or sentence would not be upheld were the reference to be made;

(b) the Governor so considers —

(i) in the case of a conviction, verdict or finding, because of an argument, or evidence, not raised in the proceedings which led to it or on any appeal or application for leave to appeal against it; or

(ii) in the case of a sentence, because of an argument on a point of law, or information, not so raised, and

(c) an appeal against the conviction, verdict, finding or sentence has been determined or leave to appeal against it has been refused.

(2) Nothing in subsection (1)(b)(i) or (c) shall prevent the making of a reference if it appears to the Governor that there are exceptional circumstances which justify making it.

Further provisions about references

5.—(1) A reference of a conviction, verdict finding or sentence may be made under either of sections 2 and 3 either after an application has been made by or on behalf of the person to whom it relates or without an application having been made.

(2) In considering whether to make a reference of a conviction, verdict, finding or sentence under section 2 or 3 the Governor shall have regard to —

(a) any application or representations made to the Governor by or on behalf of the person to whom it relates;

(b) any other representations made to the Governor in relation to it;

(c) any other matters which appear to the Governor to be relevant.

(3) In considering whether to make a reference under section 2 or 3 the Governor may at any time refer any point on which he desires the assistance of the Court of Appeal to that Court for the Court's opinion on it; and on a reference under this subsection the Court of Appeal shall consider the point referred and furnish the Governor with the Court's opinion on the point.

(4) Where the Governor makes a reference under section 2 or 3 the Governor shall —

(a) give to the court to which the reference is made a statement of the Governor's reasons for making the reference; and

(b) send a copy of the statement to every person who appears to the Governor to be likely to be a party to any proceedings on the appeal arising from the reference.

(5) Where a reference under section 2 or 3 is treated as an appeal against any conviction, verdict, finding or sentence, the appeal may be on any ground relating to the conviction, verdict finding or sentence (whether or not the ground is related to any reason given by the Governor for making the reference).

(6) In every case in which —

(a) an application has been made to the Governor by or on behalf of any person for the reference under section 2 or 3 of any conviction, verdict, finding or sentence; but

(b) the Governor decides not to make a reference of the conviction, verdict, finding or sentence,

the Governor shall give a statement of the reasons for his decision to the person who made the application.

Compensation for miscarriages of justice

6.—(1) Subject to subsection (2), when a person has been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice, the Governor shall pay compensation for the miscarriage of justice to the person who suffered punishment as the result of such conviction or, if he is dead, to his personal representatives, unless the disclosure of the unknown fact was wholly or partly attributable to the person convicted.

(2) No payment of compensation under this section shall be made unless an application for such compensation has been made to the Governor.

(3) The question as to whether there is a right to such compensation shall be determined by the Governor.

(4) If the Governor determines that there is a right to compensation, the amount of the compensation shall be determined by an assessor appointed by the Governor.

(5) In assessing so much of any compensation payable under this section to or in respect of a person as is attributable to suffering, harm to reputation or similar damage, the assessor shall have regard in particular to —

(a) the seriousness of the offence of which the person was convicted and the severity of the punishment resulting from the conviction;

(b) the conduct of the investigation and prosecution of the offence; and

(c) any other conviction of the person and any punishment resulting from them.

(6) In this section “reversed” shall be construed as referring to a conviction having been quashed—

(a) on an appeal out of time;

(b) on a reference under the previous provisions of this Ordinance.

(7) For the purposes of this section a person suffers punishment as a result of a conviction when sentence is passed on him for the offence of which he was convicted.

(8) A person shall not be appointed by the Governor under subsection (4) to be an assessor unless he holds one or more of the qualifications specified in section 79(2) of the Constitution.

Planning (Amendment) Bill 2006

(No: of 2006)

ARRANGEMENT OF PROVISIONS

Clause

1. Short title
2. Repeal of section 5(3) of the Planning Ordinance 1991

PLANNING (AMENDMENT) BILL 2006

(No: of 2006)

(assented to: 2006)
(commencement: upon publication)
(published: 2006)

A BILL

for

AN ORDINANCE

To amend the Planning Ordinance 1991 (Title 55.3)

BE IT ENACTED by the Legislature of the Falkland Islands as follows —

Short title

1. This Ordinance may be cited as the Planning (Amendment) Ordinance 2006.

Repeal of section 5(3) of the Planning Ordinance 1991

2. Section 5(3) of the Planning Ordinance 1991 is repealed.

OBJECTS AND REASONS

To amend the Planning Ordinance 1991 so as to permit public officers to be members of the Planning Committee.

Printed by the Government Printer, Printing Office, Stanley, Falkland Islands.
Price: Four Pounds & Thirty-five Pence.

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THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

Vol. 17

13th February 2006

No. 3

The following are published in this Supplement -

Family Law Bill 2006, Explanatory Memorandum;

Family Law Bill 2006; and

Land Charges (Amendment) Bill 2006.

EXPLANATORY MEMORANDUM

Family Law Bill 2006

The Family Law Bill 2006 is divided into three Parts and has thirty-six clauses and three Schedules.

PART I INTRODUCTORY

Part I of the Bill consists of one clause (clause 1) which would deal with the short title and commencement of the Ordinance, if enacted .

PART II FAMILY HOMES AND DOMESTIC VIOLENCE

Introductory

Part II of the Bill deals with the subject of Family Law and Domestic Violence.

Family Law and Domestic Violence

The Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) applies to the Falkland Islands and Part II of the Bill in part originates in the need more fully to fulfil the obligations under that Convention. It is still the case that women are disadvantaged by being more likely to be the lower salary earner in a partnership (whether within or outside marriage) with a man. They may, often because they are engaged in bringing up young children of the partnership, have no earnings of their own. The house in which the husband and wife or unmarried heterosexual partners live may be owned solely by the husband or male partner and, if it is, in the event of the breakdown of the partnership for whatever reason, the woman has no rights in the former matrimonial or quasi-matrimonial home and, unless the woman obtains an order in her favour in matrimonial proceedings (which she cannot do if there is no marriage between the partners) has no right to remain in the home. In the light of this problem, the Matrimonial Homes Act 1967 was enacted in England and was amended by the Matrimonial Homes and Property Act 1981. Both these Acts were superseded by the Matrimonial Homes Act 1983. In 1996, the provisions of the 1983 Act were replaced by the provisions of Part IV of the Family Law Act 1996 and Schedule 4 to that Act (that Schedule re-enacts with consequential amendments and modifications some of the provisions of the Matrimonial Homes Act 1983). Part II of the Bill is closely modelled on the provisions of Part IV of the Family Law Act 1996.

The scope of Part II is not limited so as to benefit only wives, since its provisions, so far as they affect persons who are married to each other, may also benefit husbands where the wife is the breadwinner or main breadwinner and the husband fulfils the role more usually that of a wife of staying at home and looking after the house and children. The provisions of the Bill are entirely gender neutral. Nor is the Bill's scope limited so as to benefit women or men who are married to each other. It contains provisions which apply to persons of opposite sexes who are or have been cohabiting with each other.

Part II of the Bill is closely modelled on Part IV of the Family Law Act 1996, and Schedule 1 to the Bill is closely modelled on Schedule 4 to that Act. Those provisions were enacted as a result of the English Law Commission's 1992 Report on Domestic Violence and Occupation of the Family Home.

In 1976 there was the landmark decision in England *Davis v Johnston* [1979] A.C.264 establishing that ouster orders (i.e. orders requiring a cohabitant to leave the family home) could be made for the benefit of cohabitants who had no rights of ownership in the family home. In recent years in the Falkland Islands a policy has been adopted more favourable to prosecuting violence against women in a domestic setting, but such violence nevertheless continues to occur. The Falkland Islands are not widely different from England in this respect. There such violence has been described by a British author (Betsy Stanko) as "the most significant problem damaging the health and safety of women", for which "husbands, boyfriends, former spouses and intimate companions" are blamed. Wife-beating is believed to be an under-reported crime in the United Kingdom. There is no reason to suppose the situation to be widely different in the Falkland Islands. The effects of it upon children of the family have been a cause of worry in England and wife-beating is now considered to be a form of child abuse.

Part II of the Bill also confers rights on former spouses or partners who are deserted in the former family home.

The Bill, if enacted, will not prevent domestic violence. It does however contain measures which may assist spouses or cohabitants who are the victims of domestic violence.

Clause 4

This clause corresponds with section 30 Family Law Act 1996 (FLA 1996) which reproduced with some minor modifications part of section 1 Matrimonial Homes Act 1983 (MLH 1983), other parts of which are in sections 31, 32 and 34 FLA 1996 (clauses 5,6 and 8 of the Bill). The clause introduces the concept of "matrimonial home rights" to describe statutory rights of occupation granted under the Bill. The clause, subject to the provisions of the Bill, would give protection against eviction to a spouse who is not entitled to occupy the dwelling-house but who is in occupation, and would give the right, with the leave of the court, to occupy the dwelling-house to the spouse who is neither so entitled nor in occupation. It should be noted that the clause would extend the rights under the clause to a dwelling-house intended as a matrimonial home, but never occupied as such.

Clause 5

Subclauses (1) to (3) would provide that, where at any time during the subsistence of the marriage, one spouse is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest, the other spouse's rights of occupation would be a charge on the estate or interest, having the like priority as if it were an equitable interest at whichever is the latest of the following dates:-

- (i) the date when the spouse so entitled acquires the estate or interest;
- (ii) the date of the marriage;

(iii) the date of commencement of the Ordinance.

The wider definition of “dwelling-house” does not apply for the purposes of this clause: see clause 2(5).

Clause 6

This clause, with Schedule 1, would reproduce, with consequential amendments, the sections of MHA 1983 (which has never applied in the Falkland Islands) relating to the conveyancing aspects of matrimonial home rights. It would be necessary to have these provisions if the Bill is enacted.

Clause 7

This clause would deal with the court’s power to make occupation orders where the applicant is entitled to occupy the dwelling-house either by virtue of the general law or by virtue of matrimonial home rights under clause 4. Under this clause, an applicant entitled to occupy the dwelling-house may apply for an order against anyone with whom he is associated, provided that the dwelling-house in question is, or was, intended by both parties to be their common home. (“Associated”, in relation to a person, would be defined by clause 3(3)-(6)).

The clause lists the regulatory orders which may be made by the court and sets out the factors which the court is to have regard in making such orders. These factors are to be subject to a balance of harm test which would impose an overriding requirement for the court to make an order if it appears to the court that the applicant or child is likely to suffer significant harm if an order is not made which is greater than the harm that the respondent or a child is likely to suffer if the order is made. Provision would also be made for declaratory orders and for matrimonial home rights to continue after the death of the other spouse or the termination of the marriage where it considers it appropriate. Where an agreement to marry is terminated, an application could only be made within three years of the termination of the agreement.

An order under the clause could be for a specified period, until the occurrence of a specified event, or until further order.

Clause 8

This clause would deal with the effect of an order under clause 7 where one spouse’s matrimonial home rights are a charge on the estate or interest of the other spouse, or of the trustees for the other spouse, and a person has derived title under the other spouse or under the trustees.

Clause 9

This clause would deal with the power of the court to make occupation orders when the applicant former spouse is not entitled to occupy the dwelling-house but the respondent former spouse is so entitled. There would be more restrictive criteria and effects (for example, an order could initially only last for up to six months, and occupation rights granted to a non-entitled applicant are personal only and are therefore not capable of registration against the property or valid against a purchaser).

Under subclause (1) an application for an order under this section could be made by a former spouse in relation to a dwelling-house which was at any time the matrimonial home, or was intended by both to be their matrimonial home.

"Former spouse" includes a polygamously married spouse (see clause 2(5)). "Entitled" has the meaning given by clause 4(1)(a). Subclause (3) would provide that every order under clause 9 would confer certain occupation rights on applicants for the duration of the order. This in effect the first step in the process. The court would then go on to consider whether a regulatory order under subclause (5) should be made. In practice the two stages might well be "telescoped". The importance of keeping the two stages conceptually separate was pinpointed by the English Law Commission which said in paragraph 4.18 of its Report "there may...be cases in which the applicant's case for an occupation rights order is not particularly strong (perhaps because she has lived with the respondent only for a matter of weeks) but in which her need is so great that it would nevertheless be just for her application to be granted (perhaps because she is ill, has the respondent's baby to care for and nowhere else to go).

Subclause (4) would deal with the situation in which the applicant is not in occupation.

In certain circumstances (see subclause (8)) the court would have to include in the order one of the regulatory provisions listed in subclause (5).

The criteria to which the court would have to have regard to in deciding whether to make an order under subclause (3) or (4) are set out in subclause (6). Under subclause (7) the court would have to have regard to all circumstances, including housing needs and resources, financial resources, the likely effect of an order, conduct and the length of time since the parties ceased to live together, in deciding whether to include one or more of the regulatory provisions listed in subclause (5).

Subclause (9) would provide that an order under clause 9 could not be made after the death of one of the spouses and that, if an order has been made, it ceases to have effect on the death of one of them.

Clause 10

This clause provides for the situation where the applicant is a cohabitant or former cohabitant who is not entitled to occupy the dwelling-house and the respondent is a cohabitant or former cohabitant who is so entitled. Provision would be made by the clause for the courts to make occupation orders in favour of such applicants against such respondents. In addition to the factors which the court would under clause 8 have to consider for former spouses, the court would have to consider some additional factors including the nature of the parties' relationship. It should be noted that under this clause the balance of harm test would not require the court to make an order containing certain specified provisions. Subclause (1) would have the effect that for this clause to apply there would have to be an "entitled" cohabitant or former cohabitant, a "non-entitled" cohabitant or former cohabitant, and the dwelling-house in question would have to have been the home in which they cohabited or intended to do so.

“Cohabitants” are defined in clause 3(1) as a man and woman who, although not married to each other, are living together as man and wife. “Former cohabitant” does not include cohabitants who have subsequently married one another.

Under subclause (9) an order could not be made under the clause after the death of either of the parties and once it is made, it ceases to have effect on the death of either of them. Subclause (10) would provide that an order under the clause could be made for up to six months and could be extended once only for a period not exceeding six months.

Clause 11

This clause would allow occupation orders to be made in favour of spouses and former spouses where neither spouse is entitled to occupy the dwelling-house. Under subclause (2) each party would have the capacity to apply for an order against the other. Under subclause (5) occupation orders would be limited to six months but could be renewed a limitless number of times for periods not exceeding six months.

Clause 12

Clause 12 would allow occupation orders to be made in favour of cohabitants and former cohabitants where neither party is entitled to occupy the dwelling-house. Orders under the clause would be limited to a maximum duration of six months and could only be extended once for a period not exceeding six months. Under subclause (1) the clause would apply to cohabitants and former cohabitants who occupy a dwelling-house which is the home in which they live or lived together as husband and wife but which neither is entitled to occupy.

The criteria for the exercise of the court’s jurisdiction would be laid down by subclauses (4) and (5).

Clause 13

This clause would define “occupation order” as an order under clauses 7, 8, 9, 10 or 11. It would provide that if an application for an order were made under any of those provisions and the court believed that it did not have the power to make such an order under that provision, it might nevertheless make an order under one of the other four clauses. The clause would also provide for the effect of an application for an order on subsequent claims to an interest in the property.

Subclause (4) would ensure that neither an application nor an order under clauses 7 to 11 would prevent either party from subsequently claiming an interest in the property in subsequent proceedings, including proceedings under Part II.

Clause 14

Clause 13 would provide that the court, on making an application order under clauses 7 to 11, or at any time thereafter, could make an ancillary order imposing certain obligations on either party or granting to either party the possession or use of the furniture or other contents contained in the dwelling-house. The obligations might relate to the repair and maintenance of the dwelling-house, the discharge of obligations (e.g. rent or mortgage payments), the payment of rent to the party who has been ousted, taking reasonable care of the furniture or other contents of the dwelling-house and taking reasonable steps to keep any contents secure.

Clause 15

This clause was not included in the English Law Commission's draft of the Bill and was inserted during the course of the Bill's passage through the House of Lords.

Clause 16

This clause would give the courts power to make non-molestation orders. Under subclause (2) such an order would prohibit the respondent from molesting a person "associated with" the respondent. Clause 3(3) to (6) would set out the rules as to when a person is to be regarded as being "associated with" another person.

A non-molestation order could be made by the court of its own motion as well as upon application. "Molesting" is not defined in the Bill. This was a deliberate decision of the English Law Commission in relation to the corresponding provisions in the Family Law Act 1996. The Commission had some concern that a definition might become over restrictive or that it could lead to borderline disputes (paragraph 3.1 of the Law Commission's Report). On the case law "molesting" includes violence or causing an apprehension of violence, and includes pestering in such a way as to make an absolute nuisance of oneself. Where there is violence, this does not require, under the case law, any intention on the part of the respondent (e.g. a respondent who is only violent during an epileptic fit).

Under subclause (4) applications for non-molestation orders by formerly engaged couples would be limited to a three year period after termination of the agreement to marry (but this would not preclude the court making an order of its own motion).

Under subclause (5), the court is to have regard to all the circumstances including the need to secure the health, safety and well-being of the applicant or the person for whose benefit the order would be made and of any relevant child. ("Relevant child" is defined in clause 2(2)).

Non-molestation orders could only be made for a specified period or until further order (subclause (7)). Where an order is made in family proceedings which are subsequently withdrawn or dismissed, the molestation order would cease to have effect (subclause (8)).

Clause 17

Clause 17 would provide that a person under 16 may not apply for an occupation order or a non-molestation order without the leave of the court. The court can only grant the request if it is satisfied that the child has sufficient understanding to make the application.

Clause 18

Clause 18 sets out for the purposes of section 2(3)(e), the evidence required to establish the existence of an agreement to marry. Subclause (1) would stipulate that the primary evidence required would be evidence in writing of the agreement to marry, but it is important to note that the agreement itself does not have to be in writing. Invitations to an engagement party, and letters from the other party referring to their engagement would constitute evidence in writing.

But subclause (2) permits the gift of an engagement ring by one party to the other in contemplation of marriage or an engagement ceremony in the presence of witnesses.

Clause 19

Clause 19(1) would permit the court, in its discretion to make an occupation order or non-molestation order *ex parte* (that is to say, without notice to the other party to the marriage or cohabitation). Decided cases lay down that this power must be used with great caution and only in circumstances in which it is really necessary to act immediately.

Subclause (2) would require the court, in deciding whether to make an order to have regard to all the circumstances including those set out in the subclause. Subclause (3) would require the court, if it made an *ex parte* order to afford to the respondent an opportunity to make representations relating to the order at a full hearing as soon as is just and convenient. Subclause (4) would provide that in calculating the maximum period of occupation orders made at a full hearing, account shall be taken of any *ex parte* order which preceded the full order.

Clause 20

Subclause (1) of this clause would enable the court to accept an undertaking from any party in any proceedings where it had power to make an occupation order or non-molestation order. A power of arrest could not (subclause (2)) be attached to an undertaking and, by virtue of subsection (3) the court would not be able to accept an undertaking where apart from the clause a power of arrest would be attached to an order. By virtue of subclause (4), undertakings would be enforceable in the same way as orders.

Clause 21

This clause (and Schedule 2) provide for the court's powers to arrest for breach of, and to attach a power of arrest to, an occupation order and a non-molestation order. They give power to the Supreme Court to remand and issue arrest warrants. They also provide for bail requirements to be attached to a remand where necessary to ensure that there is no interference with witnesses or to prevent other obstruction of the course of justice.

Subclause (2) would require the court to attach a power of arrest to one or more provisions of the order if the respondent has used or threatened violence against the applicant or a child concerned, unless this is unnecessary for their protection. Subclause (3) would provide that a power of arrest may be attached to an *ex parte* order where there has been actual or threatened violence and, in addition, there is a risk of significant harm to the applicant or a child if the power of arrest is not attached immediately. Under subclause (4) it would be possible for the court to attach the power of arrest for a shorter period than the other provisions of the order. Under subclause (5) any period specified for the purposes of subclause (4) could be extended by the court on one or more occasions on an application to vary or discharge the order.

Under subclause (7) a respondent arrested under a power of arrest would have to be brought before a judge or justice of the peace within 24 hours, in the calculation of which Sundays, Christmas Day and Good Friday would be excluded.

Subclause (8) would enable any court to issue a warrant for the respondent's arrest for breach of any provision of an occupation or non-molestation order to which no power of arrest had been attached. Under subclause (9), an arrest warrant could not be issued under subclause (8) unless the application for a warrant were substantiated on oath and the relevant judicial authority had

reasonable grounds for believing that the respondent had not complied with the order. Subclause (10) would confer power upon the court to remand the respondent if the court did not dispose of the matter forthwith.

Subclause (11) would give effect to Schedule 2 and would provide that where a person is granted bail, he might be required to comply with whatever requirements the court thinks necessary to ensure that he does not interfere with witnesses or otherwise obstruct the course of justice.

Clause 22

This clause would confer powers upon the court to remand the respondent for medical examination and reports. The English Law Commission in its Report recommended the inclusion of the powers because of "the not inconsiderable number of cases where it seems that the arrested person may be suffering from mental ill-health".

Clause 23

Clause 23 provides for the variation and discharge of occupation orders and non-molestation orders and prescribes who may apply for variation and discharge.

Clause 24

This clause would confer upon courts of summary jurisdiction (the Summary Court and the Magistrate's Court) power to suspend execution of a committal order relating to breach of certain requirements.

Clause 25

This clause would confer upon courts the power to make a hospital order or guardianship order under sections 37 and 38 of the Mental Health Act 1983 which would be applied to the Falkland Islands for the purposes only of this clause.

Clause 26

This clause gives effect to Schedule 3 to the Bill which amends the Children Ordinance 1994.

Clause 27

This clause gives effect to Schedule 4 to the Bill which makes provision in relation to the transfer of certain tenancies on divorce etc or on separation of cohabitants.

Clause 28

This clause provides that, in determining for the purposes of the Bill whether a spouse, former spouse, cohabitant or former cohabitant is entitled to occupy a dwelling-house by virtue of an estate or interest, there must be disregarded any right to possession of the dwelling-house conferred on a mortgagee of the dwellinghouse under or by virtue of the interest, and whether the mortgagee is in possession or not. However, a spouse, former spouse, cohabitant and former cohabitant have no larger right to occupy the dwelling-house than does the person with an estate or interest unless the rights are a charge, affecting the mortgagee, on the estate or interest charged.

Clause 29

Clause 29 would provide that where an action is brought by a mortgagee for enforcement of his security a spouse, former spouse, cohabitant or former cohabitant is entitled to be made party where he or she is allowed to meet the mortgagor's liabilities, has applied to do so, and the court sees no special reason against his or her being made a party and is satisfied that he or she may be expected to meet the mortgagor's liabilities so as to affect the outcome of the proceedings or the expectation of it should be considered under section 36 of the Administration of Justice Act 1970 (that section applies in the Falkland Islands).

Clause 30

This clause would provide that mortgagees must serve notices on persons who have registered a land charge where they are bringing an action to enforce their security and those persons are not parties to the action.

Subclauses (1) and (2) provide that where a mortgagee of land, which consists of or includes a dwelling-house, brings an action for enforcement of his security, and at the relevant time there is a land charge of class III registered, or any person who, where the estate owner is a trustee, preceded him as trustee during the subsistence of the mortgage, notice of the action must be served by the mortgagee on the person on whose behalf the land charge is registered if that person is not a party to the action.

Subclauses (2) and (3) provide that for the purposes of the foregoing provisions as to notice by a mortgagee bringing an action for enforcement of his security, if there has been issued a certificate of official search made on behalf of the mortgagee which would disclose any land charge of class III and the action is commenced within the priority period, the relevant time is the date of that certificate. In any other case the relevant time is the time when the action is commenced.

Clause 31

This clause sets out the principle that the primary court for proceedings under Part II of the Bill would be the Magistrate's Court. The Summary Court would only have jurisdiction in the circumstances set out in subclause (1). The Supreme Court would only have jurisdiction in circumstances to be set out in rules to be made by the Chief Justice under subclause (2). By virtue of subclause (3), in the absence of such rules, and except as they otherwise provide, the proceedings would be required to be commenced in the Magistrate's Court.

Clause 32

This clause enables the "relevant judicial authority" (defined in clause 2(1)) to deal with contempt of court arising out of failure to comply with an order.

Clause 33

Clause 33 would enable rules of court (to be made by the Chief Justice) to provide for a prescribed person or a person in a prescribed class to act on behalf of another in relation to proceedings under Part II.

Clause 34

This clause provides for appeals against an order made by the Summary Court or the Magistrate's Court to lie to the Supreme Court. No appeal would lie against a decision by the Summary Court to entertain or refuse to entertain proceedings under Part II. Any order by the Supreme Court (except an order directing that the application be re-heard) would for enforcement purposes and the exercise of any power to vary, revive or discharge the order be treated as if it were an order of the court from which the appeal was brought to the Supreme Court.

PART III

VALIDITY OF MARRIAGES UNDER A LAW WHICH PERMITS POLYGAMY

Clauses 35 and 36, which constitute Part III of the Bill, are closely modelled on sections 5 and 6 of the Private International Law (Miscellaneous Provisions) Act 1995. These sections derived from a draft Bill annexed to a joint Report of the English and Welsh and Scottish Law Commissions titled "Private International Law: Polygamous Marriages — Capacity to Contract a Polygamous Marriage". In its report the English Law Commission recommended the adoption of a general principle that "every man and woman domiciled in England and Wales ... should have the capacity to enter into a marriage outside the UK which, although celebrated in a form appropriate to a polygamous marriage, is not actually polygamous" (paragraph 2.17 of the Report).

SCHEDULES

Schedule 1

This Schedule reproduces, with consequential amendments, sections 3, 4, 5 and 6 of the Matrimonial Homes Act 1983 (which were never part of the law of the Falkland Islands). Those sections dealt with the conveyancing aspects of a spouse's rights of occupation in the matrimonial home. The concept "matrimonial home rights" replaces that of "rights of occupation", which was used in the 1983 Act.

Schedule 2

This Schedule establishes a scheme for the remand of persons arrested pursuant to a power of arrest or warrant granted by the Supreme Court. It is based on the existing scheme in courts of summary jurisdiction established by sections 128 and 129 of the Magistrates' Courts Act 1980 in its application to the Falkland Islands.

Paragraph 1 of the Schedule is a definition paragraph. Paragraphs 2, 3 and 4 provide that the court may remand the person arrested either in custody or on bail by taking from him a recognizance, with or without sureties, and impose certain time limits. It should be noted that where the court adjourns a case it can remand in custody for a period exceeding eight days. There are provisions for further remand.

Schedule 3

This Schedule would make important amendments to the Children Ordinance 1994. They are closely modelled on amendments which have been made in England to the corresponding provisions of the Children Act 1989.

Paragraph 2 would make a minor amendment to the provisions of section 4(2)(b) relating to the parental responsibility of the father of an illegitimate child.

Paragraph 3 would make a more important amendment to section 5 of the Ordinance relating to the manner in which the father of an illegitimate child could acquire parental responsibility for that child. This amendment follows amendments to the Children Act 1989 made by section 111(2) of the Adoption and Children Act 2002.

A new section 5A, providing for the acquisition of parental responsibility by a step parent, would be inserted by paragraph 4. This corresponds to section 4A of the Children Act 1989 which was inserted by section 112 of the Adoption and Children Act 2002.

Paragraph 5 would amend section 10(6) by inserting at the beginning of the subsection "Subject to section 12(5)". It is consequential on the new section 12(6) which would be inserted by paragraph 6. See also footnote 15.

Paragraph 6 would omit paragraph (a) of section 12(3) (which deprived a person not a parent or guardian of a child in whose favour a residence order in respect of that child is made of the right to consent or refuse to consent to an adoption order in respect of the child). The paragraph would also replace a reference in paragraph (b) of the section. Further it would insert new subsections (5) and (6) in section 12. The new subsection (5) would confer power upon the court to direct at the request of the person in whose favour a residence order is made that it shall continue in force until the child reached the age of eighteen unless the order is brought to an end (perhaps on the application of the child) earlier. Under the new subsection (6), an application to vary such a direction could only be made with the leave of the court.

New sections 14A to 14E relating to special guardianship orders would be inserted by paragraph 7 of Schedule 3. These correspond to section 14A to 14E of the Children Act 1989, inserted by section 115(1) of the Adoption and Children Act 2002. Special guardianship orders are intended to provide a legal alternative to the present system of adoption and residence orders. The *Review of Adoption Law* (United Kingdom Department of Health, 1992) recognised that for some, mainly older, children in care and seeking a new family for life, the total legal severance from their birth family effected by adoption was not appropriate. On the other hand, a residence order which would normally only last until the age of 16 did not provide sufficient long term security. The working group recommended a new order, *inter vivos* guardianship, effectively giving the carers the legal status of the child's guardian whilst the natural parent(s) are still alive and correspondingly restricting the birth parents' exercise of parental responsibility. The recommendation was not however taken forward until the 2000 White Paper *Adoption a new approach*.

The new clause 14A would provide who may apply for a special guardianship order and the application process. Unlike guardians appointed after the death of the child's parents, special guardians could only be appointed by a court. Courts would only be able to make special guardianship orders if they had considered a report on the suitability of the applicant to be a special guardian and any information to be prescribed in regulations, as well as any matters the Senior Welfare Officer considers relevant.

The new section 14B would require courts making a special guardianship order to consider whether any existing section 9 orders should be varied or discharged, and whether it should make a contact order in respect to the child. The general prohibitions on changing a child's name or taking him or her out of the jurisdiction without the consent of every person with parental responsibility that apply under residence orders under section 13 of the Children Ordinance 1994 (with the period for which leave to leave the jurisdiction is not necessary extended to three months) would apply to special guardianship orders under the proposed section 14C(3). The proposed section 14B(2) would allow the court, when making a special guardianship order at the same time, to give leave for the child to be known by a new name and to give leave in either general or specific terms for the child to leave the jurisdiction for more than three months.

The proposed section 14C sets out the effect of special guardianship orders. The intention is to give special guardians clear responsibility for all day to day decisions about the care of the child and his upbringing. The special guardian would have parental responsibility for a child which could be exercised to the exclusion of others with parental responsibility, except in regard to circumstances where the law requires the consent of all persons with parental responsibility or the child's adoption. The consent of all with parental responsibility would be required before a child's surname could be changed or he could leave the jurisdiction for more than three months. A special guardian would be required to take all reasonable steps to inform the child's parents if the child dies.

The new section 14D would enable special guardianship orders to be varied or discharged on the application of the special guardian and the Crown. In addition they could be varied or discharged on application, with leave of the court, by the child (if of sufficient understanding), the child's parent or guardian, anyone who had parental responsibility for the child immediately before the special guardianship order, and anyone with a residence order in respect of the child. Courts could also vary or discharge a special guardianship order without an application being made.

Supplemental provision would be made by the new section 14E. This would include allowing the court to set a timetable for the proceedings, the making of rules, provision for orders or variations of orders to have effect for a specified period, and the application of the power of the court to make directions or impose conditions in section 9 orders to special guardianship orders.

Paragraph 8 would insert new sections 23A and 23B in the Children Ordinance 1994. These would correspond to sections 38A and 38B of the Children Act 1989 which were inserted by section 52 and Schedule 6 paragraph 6 of the Family Law Act 1996.

In paragraph 6.18 of the Law Commission's Report on Domestic Violence and Occupation of the Family Home it recommended allowing the court to make temporary ouster orders (an order excluding a spouse or cohabitant or other relevant person from the family home). The new section 23A would enable the court, if it made an interim care order on the basis that a child was suffering or likely to suffer significant harm and that the harm or likelihood of harm was attributable to the care being given to the child, or likely to be given to him if the interim care order was not made not being what it would be reasonable to expect a parent to be given to him to include exclusion requirements in the interim care order if specified conditions were satisfied.

Those conditions are (a) that there is reasonable cause to believe that if a person ("the relevant person") is excluded from the dwelling-house in which the child lives, the child would cease to suffer, or cease to be likely to suffer, significant harm and (b) that another person in the house (whether a parent of the child or some other person) is able and willing to give to the child the care which it would be reasonable to expect a parent to give to him and consents to the exclusion requirement. An "exclusion requirement" would be any one or more of the requirements specified in the proposed section 23A(3). Under the proposed section 23A(4) the exclusion requirement could have effect for a shorter period than the other provisions of the interim care order. Subsections (5) and (6) of the proposed section 23A enable a power of arrest to be attached to an exclusion requirement and for the order to provide that the power of arrest is to have effect for a shorter period than the exclusion requirement.

The new section 38B would enable the court to accept an undertaking from the relevant person instead of making an exclusion order. No power of arrest could then be attached to the exclusion requirement, but the undertaking would be enforceable as if it were an order of the court.

Paragraph 9 of the Schedule would insert new subsections (3A) and (3B) in section 24 of the Children Ordinance 1994 which would correspond with the subsections (3A) and (3B) inserted in the Children Act 1989 by section 52 and paragraph 2 of Schedule 6 to Family Law Act 1996. These subsections would make provision in relation to care orders and supervision orders similar to that made by sections 23A and 23B in relation to interim care orders.

Paragraph 10 of Schedule 3 would insert new sections 28A and 28B in the Children Ordinance 1994 corresponding to sections 44A and 44B of the Children Act 1989, which were inserted by section 52 and Schedule 6 paragraph 3 to the Family Law Act 1996. These new sections would make similar provision, in relation to the insertion of exclusion requirements in emergency protection orders, and acceptance of undertakings as would be made by sections 23A and 23B in relation to insertion of such requirements in interim care orders.

Paragraph 11 of the Schedule would insert new subsections (8A) and (8B) in section 29 of the Children Ordinance 1994. The new subsection (8A) would enable a person subject to an exclusion requirement included in an emergency protection order to apply for discharge of that requirement even though he is not a person entitled by section 29(8) to apply for discharge of the emergency protection order. The new subsection 8(b) would enable the court on the application of a person entitled to apply for the discharge of the exclusion requirement, to vary or discharge the requirement so far as it relates to the power of arrest.

Paragraph 12 would make a consequential amendment to section 35 necessary as a result of the amendment of section 12 effected by paragraph 6 of Schedule 3.

Paragraph 13 would amend section 37 so as to enable rules of court to be made in relation to the separate representation of children.

Family Law Bill 2006

(No: of 2006)

ARRANGEMENT OF PROVISIONS

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Clause

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16. Non-molestation orders

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20. Undertakings
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PART III

VALIDITY OF MARRIAGES UNDER A LAW WHICH PERMITS POLYGAMY

- 34. Validity in Falkland Islands law of potentially polygamous marriages
- 35. Application of section 34 to prior marriages

Schedule 1: Provisions supplementary to sections 4 and 5

Schedule 2: Powers of Supreme Court and Magistrate's Court to remand

Schedule 3: Amendment of Children Ordinance 1994

FAMILY LAW BILL 2006

(No: of 2006)

(*assented to:* 2006)
(*commencement: in accordance with section 1*)
(*published:* 2006)

A BILL

for

AN ORDINANCE

To make new provision in relation to rights to occupy the matrimonial home and in relation to domestic violence.

BE IT ENACTED by the Legislature of the Falkland Islands as follows —

PART I INTRODUCTORY

Short title and commencement

1.—(1) This Ordinance may be cited as the Family Law Ordinance 2006.

(2) This section comes into force on the publication of this Ordinance in the *Gazette* and the other provisions of this Ordinance come into force on such day as the Governor may appoint by notice published in the *Gazette* and different days may be appointed for different provisions and different purposes.

PART II FAMILY HOMES AND DOMESTIC VIOLENCE

Introductory

Interpretation

2.—(1) In this Part —

“adoption order” has the meaning given by section 72(1) of the Adoption Act 1976 in its application to the Falkland Islands or the statutory provision for the time being in force in place of that provision;

“associated”, in relation to a person, is to be read with section 3(3) to (6);

“child” means a person under the age of eighteen years;

“cohabitant” and “former co-habitant” have the meaning given by section 3(1);

“court” means the Supreme Court or the Magistrate’s Court except that in relation to any proceedings which by virtue of rules made under section 31(3) may only be commenced in the Supreme Court, it means the Supreme Court;

“dwelling-house” includes, subject to subsection (4) —

- (a) any building or part of a building which is occupied as a dwelling;
- (b) any caravan, house-boat or structure which is occupied as a dwelling, and any yard, garden, garage or outhouse belonging to it and occupied with it;

“family proceedings” means any proceedings —

- (a) under the inherent jurisdiction of the Supreme Court in relation to children; or
- (b) under the following enactments —
 - (i) this Part;
 - (ii) the Matrimonial Causes Ordinance (Title 38(2).5);
 - (iii) the Adoption Act 1976 or the Adoption and Children Act 2002;
 - (iv) Parts II and III of the Children Ordinance 1994;
 - (v) the Matrimonial Proceedings (Summary Jurisdiction) Ordinance (Title 38(2).6);
 - (vi) the Matrimonial Proceedings (Domestic Violence) Ordinance 1994;
 - (vii) any other enactment specified by Ordinance for the purposes of this definition;

“harm” —

- (a) in relation to a person who has reached the age of eighteen years, means ill-treatment or the impairment of health; and
- (b) in relation to a child, means ill-treatment or the impairment of health or development;

“health” includes physical or mental health;

“ill-treatment” includes forms of ill-treatment which are not physical and, in relation to a child, includes sexual abuse;

“matrimonial home rights” has the meaning given by section 4;

“mortgage”, “mortgagor” and “mortgagee” have the same meaning as in the Mortgages and Law of Property Ordinance 1996;

“mortgage payments” includes any payments which, under the terms of the mortgage, the mortgagor is required to make to any person;

“non-molestation order” has the meaning given by section 16(1);

“occupation order” has the meaning given by section 13(1);

“parental responsibility” has the same meaning as in the Children Ordinance 1994;

“relative”, in relation to a person, means —

(a) the father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson or granddaughter of that person or of that person’s spouse or former spouse, or

(b) the brother, sister, uncle, aunt, niece or nephew (whether of the full blood or of the half blood or by affinity) of that person or of the person’s spouse or former spouse,

and includes, in relation to a person who is living or has lived with another person as husband and wife, any person who would fall within paragraph (a) or (b) if the parties were married to each other;

“relevant child”, in relation to any proceedings under this Ordinance, has the meaning given by section 3(2);

“the relevant judicial authority”, in relation to any order under this Ordinance, means —

(a) where the order was made by the Supreme Court, the Chief Justice or another judge of that court;

(b) where the order was made by the Magistrate’s Court, the Senior Magistrate; or

(c) where the order was made by the Summary Court, the Summary Court.

(2) This Part applies as between the parties to a marriage even though either of them is, or has at any time during the marriage been, married to more than one person.

(3) Where the question of whether harm suffered by a child is significant turns on the child’s health or development, his health or development shall be compared with that which could reasonably be expected of a similar child.

(4) For the purposes of sections 5, 6 and 28 and such other provisions of this Part as may be prescribed, this Part is to have effect as if paragraph (b) of the definition of “dwelling-house” in subsection (1) of this section were omitted.

Meaning of “cohabitants”, “relevant child” and “associated person”

3.—(1) For the purposes of this Part —

(a) “cohabitants” are a man and woman who, although not married to each other, are living together as husband and wife; and

(b) “former cohabitants” is to be read accordingly, but does not include cohabitants who have subsequently married each other.

(2) In this Ordinance, “relevant child”, in relation to any proceedings under this Ordinance, means —

(a) any child who is living with or who might reasonably be expected to live with either party to the proceedings;

(b) any child in relation to whom an order under the Adoption Act 1976 or the Adoption and Children Act 2002 in its application to the Falkland Islands or under the Children Ordinance 1994 is in question in the proceedings; and

(c) any other child whose interests the court considers relevant.

(3) For the purposes of this Ordinance, a person is associated with another person if —

(a) they are or have been married to each other;

(b) they are cohabitants or former cohabitants;

(c) they live or have lived in the same household, otherwise than merely by reason of one of them being the other’s employee, tenant, lodger or boarder;

(d) they are relatives;

(e) they have agreed to marry one another (whether or not that agreement has been terminated);

(f) in relation to any child, they are both persons falling within subsection (4); or

(g) they are parties to the same family proceedings (other than proceedings under this Ordinance).

(4) A person falls within this subsection in relation to a child if —

(a) he is a parent of the child; or

(b) he has or has had parental responsibility for the child.

(5) If a child has been adopted two persons are also associated with each other for the purposes of this Ordinance if —

(a) one is a natural parent of the child or a parent of such a natural parent; and

(b) the other is the child or any person —

(i) who has become a parent of the child by virtue of an adoption order or has applied for an adoption order, or

(ii) with whom the child has at any time been placed for adoption.

(6) A body corporate and another person are not, by virtue of subsection (3)(f) or (g), to be regarded for the purposes of this Ordinance as being associated with each other.

Rights to occupy matrimonial home

Rights concerning matrimonial home where one spouse has no estate, etc.

4.—(1) This section applies if —

(a) one spouse is entitled to occupy a dwelling-house by virtue of —

(i) a beneficial estate or interest or contract; or

(ii) any enactment giving that spouse the right to remain in occupation; and

(b) the other spouse is not so entitled.

(2) Subject to the provisions of this Part, the spouse not so entitled has the following rights (“matrimonial home rights”) —

(a) if in occupation, a right not to be evicted or excluded from the dwelling-house or any part of it by the other spouse except with the leave of the court given by an order under section 7;

(b) if not in occupation, a right with the leave of the court so given to enter into and occupy the dwelling-house.

(3) If a spouse is entitled under this section to occupy a dwelling-house or any part of a dwelling-house, any payment or tender made or other thing done by that spouse in or towards satisfaction of any liability of the other spouse in respect of rent, mortgage payments or other outgoings affecting the dwelling-house is, whether or not it is made or done in pursuance of an order under section 14, as good as if made or done by the other spouse.

(4) If a spouse ("the first spouse") —

(a) is entitled under this section to occupy a dwelling-house or any part of a dwelling-house, and

(b) makes any payment in or towards satisfaction of any liability of the other spouse ("the second spouse") in respect of mortgage payments affecting the dwelling-house,

the person to whom the payment is made may treat it as having been made by the second spouse, but the fact that that person has treated any such payment as having been so made does not affect any claim of the first spouse against the second spouse to an interest in the dwelling-house by virtue of the payment.

(5) If a spouse is entitled under this section to occupy a dwelling-house or part of a dwelling-house by reason of an interest of the other spouse under a trust, subsections (3) and (4) apply in relation to the trustees as they do in relation to the other spouse.

(6) This section does not apply to a dwelling-house which has at no time been, and which was at no time intended by the spouses to be, a matrimonial home of theirs.

(7) A spouse's matrimonial home rights continue —

(a) only so long as the marriage subsists, except to the extent that an order under section 7(5) otherwise provides;

(b) only so long as the other spouse is entitled as mentioned in subsection (1) to occupy the dwelling-house, except where provision is made by section 5 for those rights to be a charge on an estate or interest in the dwelling-house.

(8) It is hereby declared that a spouse —

(a) who has an equitable interest in a dwelling-house or in its proceeds of sale, but

(b) is not a spouse in whom there is vested (whether solely or as joint tenant) a legal estate in fee simple or a legal term of years absolute in the dwelling-house,

is to be treated, only for the purpose of determining whether he has matrimonial home rights, as not being entitled to occupy the dwelling-house by virtue of that interest.

Effect of matrimonial home rights as charge on dwelling-house

5.—(1) Subsections (2) and (3) apply if, at any time during the marriage, one spouse is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest.

(2) The other spouse's matrimonial home rights are a charge upon that interest.

(3) The charge created by subsection (2) has the same priority as if it were an equitable interest created at whichever is the latest of the following dates —

- (a) the date on which the spouse so entitled acquires the estate or interest; and
- (b) the date of the marriage; and
- (c) the date of the commencement of this Ordinance.

(4) Subsections (5) and (6) apply if, at any time when a spouse's matrimonial home rights are a charge on an interest of the other spouse under a trust, there are, apart from either of the spouses, no persons, living or unborn, who are or could become beneficiaries under the trust.

(5) The rights are a charge also on the estate or interest of the trustees for the other spouse.

(6) The charge created by subsection (5) has the same priority as if it were an equitable interest created (under powers overriding the trusts) on the date when it arises.

(7) In determining for the purposes of subsection (4) whether there are any persons who are not, but could become, beneficiaries under the trust, there is to be disregarded any potential exercise of a general power of appointment exercisable by either or both of the spouses alone (whether or not the exercise of it requires the consent of another person).

(8) Even though a spouse's matrimonial home rights are a charge on an estate or interest in the dwelling-house, those rights are brought to an end by —

- (a) the death of the other spouse,
- (b) the termination (otherwise than by death) of the marriage,

unless the court directs otherwise by an order made under section 7(5).

(9) If —

- (a) a spouse's matrimonial home rights are a charge on an estate or interest in the dwelling-house, and
- (b) that estate or interest is surrendered to merge in some other estate or interest expectant upon it in such circumstances that, but for the merger, the person taking the estate or interest would be bound by the charge,

the surrender has effect subject to the charge and the persons thereafter entitled to the other estate or interest are, for so long as the estate or interest surrendered would have endured if not so surrendered, to be treated for all purposes of this Part as deriving title to the other estate or interest under the other spouse or, as the case may be, under the trustees for the other spouse, by virtue of the surrender.

(10) If —

(a) a spouse's matrimonial home rights are a charge on the estate of the other spouse or of trustees of the other spouse, and

(b) that estate is the subject of a mortgage,

then if, after the date of the creation of the mortgage ("the first mortgage") the charge is registered under section 5 of the Land Charges Ordinance 1996, the charge is for the purposes of section 12 of the Mortgages and Property Ordinance 1996 (which regulates the right of mortgagees to make further advances ranking in priority to subsequent mortgages), to be deemed to be a mortgage subsequent to the first mortgage.

(11) It is hereby declared that a charge under subsection (2) or (5) is not registrable under section 5 of the Land Charges Ordinance 1996 unless it is a charge on a legal estate.

Further provision relating to matrimonial home rights

6. Schedule 1 (which represents in an amended and modified form some of the provisions of the Matrimonial Homes Act 1983) shall have effect.

Occupation Orders

Occupation Orders where applicant has estate or interest etc or has matrimonial home rights

7.— (1) If —

(a) a person ("the person entitled") —

(i) is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest or contract or by virtue of any enactment giving him the right to remain in occupation, or

(ii) has matrimonial home rights in relation to a dwelling-house, and

(b) the dwelling-house —

(i) is or at any time has been the home of the person entitled and of another person with whom he is associated, or

(ii) was at any time intended by the person entitled and any such other person to be their home,

the person entitled may apply to the court for an order containing any of the provisions specified in subsections (3), (4) and (5).

(2) If an agreement to marriage is terminated, no application under this section may be made by virtue of section 3(3)(e) by reference to that agreement after the end of the period of three years beginning with the day on which it is terminated.

(3) An order under this section may —

(a) enforce the applicant's entitlement to remain in occupation as against the other person ("the respondent");

(b) require the respondent to permit the applicant to enter and remain in the dwelling-house or part of the dwelling-house;

(c) regulate the occupation of the dwelling-house by either or both parties;

(d) if the respondent is entitled as mentioned in subsection (1)(a)(i), prohibit, suspend or restrict the exercise by him of his right to occupy the dwelling-house;

(e) if the respondent has matrimonial home rights in relation to the dwelling-house and the applicant is the other spouse, restrict or terminate those rights;

(f) require the respondent to leave the dwelling-house or part of the dwelling-house; or

(g) exclude the respondent from a defined area in which the dwelling-house is included.

(4) An order under this section may declare that the applicant is entitled as mentioned in subsection (1)(a)(i) or has matrimonial home rights.

(5) If the applicant has matrimonial home rights and the respondent is the other spouse, an order under this section made during the marriage may provide that those rights are not brought to an end by —

(a) the death of the other spouse; or

(b) the termination (otherwise than by death) of the marriage.

(6) In deciding whether to exercise its powers under subsection (3) and (if so) in what manner, the court shall have regard to all the circumstances including —

(a) the housing needs and housing resources of each of the parties and of any relevant child;

(b) the financial resources of each of the parties;

(c) the likely effect of any order, or of any decision by the court not to exercise its powers under subsection (3), on the health, safety or well-being of the parties and of any relevant child; and

(d) the conduct of the parties in relation to each other and otherwise.

(7) If it appears to the court that the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent if an order under this section containing one or more of the provisions mentioned in subsection (3) is not made, the court shall make the order unless it appears to it that —

(a) the respondent or any relevant child is likely to suffer significant harm if the order is made; and

(b) the harm likely to be suffered by the respondent or child in that event is as great as, or greater than, the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the order is not made.

(8) The court may exercise its powers under subsection (5) in any case where it considers that in all the circumstances it is just and reasonable to do so.

(9) An order under this section —

(a) may not be made after the death of either of the parties mentioned in subsection (1); and

(b) except in the case of an order made by virtue of subsection (5)(a), ceases to have effect on the death of either party.

(10) An order under this section may, in so far as it has continuing effect, be made for a specified period, until the occurrence of a specified event or until further order.

Effect of order under section 7 where rights are charge on dwelling-house

8.—(1) If a spouse's matrimonial home rights are a charge on the estate or interest of the other spouse or of trustees for the other spouse —

(a) an order under section 7 against the other spouse has, except so far as a contrary intention appears, the same effect against persons deriving title under the other spouse or under the trustees and affected by the charge, and

(b) sections 7(1), (3), (4) and (10) and 4(4) and (5) apply in relation to any person deriving title under the other spouse or under the trustees and affected by the charge as they apply in relation to the other spouse.

(2) The court may make an order under section 7 by virtue of subsection (1)(b) if it considers that in all the circumstances it is just and reasonable to do so.

One former spouse with no existing right to occupy

9.—(1) This section applies if —

- (a) one former spouse is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest or contract, or by virtue of any enactment giving him a right to remain in occupation;
 - (b) the other former spouse is not so entitled;
 - (c) the dwelling-house was at any time their matrimonial home or was at any time intended by them to be their matrimonial home.
- (2) The former spouse not so entitled may apply to the court for an order under this section against the other former spouse ("the respondent").
- (3) If the applicant is in occupation, an order under this section must contain provision —
- (a) giving the applicant the right not to be evicted or excluded from the dwelling-house or any part of it by the respondent for the period specified in the order; and
 - (b) prohibiting the respondent from evicting or excluding the applicant during that period.
- (4) If the applicant is not in occupation, an order under this section must contain provision —
- (a) giving the applicant the right to enter into and occupy the dwelling-house for the period specified in the order; and
 - (b) requiring the respondent to permit the exercise of that right.
- (5) An order under this section may also —
- (a) regulate the occupation of the dwelling-house by either or both of the parties;
 - (b) prohibit, suspend or restrict the exercise by the respondent of his right to occupy the dwelling-house;
 - (c) require the respondent to leave the dwelling-house or part of the dwelling-house; or
 - (d) exclude the respondent from a defined area in which the dwelling-house is included.
- (6) In deciding whether to make an order under this section containing provision of the kind mentioned in subsection (3) or (4) and (if so) in what manner, the court shall have regard to all the circumstances including —
- (a) the housing needs and housing resources of each of the parties and of any relevant child;
 - (b) the financial resources of each of the parties;

(c) the likely effect of any order, or of any decision by the court not to exercise its powers under subsection (3) or (4), on the health, safety or well-being of the parties and of any relevant child;

(d) the conduct of the parties in relation to each other and otherwise;

(e) the length of time that has elapsed since the parties ceased to live together;

(f) the length of time that has elapsed since the marriage was dissolved or annulled; and

(g) the existence of any pending proceedings between the parties —

(i) for an order under section 26A or 27 of the Matrimonial Causes Ordinance (Title 38.2) (property adjustment orders in connection with divorce proceedings etc);

(ii) for an order under paragraph 1(2)(d) or (e) of Schedule 1 to the Children Ordinance 1994 (orders for financial relief against parents); or

(iii) relating to the legal or beneficial ownership of the dwelling-house.

(7) In deciding whether to exercise its power to include one or more of the provisions referred to in subsection (5) (“a subsection (5) provision”) and (if so) in what manner, the court shall have regard to all the circumstances including the matters mentioned in subsection (6)(a) to (e).

(8) If the court decides to make an order under this section and it appears to it that, if the order does not include a subsection (5) provision, the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent, the court shall include the subsection (5) provision in the order unless it appears to the court that —

(a) the respondent or any relevant child is likely to suffer significant harm if the provision is included in the order; and

(b) the harm likely to be suffered by the respondent or child in that event is as great as or greater than the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the provision is not included.

(9) An order under this section —

(a) may not be made after the death of either of the former spouses; and

(b) ceases to have effect on the death of either of them.

(10) An order under this section must be limited so as to have effect for a specified period not exceeding six months, but may be extended on one or more occasions for a further specified period not exceeding six months.

(11) A former spouse who has an equitable interest in the dwelling-house or in the proceeds of sale of the dwelling-house but in whom there is not vested (whether solely or as joint tenant) a legal estate in fee simple or a legal term of years absolute in the dwelling-house is to be treated (but only for the purpose of determining whether he is eligible to apply under this section) as not being entitled to occupy the dwelling-house by virtue of that interest.

(12) Subsection (11) does not prejudice any right of such a former spouse to apply for an order under section 7.

(13) So long as an order under this section remains in force, subsections (3) to (6) of section 4 apply in relation to the applicant —

(a) as if he were the spouse entitled to occupy the dwelling-house by virtue of that section; and

(b) as if the respondent were the other spouse.

One cohabitant or former cohabitant with no existing right to occupy

10.—(1) This section applies if —

(a) one cohabitant or former cohabitant is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest or contract or by virtue of any enactment giving him the right to remain in occupation;

(b) the other cohabitant or former cohabitant is not so entitled; and

(c) that dwelling-house is the home in which they live together as husband and wife or a home in which they at any time so lived together or intended to so live together.

(2) The cohabitant or former cohabitant not so entitled may apply to the court for an order under this section against the other cohabitant or former cohabitant ("the respondent").

(3) If the applicant is in occupation, an order under this section must contain provision —

(a) giving the applicant the right not to be evicted or excluded from the dwelling-house or any part of it by the respondent for the period specified in the order; and

(b) prohibiting the respondent from evicting or excluding the applicant during that period.

(4) If the applicant is not in occupation, an order under this section must contain provision —

(a) giving the applicant the right to enter into and occupy the dwelling-house for the period specified in the order; and

(b) requiring the respondent to permit the exercise of that right.

(5) An order under this section may also —

- (a) regulate the occupation of the dwelling-house by either or both of the parties;
- (b) prohibit, suspend or restrict the exercise by the respondent of his right to occupy the dwelling-house;
- (c) require the respondent to leave the dwelling-house or part of the dwelling-house; or
- (d) exclude the respondent from a defined area in which the dwelling-house is included.

(6) In deciding whether to make an order under this section containing provision of the kind mentioned in subsection (3) or (4) and (if so) in what manner, the court shall have regard to all the circumstances including —

- (a) the housing needs and housing resources of each of the parties and of any relevant child;
- (b) the financial resources of each of the parties;
- (c) the likely effect of any order, or of any decision by the court not to exercise its powers under subsection (3) or (4), on the health, safety or well-being of the parties and of any relevant child;
- (d) the conduct of the parties in relation to each other and otherwise;
- (e) the nature of the parties' relationship;
- (f) the length of time during which they have lived together as husband and wife;
- (g) whether there are or have been any children who are children of both parties or for whom both parties have or have had parental responsibility;
- (h) the length of time that has elapsed since the parties ceased to live together; and
- (i) the existence of any pending proceedings between the parties —
 - (i) for an order under section 27 of the Matrimonial Causes Ordinance (Title 38(2).5) (property adjustment orders in connection with divorce proceedings, etc);
 - (ii) for an order under paragraph 1(2)(d) or (e) of Schedule 1 to the Children Ordinance 1994 (orders for financial relief against parents); or
 - (iii) relating to the legal or beneficial ownership of the dwelling-house.

(7) In deciding whether to exercise its powers to include one or more of the provisions referred to in subsection (5) ("a subsection (5) provision") and (if so) in what manner, the court shall have regard to all the circumstances including —

(a) the matters mentioned in subsection (6)(a) to (d); and

(b) the questions mentioned in subsection (8).

(8) The questions are —

(a) whether the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent if the subsection (5) provision is not included in that order; and

(b) whether the harm likely to be suffered by the respondent or child if the provision is included is as great as or greater than the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the provision is not included.

(9) An order under this section —

(a) may not be made after the death of either of the parties; and

(b) ceases to have effect on the death of either of them.

(10) An order under this section must be limited so as to have effect for a specified period not exceeding six months, but may be extended on one occasion for a further specified period not exceeding six months.

(11) A person who has an equitable interest in the dwelling-house or in the proceeds of sale of the dwelling-house but in whom there is not vested (whether solely or as joint tenant) a legal estate in fee simple or a legal term of years absolute in the dwelling-house is to be treated (but only for the purpose of determining whether he is eligible to apply under this section) as not being entitled to occupy the dwelling-house by virtue of that interest.

(12) Subsection (11) does not prejudice any right of such a person to apply for an order under section 7.

(13) So long as the order remains in force, subsections (3) to (6) of section 4 apply in relation to the applicant —

(a) as if he were a spouse entitled to occupy the dwelling-house by virtue of that section; and

(b) as if the respondent were the other spouse.

Neither spouse entitled to occupy

11.—(1) This section applies if —

(a) one spouse or former spouse and the other spouse or former spouse occupy a dwelling-house which is or was the matrimonial home; but

(b) neither of them is entitled to remain in occupation —

(i) by virtue of a beneficial estate or interest or contract; or

(ii) by virtue of any enactment giving him the right to remain in occupation.

(2) Either of the parties may apply to the court for an order against the other under this section.

(3) An order under this section may —

(a) require the respondent to permit the applicant to enter and remain in the dwelling-house or part of the dwelling-house;

(b) regulate the occupation of the dwelling-house by either or both of the spouses;

(c) require the respondent to leave the dwelling-house or part of the dwelling-house; or

(d) exclude the respondent from a defined area in which the dwelling-house is included.

(4) Subsections (6) and (7) of section 7 apply to the exercise by the court of its powers under this section as they apply to the exercise by the court of its powers under subsection (3) of that section.

(5) An order under this section must be limited so as to have effect for a specified period not exceeding six months, but may be extended on one or more occasions for a further specified period not exceeding six months.

Neither cohabitant or former cohabitant entitled to occupy

12.—(1) This section applies if —

(a) one cohabitant or former cohabitant and the other cohabitant or former cohabitant occupy a dwelling-house which is the home in which they live or lived together as husband and wife; but

(b) neither of them is entitled to remain in occupation —

(i) by virtue of a beneficial estate or interest or contract; or

(ii) by virtue of any enactment giving him the right to remain in occupation.

(2) Either of the parties may apply to the court for an order against the other under this section.

(3) An order under this section may —

- (a) require the respondent to permit the applicant to enter and remain in the dwelling-house or part of the dwelling-house;
 - (b) regulate the occupation of the dwelling-house by either or both of the parties;
 - (c) require the respondent to leave the dwelling-house or part of the dwelling-house; or
 - (d) exclude the respondent from a defined area in which the dwelling-house is included.
- (4) In deciding whether to exercise its power to include one or more of the provisions referred to in subsection (3) ("a subsection (3) provision") and (if so) in what manner, the court shall have regard to all the circumstances including —
- (a) the housing needs and housing resources of each of the parties and of any relevant child;
 - (b) the financial resources of each of the parties;
 - (c) the likely effect of any order, or of any decision by the court not to exercise its powers under subsection (3), on the health, safety or well-being of the parties and of any relevant child;
 - (d) the conduct of the parties in relation to each other and otherwise; and
 - (e) the questions mentioned in subsection (5).
- (5) The questions are —
- (a) whether the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent if the subsection (3) provision is not included in the order; and
 - (b) whether the harm likely to be suffered by the respondent or child if the provision is included is as great as or greater than the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the provision is not included.
- (6) An order under this section shall be limited so as to have effect for a specified period not exceeding six months, but may be extended on one occasion for a further specified period not exceeding six months.

Supplementary provisions

13.—(1) In this Part an "occupation order" means an order under section 7, 9, 10, 11 or 12.

(2) An application for an occupation order may be made in other family proceedings or without any other family proceedings being instituted.

(3) If —

(a) an application for an occupation order is made under section 7, 9, 10, 11 or 12, and

(b) the court considers that it has no power to make the order under the section concerned, but that it has power to make an order under one of the other sections,

the court may make an order under that other section.

(4) The fact that a person has applied for an occupation order under sections 9 to 12, or that an occupation order has been made, does not affect that right of any person to claim a legal or equitable interest in any property in any subsequent proceedings (including subsequent proceedings under this Part).

Additional provisions that may be included in some occupation orders

14.—(1) The court may on, or at any time after, making an occupation order under section 7, 9 or 10 —

(a) impose on either party obligations as to —

(i) the repair and maintenance of the dwelling-house; or

(ii) the discharge of rent, mortgage payments or other outgoings affecting the dwelling-house;

(b) order a party occupying the dwelling-house or any part of it (including a party who is entitled to do so by virtue of a beneficial estate or interest or contract or by virtue of any enactment giving him the right to remain in occupation) to make periodical payments to the other party in respect of the accommodation, if the other party would (but for the order) be entitled to occupy the dwelling-house by virtue of a beneficial estate or interest or contract or by virtue of any such enactment;

(c) grant either party possession or use of furniture or other contents of the dwelling-house;

(d) order either party to take reasonable care of any furniture or other contents of the dwelling-house;

(e) order either party to take reasonable steps to keep the dwelling-house and any furniture or other contents secure.

(2) In deciding whether and, if so, how to exercise its powers under this section, the court shall have regard to all the circumstances of the case including —

(a) the financial needs and financial resources of the parties; and

(b) the financial obligations which they have, or are likely to have in the foreseeable future, including financial obligations to each other and to any relevant child.

(3) An order under this section ceases to have effect when the occupation order to which it relates ceases to have effect.

Additional consideration if parties are cohabitants or former cohabitants

15.—(1) This section applies if the parties are cohabitants or former cohabitants.

(2) Where the court is required to consider the nature of the parties' relationship, it is to have regard to the fact that they have not given to each other the commitment involved in marriage.

Non-molestation orders

Non-molestation orders

16.—(1) In this Part a "non-molestation order" means an order containing either or both of the following provisions —

(a) provision prohibiting a person ("the respondent") from molesting another person who is associated with the respondent;

(b) provision prohibiting the respondent from molesting a relevant child.

(2) The court may make a non-molestation order —

(a) if an application for the order has been made (whether in other family proceedings or without any other family proceedings being instituted) by a person who is associated with the respondent; or

(b) if in any family proceedings to which the respondent is a party the court considers that the order should be made for the benefit of any other party to the proceedings or any relevant child even though no such application has been made.

(3) In subsection (2) "family proceedings" includes proceedings in which the court has made an emergency protection order under section 28 of the Children Ordinance 1994 which includes an exclusion requirement (as defined in section 28A(3) of that Ordinance).

(4) Where an agreement to marry is terminated, no application under subsection (2)(a) may be made by virtue of section 3(3)(e) by reference to that agreement after the end of the period of three years beginning with the day on which it is terminated.

(5) In deciding whether to exercise its powers under this section and, if so, in what manner, the court shall have regard to all the circumstances including the need to secure the health, safety and well-being —

(a) of the application or, in a case falling within subsection (2)(b), the person for whose benefit the order would be made; and

(b) of any relevant child.

(6) A non-molestation order may be expressed so as to refer to molestation in general, to particular acts of molestation, or to both.

(7) A non-molestation order may be made for a specified period or until further order.

(8) A non-molestation order which is made in other family proceedings ceases to have effect if those proceedings are withdrawn or dismissed.

Further provisions relating to occupation and non-molestation orders

Leave of court required for applications by children under 16

17.—(1) A child under the age of sixteen may not apply for an occupation order or a non-molestation order except with the leave of the court.

(2) The court may grant leave for the purposes of subsection (1) only if it is satisfied that the child has sufficient understanding to make the proposed application for the occupation order or non-molestation order.

Evidence of agreement to marry

18.—(1) Subject to subsection (2), the court shall not make an order under section 7 or 16 by virtue of section 3(3)(e) unless there is produced to it evidence in writing of the existence of the agreement to marry.

(2) Subsection (1) does not apply if the court is satisfied that the agreement was evidenced by—

(a) the gift of an engagement ring by one party to the agreement to the other in contemplation of their marriage, or

(b) a ceremony entered into by the parties in the presence of one or more other persons assembled for the purpose of witnessing the ceremony.

Ex parte orders

19.—(1) The court may, in any case where it considers that it is just and convenient to do so, make an occupation order or a non-molestation order even though the respondent has not been given such notice of the proceedings as would otherwise be required by rules of court.

(2) In determining whether to exercise its powers under subsection (1), the court shall have regard to all the circumstances including —

(a) any risk of significant harm to the applicant or a relevant child, attributable to conduct of the respondent, if the order is not made immediately;

(b) whether it is likely that the applicant will be deterred or prevented from pursuing the application if an order is not made immediately; and

(c) whether there is reason to believe that the respondent is aware of the proceedings but is deliberately evading service and that the applicant or a relevant child will be seriously prejudiced by the delay involved —

(i) where the court is a court of summary jurisdiction, in effecting service of proceedings;
or

(ii) in any other case, in effecting substituted service.

(3) If the court makes an order by virtue of subsection (1) it must afford the respondent an opportunity to make representations relating to the order as soon as just and convenient at a full hearing.

(4) If, at a full hearing, the court makes an occupation order (“the full order”), then —

(a) for the purposes of calculating the maximum period for which the full order may be made to have effect, the relevant section is to apply as if the period for which the full order will have effect began on the date on which the initial order first had effect; and

(b) the provisions of section 10(10) or 12(6) as to the extension of orders are to apply as if the full order and the initial order were a single order.

(5) In this section —

“full hearing” means a hearing of which notice has been given to all the parties in accordance with rules of court;

“initial order” means an occupation order made by virtue of subsection (1); and

“relevant section” means section 7(10), 9(10), 10(10), 11(5) or 12(6).

Undertakings

20.—(1) In any case where the court has power to make an occupation order or non-molestation order, the court may accept an undertaking from any party to the proceedings.

(2) No power of arrest may be attached to any undertaking given under subsection (1).

(3) The court shall not accept an undertaking under subsection (1) in any case where apart from this section a power of arrest would be attached to the order.

(4) An undertaking given to a court under subsection (1) is enforceable as if it were an order of the court.

(5) This section has effect without prejudice to the powers of the Supreme Court and of the Magistrate’s Court apart from this section.

Arrest for breach of order

21.—(1) In this section “a relevant order” means an occupation order or a non-molestation order.

(2) If —

(a) the court makes a relevant order; and

(b) it appears to the court that the respondent has used or threatened violence against the applicant or a relevant child,

it shall attach a power of arrest to one or more provisions of the order unless satisfied that in all the circumstances of the case the applicant or child will be adequately protected without such a power of arrest.

(3) Subsection (2) does not apply in any case where the relevant order is made by virtue of section 19(1), but in such a case the court may attach a power of arrest to one or more provisions of the order if it appears to it —

(a) that the respondent has used or threatened violence against the applicant or a relevant child; and

(b) that there is a risk of significant harm to the applicant or child, attributable to conduct of the respondent, if the power of arrest is not attached to those provisions immediately.

(4) If, by virtue of subsection (3), the court attaches a power of arrest to any provisions of a relevant order, it may provide that the power of arrest is to have effect for a shorter period than the other provisions of the order.

(5) Any period specified for the purposes of subsection (4) may be extended by the court (on one or more occasions) on an application to vary or discharge the relevant order.

(6) If, by virtue of subsection (2) or (3), a power of arrest is attached to certain provisions of an order, a police officer may arrest without warrant a person whom he has reasonable cause for suspecting to be in breach of any such provision.

(7) If a power of arrest is attached under subsection (2) or (3) to certain provisions of the order and the respondent is arrested under subsection (6) —

(a) he must be brought before the relevant judicial authority within the period of 24 hours beginning at the time of his arrest; and

(b) if the matter is not then disposed of forthwith, the relevant judicial authority before whom he is brought may remand him.

In reckoning for the purposes of this subsection any period of 24 hours, no account is to be taken of Christmas Day, Good Friday or any Sunday.

(8) If the court has made a relevant order but —

(a) has not attached a power of arrest under subsection (2) or (3) to any provisions of the order, or

(b) has attached that power only to certain provisions of the order,

then, if at any time the applicant considers that the respondent has failed to comply with the order, he may apply to the relevant judicial authority for the issue of a warrant for the arrest of the respondent.

(9) The relevant judicial authority shall not issue a warrant on an application under subsection (8) unless —

(a) the application is substantiated on oath; and

(b) the relevant judicial authority has reasonable grounds for believing that the respondent has failed to comply with the order.

(10) If a person is brought before a court by virtue of a warrant issued under subsection (9) and the court does not dispose of the matter forthwith, the court may remand him.

(11) Schedule 2 (which makes provision corresponding to that applying in courts of summary jurisdiction in civil cases under sections 128 and 129 of the Magistrates' Courts Act 1980 in its application to the Falkland Islands) has effect in relation to the powers of the Supreme Court to remand a person by virtue of this section.

(12) If a person remanded under this section is granted bail (whether in the Supreme Court under Schedule 2 or in a court of summary jurisdiction under section 128 or 129 of the Magistrates' Courts Act 1980), he may be required by the relevant judicial authority to comply, before release on bail or later, with such requirements as appear to that authority to be necessary to secure that he does not interfere with witnesses or otherwise obstruct the course of justice.

Remand for medical examination and report

22.—(1) If the relevant judicial authority has reason to consider that a medical report will be required, any power to remand a person under section 21(7)(b) or (10) may be exercised for the purpose of enabling a medical examination and report to be made.

(2) If such a power is so exercised, the adjournment must not be for more than 4 weeks at a time unless the relevant judicial authority remands the accused in custody.

(3) If the relevant judicial authority so remands the accused, the adjournment must not be for more than 3 weeks at a time.

(4) If there is reason to suspect that a person who has been arrested —

(a) under section 21(6), or

(b) under a warrant issued on an application made under section 21(8), is suffering from mental illness or severe mental impairment, the relevant judicial authority has the same power to make an order for remand for report on the respondent's mental condition as the Crown Court in England has under section 35 of the Act of 1983 in the case of an accused person within the meaning of that section, and to that extent and for that purpose only, section 35 of the Mental Health Act 1983 is applied as law of the Falkland Islands.

Variation and discharge of orders

23.—(1) An occupation order or non-molestation order may be varied or discharged by the court on an application by —

(a) the respondent, or

(b) the person on whose application the order was made.

(2) In the case of a non-molestation order made by virtue of section 16(2)(b), the order may be varied or discharged by the court even though no such application has been made.

(3) If a spouse's matrimonial home rights are a charge on the estate or interest of the other spouse or of trustees for the other spouse, an order under section 7 against the other spouse may also be varied or discharged by the court on an application by any person deriving title under the other spouse or under the trustees and affected by the charge.

(4) If, by virtue of section 21(3), a power of arrest has been attached to certain provisions of an occupation order or non-molestation order, the court may vary or discharge the order under subsection (1) in so far as it confers a power of arrest (whether or not any application has been made to vary or discharge any other provision of the order).

Power to court of summary jurisdiction to suspend execution of committal order

24.—(1) If, under section 63(3) of the Magistrates' Courts Act 1980, a court of summary jurisdiction has power to commit a person to custody for breach of a relevant requirement, the court may by order direct that the execution of the order of committal is to be suspended for such period or on such terms and conditions as it may specify.

(2) In subsection (1) "a relevant requirement" means —

(a) an occupation order or non-molestation order;

(b) an exclusion requirement included by virtue of section 23A of the Children Ordinance 1994 in an interim care order made under section 23 of that Ordinance; or

(c) an exclusion requirement included by virtue of section 28A of the Children Ordinance 1994 in an emergency protection order under section 28 of that Ordinance.

Power of court of summary jurisdiction to order hospital admission or guardianship

25.—(1) A court has the same power to make a hospital order or guardianship order under section 37 of the Mental Health Act 1983 or an interim hospital order under section 38 of that Act in the case of a person suffering from mental illness or severe mental impairment who could otherwise be committed to custody for breach of a relevant requirement as a magistrates' court in England has under those sections in the case of a person convicted of an offence punishable on summary conviction with imprisonment.

(2) For the purposes only of this section 37 and 38 of the Mental Health Act 1983 are applied as law of the Falkland Islands.

(3) In subsection (1) "a relevant requirement" has the meaning given by section 24(2).

Interim care orders and emergency protection orders

Amendments of Children Ordinance 1994

26. Schedule 3 amends the Children Ordinance 1994.

Dwelling-house subject to mortgage

Dwelling-house subject to mortgage

27.—(1) In determining for the purposes of this Part whether a person is entitled to occupy a dwelling-house by virtue of an estate or interest, any right to possession of the dwelling-house conferred on a mortgagee of the dwelling-house under or by virtue of his mortgage is to be disregarded.

(2) Subsection (1) applies whether or not the mortgagee is in possession.

(3) Where a person ("A") is entitled to occupy a dwelling-house by virtue of an estate or interest, a connected person does not by virtue of —

(a) any matrimonial rights conferred by section 4, or

(b) any rights conferred by an order under section 9 or 10,

have any larger right against the mortgagee to occupy the dwelling-house than A has by virtue of his estate or interest and of any contract with the mortgagee.

(4) Subsection (3) does not apply, in the case of matrimonial home rights, if under section 5 those rights are a charge, affecting the mortgagee, on the estate or interest mortgaged.

(5) In this section "connected person", in relation to any person, means that person's spouse, former spouse, cohabitant or former cohabitant.

Actions by mortgagees: joining connected persons as parties

28.—(1) This section applies if a mortgagee of land which consists of or includes a dwelling-house brings an action in any court for the enforcement of his security.

(2) A connected person who is not already a party to the action is entitled to be made a party in the circumstances mentioned in subsection (3).

(3) The circumstances are that —

(a) the connected person is enabled by section 4(3) or (6) (or by section 4(3) or (6) as applied by section 9(13) or 10(13)), to meet the mortgagor's liabilities under the mortgage;

(b) he has applied to the court before the action is finally disposed of in that court; and

(c) the court sees no special reason against him being made a party to the action and is satisfied —

(i) that he may be expected to make such payments or do such other things in or towards satisfaction of the mortgagor's liabilities or obligations as might affect the outcome of the proceedings; or

(ii) that the expectation of it should be considered under section 36 of the Administration of Justice Act 1970 in its application to the Falkland Islands.

(4) In this section "connected person" has the same meaning as in section 27.

Actions by mortgagees: service of notice on certain persons

29.—(1) This section applies if a mortgagee of land which consists, or substantially consists, of a dwelling-house brings an action for the enforcement of his security, and at the relevant time there is a land charge of Class IV registered against the person who is the estate owner at the relevant time or any person who, where the estate owner is a trustee, preceded him as trustee during the subsistence of the mortgage.

(2) If the person on whose behalf the land charge is registered is not a party to the action, the mortgagee must serve notice of the action on him.

(3) If —

(a) an official search has been made on behalf of the mortgagee which would disclose any land charge of Class IV within subsection (1),

(b) a certificate of the result of the search has been issued, and

(c) the action is commenced within the priority period.

the relevant time is the date of the certificate.

(4) In any other case the relevant time is when the action is commenced.

(5) The priority period is the period for which, in accordance with section 13(5) and (6) of the Land Charges Ordinance 1996, a certificate on an official search operates in favour of a purchaser.

Jurisdiction, procedure etc

Jurisdiction of courts

30.—(1) The Summary Court shall not entertain any proceedings under this Part (except for the purpose of ordering those proceedings to be transferred to the Magistrate's Court to be heard and disposed of in that court) unless —

(a) the Summary Court is satisfied that the Magistrate's Court will not, by reason of the absence of the Senior Magistrate from the Falkland Islands or a vacancy in the post of Senior Magistrate, be able within a reasonable time to hear and dispose of the proceedings; or

(b) the Senior Magistrate has indicated in writing that he will not be able to hear and dispose of the proceedings.

(2) The Summary Court may transfer to the Magistrate's Court to be heard and disposed of in that court any proceedings under this Part commenced in the Summary Court which the court believes could more conveniently be heard in the Magistrate's Court.

(3) The Chief Justice may make rules specifying circumstances in which specified proceedings under this Part may only be commenced in the Supreme Court, but in the absence of such rules and except as such rules otherwise provide, proceedings under this Part, subject to subsection (1) shall be commenced in the Magistrate's Court.

(4) The powers, so far as they apply to the Summary Court, of a court of summary jurisdiction under section 63(2) of the Magistrates' Courts Act 1980 to suspend or rescind orders shall not apply in relation to any order made under this Part.

Contempt proceedings

31. The powers of the court in relation to contempt of court arising out of a person's failure to comply with an order under this Part may be exercised by the relevant judicial authority.

Provision for third parties to act on behalf of victims of domestic violence

32.—(1) Rules of court may provide for a prescribed person, or any person in a prescribed category, ("a representative") to act on behalf of another in relation to proceedings to which this Part applies.

(2) Rules made under this section may, in particular, authorise a representative to apply for an occupation order or for a non-molestation order for which the person on whose behalf the representative is acting could have applied.

(3) Rules made under this section may prescribe —

(a) conditions to be satisfied before a representative may make an application to the court on behalf of another; and

(b) considerations to be taken into account by the court in determining whether, and if so how, to exercise any of its powers under this Part when a representative is acting on behalf of another.

(4) If no rules of court have for the time being been made for the purposes of this section, a person may with the leave of the court make application on behalf of another for an order to which subsection (2) applies. Any such leave shall be granted in relation to a particular case or cases and shall not have general effect.

Appeals

33.—(1) An appeal shall lie to the Supreme Court against —

(a) the making by a court of summary jurisdiction of an order under this Part; or

(b) any refusal by such a court to make such an order,

but no appeal shall lie against any decision of the Summary Court under section 30(1) to entertain or not to entertain proceedings under this Part or to transfer any proceedings commenced in the Summary Court to the Magistrate's Court.

(2) On an appeal under this section, the Supreme Court may make such orders as may be necessary to give effect to its determination of the appeal.

(3) Where an order is made under subsection (2), the Supreme Court may also make such incidental or consequential orders as appear to it to be just.

(4) Any order of the Supreme Court made on an appeal under this section (other than one directing that an application be re-heard by a court of summary jurisdiction) for the purposes —

(a) of the enforcement of the order, and

(b) of any power to vary, revive or discharge orders,

be treated as if it were an order of the court of summary jurisdiction from which the appeal was brought and not an order of the Supreme Court.

PART III

VALIDITY OF MARRIAGES UNDER A LAW WHICH PERMITS POLYGAMY

Validity in Falkland Islands law of potentially polygamous marriages

34.—(1) A marriage entered into outside the Falkland Islands between parties neither of whom is already married is not void under the law of the Falkland Islands on the ground that it is entered into under a law which permits polygamy and that either party is domiciled in the Falkland Islands.

(2) This section does not affect the determination of the validity of a marriage by reference to the law of another country to the extent that it falls to be so determined in accordance with the rules of private international law.

Application of section 34 to prior marriages

35.—(1) Section 34 shall be deemed to apply, and always to have applied, to any marriage entered into before commencement which is not excluded by subsection (2) or (3) of this section.

(2) That section does not apply to a marriage a party to which has (before commencement) entered into a later marriage which either —

(a) is valid apart from this section but would be void if section 34 applied to the earlier marriage; or

(b) is valid by virtue of this section.

(3) That section does not apply to a marriage which has been annulled before commencement, whether by a decree granted in the Falkland Islands or by an annulment obtained elsewhere and recognised in the Falkland Islands at commencement.

(4) An annulment of a marriage resulting from legal proceedings begun before commencement shall be treated for the purposes of subsection (3) as having taken effect before that time.

(5) For the purposes of subsection (3) and (4) of this section a marriage which has been declared to be invalid by a court of competent jurisdiction in any proceedings concerning either the validity of the marriage or any right dependent on its validity shall be treated as having been annulled.

(6) Nothing in section 34 in its application to marriages entered into before commencement —

(a) gives or affects any entitlement to an interest —

(i) under the will or codicil of, or on the intestacy of, a person who died before commencement; or

- (ii) under a settlement or other disposition of property made before that time (otherwise than by will or codicil);
 - (b) gives or affects any entitlement to a benefit, allowance, pension or other payment —
 - (i) payable before, or in respect of a period before, commencement; or
 - (ii) payable in respect of the death of a person before that time;
 - (c) affects tax in respect of a period or event before commencement; or
 - (d) affects the succession to any dignity or title of honour.
- (7) In this section “commencement” means the commencement of this Part.

SCHEDULE 1

PROVISIONS SUPPLEMENTARY TO SECTIONS 4 AND 5

(section 6)

Restriction on registration where spouse entitled to more than one charge

1. Where one spouse is entitled by virtue of section 5 to a registrable charge in respect of each of two or more dwelling-houses, only one of the charges to which that spouse is so entitled shall be registered under section 5 of the Land Charges Ordinance 1996 at any one time, and if any of those charges is registered under either of those provisions the Registrar General, on being satisfied that any other of them is so registered, shall cancel the registration of the charge first registered.

Contract for sale of house affected by registered charge to include term requiring cancellation of registration before completion

2.—(1) Where one spouse is entitled by virtue of section 5 to a charge on an estate in a dwelling-house and the charge is registered under section 5 or under section 5 of the Land Charges Ordinance 1996 it shall be a term of any contract for sale of that estate whereby the vendor agrees to give vacant possession of the dwelling-house on completion of the contract that the vendor will before such completion procure the cancellation of the registration of the charge at his expense.

(2) Sub-paragraph (1) shall not apply to any such contract made by a vendor who is entitled to sell the estate in the dwelling-house freed from any such charge.

(3) If, on the completion of such a contract as is referred to in sub-paragraph (1), there is delivered to the purchaser or his solicitor an application by the spouse entitled to the charge for

the cancellation of the registration of that charge, the term of the contract for which sub-paragraph (1) provides shall be deemed to have been performed.

(4) This paragraph applies only if and so far as a contrary intention is not expressed in the contract.

(5) This paragraph shall apply to a contract for exchange as it applies to a contract for sale.

(6) This paragraph shall, with the necessary modifications, apply to a contract for the grant of a lease or underlease of a dwelling-house as it applies to a contract for the sale of an estate in a dwelling-house.

Cancellation of registration after termination of marriage, etc

3.—(1) Where a spouse's matrimonial home rights are a charge on an estate in the dwelling-house and the charge is registered under section 5 or under section 5 of the Land Charges Ordinance 1996 the Registrar General shall, subject to sub-paragraph (2), cancel the registration of the charge if he is satisfied —

(a) by production of a certificate or other sufficient evidence, that either spouse is dead, or

(b) by the production of an official copy of a decree or order of a court, that the marriage in question has been terminated otherwise than by death, or

(c) by the production of an order of the court, that the spouse's matrimonial home rights constituting the charge have been terminated by the order.

(2) Where —

(a) the marriage in question has been terminated by the death of the spouse entitled to an estate in the dwelling-house or otherwise than by death, and

(b) an order affecting the charge of the spouse not so entitled had been made under section 7(1),

then if, after the making of the order, registration of the charge was renewed or the charge registered in pursuance of sub-paragraph (3), the Registrar General shall not cancel the registration of the charge in accordance with sub-paragraph (1) unless he is also satisfied that the order has ceased to have effect.

(3) Where such an order has been made, then, for the purposes of sub-paragraph (2), the spouse entitled to the charge affected by the order may —

(a) if before the date of the order the charge was registered under section 5 of the Land Charges Ordinance 1996, renew the registration of the charge, and

(b) if before the said date the charge was not so registered, register the charge under section 5(10) or under section 5 of the Land Charges Ordinance 1996.

(4) Renewal of the registration of a charge in pursuance of sub-paragraph (3) shall be effected in such manner as may be prescribed, and an application for such renewal or for registration of a charge in pursuance of that sub-paragraph shall contain such particulars of any order affecting the charge made under section 7(10) as may be prescribed.

(5) The renewal in pursuance of sub-paragraph (3) of the registration of a charge shall not affect the priority of the charge.

(6) In this paragraph "prescribed" means prescribed by rules made under section 17 of the Land Charges Ordinance 1996.

Release of matrimonial home rights

4.—(1) A spouse entitled to matrimonial home rights may by a release in writing release those rights or release them as respects part only of the dwelling-house affected by them.

(2) Where a contract is made for the sale of an estate or interest in a dwelling-house, or for the grant of a lease or underlease of a dwelling-house, being (in either case) a dwelling-house affected by a charge registered under section 5 of the Land Charges Ordinance 1996, then, without prejudice to sub-paragraph (1), the matrimonial home rights constituting the charge shall be deemed to have been released on the happening of whichever of the following events first occurs —

(a) the delivery to the purchaser or lessee, as the case may be, or his solicitor on completion of the contract of an application by the spouse entitled to the charge for the cancellation of the registration of the charge; or

(b) the lodging of such an application with the Registrar General.

Postponement of priority of charge

5. A spouse entitled by virtue of section 5 to a charge on an estate or interest may agree in writing that any other charge on, or interest in, that estate or interest shall rank in priority to the charge to which that spouse is so entitled.

SCHEDULE 2

(section 21(11))

POWERS OF SUPREME COURT TO REMAND

Interpretation

1. In this Schedule, "the court" means the Supreme Court and includes a judge of that court.

Remand in custody or on bail

- 2.—(1) Where a court has power to remand a person under section 21, the court may —

- (a) remand him in custody, that is to say, commit him to custody to be brought before the court at the end of the period of remand or at such earlier time as the court may require, or

- (b) remand him on bail —

- (i) by taking from him a recognizance (with or without sureties) conditioned as provided in sub-paragraph (3), or

- (ii) by fixing the amount of the recognizances with a view to their being taken subsequently in accordance with paragraph 4 and in the meantime committing the person to custody in accordance with paragraph (a).

- (2) Where a person is brought before the court after remand, the court may further remand him.

- (3) Where a person is remanded on bail under sub-paragraph (1), the court may direct that his recognizance be conditioned for his appearance —

- (a) before that court at the end of the period of remand, or

- (b) at every time and place to which during the course of the proceedings the hearing may from time to time be adjourned.

- (4) Where a recognizance is conditioned for a person's appearance in accordance with sub-paragraph (1)(b), the fixing of any time for him next to appear shall be deemed to be a remand; but nothing in this sub-paragraph or sub-paragraph (3) shall deprive the court of power at any subsequent hearing to remand him afresh.

- (5) Subject to paragraph 3, the court shall not remand a person under this paragraph for a period exceeding 8 clear days, except that —

- (a) if the court remands him on bail, it may remand him for a longer period if he and the other party consent, and

(b) if the court adjourns a case under section 22(1), the court may remand him for the period of the adjournment.

(6) Where the court has power under this paragraph to remand a person in custody it may, if the remand is for a period not exceeding 3 clear days, commit him to the custody of a police officer.

Further remand

3.—(1) If the court is satisfied that any person who has been remanded under paragraph 2 is unable by reason of illness or accident to appear or be brought before the court at the expiration of the period for which he was remanded, the court may, in his absence, remand him for a further time; and paragraph 2(5) shall not apply.

(2) Notwithstanding anything in paragraph 2(1), the power of the court under sub-paragraph (1) to remand a person on bail for a further time may be exercised by enlarging his recognizance and those of any sureties for him to a later time.

(3) Where a person remanded on bail under paragraph 2 is bound to appear before the court at any time and the court has no power to remand him under sub-paragraph (1), the court may in his absence enlarge his recognizance and those of any sureties for him to a later time; and the enlargement of his recognizance shall be deemed to be a further remand.

Postponement of taking of recognizance

4. Where under paragraph 2(1)(b)(ii) the court fixes the amount in which the principal and his sureties, if any, are to be bound, the recognizance may thereafter be taken by such person as may be prescribed by rules of court, and the same consequences shall follow as if it had been entered into before the court.

SCHEDULE 3

AMENDMENT OF CHILDREN ORDINANCE 1994

(section 26)

1. In the subsequent paragraphs of this Schedule a reference to a section or other provision, unless otherwise specifically stated, is a reference to a section or other provision so described of the Children Ordinance 1994.

2. In section 4(2)(b) the words “shall not have parental responsibility for the child, unless he acquires it” shall be replaced by the words “shall have parental responsibility for the child if he has acquired it (and has not ceased to have it)”.

3. In section 5 —

(a) the hyphen after "time of his birth" and paragraphs (a) and (b) of subsection (1) are replaced by —

“, the father shall acquire parental responsibility for the child if —

(a) he has become registered as the child's father under the Registration Ordinance (Title 62.2);

(b) he and the child's mother make an agreement ("a parental responsibility agreement") providing for him to have parental responsibility for the child; or

(c) the court, on his application, orders that he shall have parental responsibility for the child.”;

(b) the following subsection is inserted after subsection (2) —

“(2A) A person who has acquired parental responsibility under subsection (1) shall cease to have that responsibility only if the court so orders.”; and

(c) the following subsection is inserted after subsection (3) —

“(3A) The court may make an order under subsection (2A) on the application —

(a) of any person who has parental responsibility for the child; or

(b) with the leave of the court, of the child himself.”

4. The following section is inserted after section 5 —

“Acquisition of parental responsibility by step-parent

5A.—(1) Where a child's parent (“parent A”) who has parental responsibility for the child is married to a person who is not the child's parent (“the step-parent”) —

(a) parent A or, if the other parent of the child also has parental responsibility for the child, both parents may by agreement with the step-parent provide for the step-parent to have parental responsibility for the child; or

(b) the court may, on the application of the step-parent, order that the step-parent shall have parental responsibility for the child.

(2) An agreement under subsection (1)(a) is also a “parental responsibility agreement”, and section 5(2) applies in relation to such agreements as it applies in relation to parental responsibility agreements under section 5.

(3) A parental responsibility agreement under subsection (1)(a), or an order under subsection (1)(b), may only be brought to an end by an order of the court made on the application —

(a) of any person who has parental responsibility for the child; or

(b) with the leave of the court, of the child himself.

(4) The court may only grant leave under subsection (3)(b) if it is satisfied that the child has sufficient understanding to make the proposed application."

5. Section 10(6) is amended at the beginning of the subsection by inserting "Subject to section 12(5)".

6. Section 12 is amended —

(1) in subsection (3) —

(a) by omitting paragraph (a); and

(b) by replacing the words "section 55 of the Adoption Act 1976" in paragraph (b) with the words "section 84 of the Adoption and Children Act 2002";

(2) by inserting the following subsections after subsection (4) —

"(5) The power of a court to make a residence order in favour of any person who is not the parent or guardian of the child concerned includes power to direct, at the request of that person, that the order continues in force until the child reaches the age of eighteen (unless the order is brought to an end earlier) and any power to vary a residence order is variable accordingly.

(6) Where a residence order includes such a direction, an application to vary or discharge the order may only be made, if apart from this subsection the leave of the court is not required, with such leave."

7. The following heading and sections are inserted after section 14 —

"Special guardianship

Special guardianship orders

14A.—(1) A "special guardianship order" is an order appointing one or more individuals to be a child's "special guardian" (or special guardians).

(2) A special guardian —

(a) must be aged eighteen or over; and

(b) must not be a parent of the child in question,

and subsections (3) to (6) are to be read in that light.

(3) The court may make a special guardianship order with respect to any child on the application of an individual who —

(a) is entitled to make such an application with respect to the child; or

(b) has obtained leave of the court to make the application,

or on the joint application of more than one such individual.

(4) The individuals who are entitled to apply for a special guardianship order with respect to a child are —

(a) any guardian of the child;

(b) any individual in whose favour a residence order is in force with respect to the child;

(c) any individual listed in subsection (5)(b) or (c) of section 10 (as read with subsection (10) of that section);

(d) a Crown foster parent with whom the child has lived for a period of at least one year immediately preceding the application.

(5) The court may also make a special guardianship order with respect to a child in any family proceedings in which a question arises with respect to the welfare of the child if —

(a) an application for the order has been made by an individual who falls within subsection (3)(a) or (b) (or more than one such individual jointly); or

(b) the court considers that a special guardianship order should be made even though no such application has been made.

(6) No individual may make an application under subsection (3) or (5)(a) unless, before the beginning of the period of three months ending with the date of the application, he has given written notice of his intention to make the application to the Department of Social Services. .

(7) On receipt of such a notice, the Department must investigate the matter and prepare a report for the court dealing with —

(a) the suitability of the applicant to be a special guardian;

(b) such matters as may be prescribed by regulations; and

(c) any other matter which the Department considers to be relevant.

(8) The court may itself ask the Department to conduct such an investigation and prepare such a report, and the Department must do so.

(9) The Department may make such arrangements as it thinks fit for any member of the Department to act on its behalf in conducting an investigation or preparing a report referred to in subsection (7) or subsection (8).

(10) The court may not make a special guardianship order unless it has received a report dealing with the matters referred to in subsection (7). Subsections (8) and (9) of section 10 apply in relation to special guardianship orders as they apply in relation to section 9 orders.

(11) In this section "Crown foster parent" means a person with whom the Crown has placed a child for fostering.

Special guardianship orders: making

14B.—(1) Before making a special guardianship order, the court must consider whether, if the order were made —

(a) a contact order should also be made with respect to the child, and

(b) any section 9 order in force with respect to the child should be varied or discharged.

(2) On making a special guardianship order the court may also —

(a) give leave for the child to be known by a new surname;

(b) grant the leave required by section 14C(3)(b), either generally or for specified purposes.

Special guardianship orders: effect

14C.—(1) The effect of a special guardianship order is that while the order remains in force—

(a) a special guardian appointed by the order has parental responsibility for the child in respect of whom it is made; and

(b) subject to any other order in force under this Ordinance, a special guardian is entitled to exercise parental responsibility to the exclusion of any other person with parental responsibility for the child (apart from another special guardian).

(2) Subsection (1) does not affect—

(a) the operation of any enactment or rule of law which requires the consent of more than one person with parental responsibility in a manner affecting the child; or

(b) any rights which a parent of the child has in relation to the child's adoption or placement for adoption.

(3) While a special guardianship order is in force with respect to a child, no person may —

(a) cause the child to be known by a new surname; or

(b) remove him from the Falkland Islands,

without either the written consent of every person who has parental responsibility for the child or the leave of the court.

(4) Subsection (3)(b) does not prevent the removal of a child, for a period of less than three months, by a special guardian of his.

(5) If the child to whom the special guardianship order is in force dies, his special guardian must take reasonable steps to give notice of that fact to —

(a) each parent of the child with parental responsibility; and

(b) each guardian of the child,

but if the child has more than one special guardian, and one of them has taken such steps in relation to a particular parent or guardian, any other special guardian need not do so as respects that parent or guardian.

(6) This section is subject to section 29(7) of the Adoption and Children Act 2002.

Special guardianship orders: variation and discharge

14D.—(1) The court may vary or discharge a special guardianship order on the application of—

(a) the special guardian (or any of them, if there are more than one);

(b) any parent or guardian of the child concerned;

(c) any individual in whose favour a residence order is in force in relation to the child;

(d) any individual not falling within any of paragraphs (a) to (c) who has, or immediately before the making of the special guardianship order had, parental responsibility for the child;

(e) the child himself; or

(f) the Crown.

(2) In any family proceedings in which a question arises with respect to the welfare of a child with respect to whom a special guardianship order is in force, the court may also vary or discharge the special guardianship order if it considers that the order should be varied or discharged, even though no application has been made under subsection (1).

(3) The following must obtain the leave of the court before making an application under subsection (1) —

(a) the child;

(b) any parent or guardian of his;

(c) any step-parent of his who has acquired, and has not lost, parental responsibility for him by virtue of section 5A;

(d) any individual falling within subsection (1)(d) who immediately before the making of the special guardianship order had, but no longer has, parental responsibility for him.

(4) Where a person applying for leave to make an application under subsection (1) is the child, the court may only grant leave if it is satisfied that he has sufficient understanding to make the proposed application under subsection (1).

(5) The court may not grant leave to a person falling within subsection (3)(b)(c) or (d) unless it is satisfied that there has been a significant change in circumstances since the making of the special guardianship order.

Special guardianship orders: supplementary

14E.—(1) In proceedings in which any question of making, varying or discharging a special guardianship order arises, the court shall (in the light of any rules made by virtue of subsection (3)) —

(a) draw up a timetable with a view to determining the question without delay; and

(b) give such directions as it considers appropriate for the purpose of ensuring, so far as reasonably practicable, that the timetable is adhered to.

(2) Subsection (1) applies also in relation to proceedings in which any other question with respect to a special guardianship order arises.

(3) The power to make rules in subsection (2) of section 11 applies for the purposes of this section as it applies for the purposes of that.

(4) A special guardianship order, or an order varying one, may contain provisions which are to have effect for a specified period.

(5) Section 11(7) (apart from paragraph (c)) applies in relation to special guardianship orders and orders varying them as it applies in relation to section 9 orders."

8. After section 23 of the Children Ordinance 1994 insert —

“Power to include exclusion requirement in interim care order

23A.—(1) Where —

(a) on being satisfied that there are reasonable grounds for believing that the circumstances with respect to a child are as mentioned in section 17(2)(a) and (b)(i), the court makes an interim care order with respect to a child, and

(b) the conditions mentioned in subsection (2) are satisfied,

the court may include an exclusion requirement in the interim care order.

(2) The conditions are —

(a) that there is reasonable cause to believe that, if a person (“the relevant person”) is excluded from a dwelling-house in which the child lives, the child will cease to suffer, or cease to be likely to suffer, significant harm, and

(b) that another person living in the dwelling-house (whether a parent of the child or some other person) —

(i) is able and willing to give to the child the care which it would be reasonable to expect a parent to give him, and

(ii) consents to the inclusion of the exclusion requirement.

(3) For the purposes of this section an exclusion requirement is any one or more of the following —

(a) a provision requiring the relevant person to leave a dwelling-house in which he is living with the child,

(b) a provision prohibiting the relevant person from entering a dwelling-house in which the child lives, and

(c) a provision excluding the relevant person from a defined area in which a dwelling-house in which the child lives is situated.

(4) The court may provide that the exclusion requirement is to have effect for a shorter period than the other provisions of the interim care order.

(5) Where the court makes an interim care order containing an exclusion requirement, the court may attach a power of arrest to the exclusion requirement.

(6) Where the court attaches a power of arrest to an exclusion requirement of an interim care order, it may provide that the power of arrest is to have effect for a shorter period than the exclusion requirement.

(7) Any period specified for the purposes of subsection (4) or (6) may be extended by the court (on one or more occasions) on an application to vary or discharge the interim care order.

(8) Where a power of arrest is attached to an exclusion requirement of an interim care order by virtue of subsection (5), a police officer may arrest without warrant any person whom he has reasonable cause to believe to be in breach of the requirement.

(9) Sections 21(7), (11) and (12) and 22 of the Family Law Ordinance 2005 shall have effect in relation to a person arrested under subsection (8) of this section as they have effect in relation to a person arrested under section 21(6) of that Ordinance.

(10) If, while an interim care order containing an exclusion requirement is in force, the Crown have removed the child from the dwelling-house from which the relevant person is excluded to other accommodation for a continuous period of more than 24 hours, the interim care order shall cease to have effect in so far as it imposes the exclusion requirement.

Undertakings relating to interim care orders

23B.—(1) In any case where the court has power to include an exclusion requirement in an interim care order, the court may accept an undertaking from the relevant person.

(2) No power of arrest may be attached to any undertaking given under subsection (1).

(3) An undertaking given to a court under subsection (1) —

(a) shall be enforceable as if it were an order of the court, and

(b) shall cease to have effect if, while it is in force, the Crown has removed the child from the dwelling-house from which the relevant person is excluded to other accommodation for a continuous period of more than 24 hours.

(4) This section has effect without prejudice to the powers of the Supreme Court and Magistrate's Court apart from this section.

(5) In this section "exclusion requirement" and "relevant person" have the same meaning as in section 23A."

9. In section 24 (discharge and variation etc of care orders and supervision orders) after subsection (3) insert —

"(3A) On the application of a person who is not entitled to apply for the order to be discharged, but who is a person to whom an exclusion requirement contained in the order

applies, an interim care order may be varied or discharged by the court in so far as it imposes the exclusion requirement.

(3B) Where a power of arrest has been attached to an exclusion requirement of an interim care order, the court may, on the application of any person entitled to apply for the discharge of the order so far as it imposes the exclusion requirement, vary or discharge the order in so far as it confers a power of arrest (whether or not any application has been made to vary or discharge any other provision of the order)."

10. In section 26 —

(a) In subsection (6) paragraph (h)(vi) shall become paragraph (i) of that subsection; and

(b) there is inserted after subsection (6), the following subsection—

"(6A) The proceedings which may be specified under subsection (6)(i) include (for example) proceedings for the making or discharge of a section 9 order."

11. After section 28 insert —

"Power to include exclusion requirement in emergency protection order

28A.—(1) Where—

(a) on being satisfied as mentioned in section 28(1)(a) or (b), the court makes an emergency protection order with respect to a child, and

(b) the condition mentioned in subsection (2) is satisfied,

the court may include an exclusion requirement in the emergency protection order.

(2) The condition is that there is reasonable cause to believe that, if a person ("the relevant person") is excluded from a dwelling-house in which a child lives, then the child will not be likely to suffer significant harm, even though the child is not removed as mentioned in section 28(1)(a) or does not remain as mentioned in section 28(1)(b).

(3) For the purposes of this section an exclusion requirement is any one or more of the following —

(a) a provision requiring the relevant person to leave a dwelling-house in which he is living with that child,

(b) a provision prohibiting the relevant person from entering a dwelling-house in which the child lives, and

(c) a provision excluding the relevant person from a defined area in which a dwelling-house in which the child lives is situated.

(4) The court may provide that the exclusion requirement is to have effect for a shorter period than the other provisions of the order.

(5) Where the court makes an emergency protection order containing an exclusion requirement, the court may attach a power of arrest to the exclusion requirement.

(6) Where the court attaches a power of arrest to an exclusion requirement of an emergency protection order, it may provide that the power of arrest is to have effect for a shorter period than the exclusion requirement.

(7) Any period specified for the purposes of subsection (4) or (6) may be extended by the court (on one or more occasions) on an application to vary or discharge the emergency protection order.

(8) Where a power of arrest is attached to an exclusion requirement of an emergency protection order by virtue of subsection (5), a constable may arrest without warrant any person whom he has reasonable cause to believe to be in breach of the requirement.

(9) Sections 21(7), (11) and (12) and 22 of, and Schedule 2 to the Family Law Ordinance 2005 shall have effect in relation to a person arrested under subsection (8) of this section as they have effect in relation to a person arrested under section 21(6) of that Ordinance.

(10) If, while an emergency protection order containing an exclusion requirement is in force, the applicant has removed the child from the dwelling-house from which the relevant person is excluded to other accommodation for a continuous period of more than 24 hours, the order shall cease to have effect in so far as it imposes the exclusion requirement.

Undertakings relating to emergency protection orders

28B.—(1) In any case where the court has power to include an exclusion requirement in an emergency protection order, the court may accept an undertaking from the relevant person.

(2) No power of arrest may be attached to any undertaking given under subsection (1).

(3) An undertaking given to a court under subsection (1) —

(a) shall be enforceable as if it were an order of the court, and

(b) shall cease to have effect if, while it is in force, the applicant has removed the child from the dwelling-house from which the relevant person is excluded to other accommodation for a continuous period of more than 24 hours.

(4) This section has effect without prejudice to the powers of the Supreme Court and Magistrate's Court apart from this section.

(5) In this section “exclusion requirement” and “relevant person” have the same meaning as in section 28A.”

13. In section 29 of the Children Ordinance 1994 (duration of emergency protection orders and other provisions) insert after subsection (8) —

“(8A) On the application of a person who is not entitled to apply for the order to be discharged, but who is a person to whom an exclusion requirement contained in the order applies, an emergency protection order may be varied or discharged by the court in so far as it imposes the exclusion requirement.

(8B) Where a power of arrest has been attached to an exclusion requirement of an emergency protection order, the court may, on the application of any person entitled to apply for the discharge of the order so far as it imposes the exclusion requirement, vary or discharge the order in so far as it confers a power of arrest (whether or not any application has been made to vary or discharge any other provision of the order).”

14. In section 35 (effect and duration of orders etc) “or 12(5)” is inserted in subsection (9) after “9(4)”.

15. In section 37 (rules of court), in subsection (2) there is inserted after paragraph (b) —

“(bb) for children to be separately represented in relevant proceedings”.

Land Charges (Amendment) Bill 2006

(No: of 2006)

ARRANGEMENT OF PROVISIONS

Clause

1. Short title
2. Amendment of the Land Charges Ordinance 1996

Schedule

LAND CHARGES (AMENDMENT) BILL 2006

(No: of 2006)

(assented to: 2006)

(commencement: in accordance with section 1)

(published: 2006)

A BILL

for

AN ORDINANCE

To amend the Land Charges Ordinance 1996.

BE IT ENACTED by the Legislature of the Falkland Islands as follows —

Short title and commencement

1. This Ordinance may be cited as the Land Charges (Amendment) Ordinance 2006 and shall come into force on such date as is appointed by the Governor by notice published in the *Gazette*.

Amendment of the Land Charges Ordinance 1996

2. The Land Charges Ordinance 1996 is amended —

(a) in section 4, by inserting the following subsection after subsection (3A) —

“(3B) A Class IV land charge is a charge affecting any land by virtue of Part II of the Family Law Ordinance 2006”;

(b) in section 5, by inserting the following subsection after subsection (1) —

“(1A) Where a person has died and a land charge created before his death would apart from his death have been registered in his name, it shall be so registered notwithstanding his death.”;

(c) in section 6 —

(i) in subsection (2), by replacing “Class II or Class III” with “Class II, Class III or Class IV”; and

(ii) by inserting the following subsection after subsection (3) —

“(4) A land charge of Class IV shall be void as against a purchaser of the land charged with it, or of any interest in such land, unless the land charge is registered in the appropriate register before the completion of the purchase.”;

(d) in section 7, by inserting the following subsection after subsection (4) —

“(4A) Where a person has died and a pending land action would apart from his death have been registered in his name, it shall be so registered notwithstanding his death.”;

(e) in section 8 —

(i) by inserting the following subsection after subsection (1) —

“(1A) No writ or order affecting an interest under a trust of land may be registered under subsection (1).”; and

(ii) by inserting the following subsection after subsection (2) —

“(2A) Where a person has died and any such writ or order as is mentioned in subsection (1)(a) or (b) would apart from his death have been registered in his name, it shall be so registered notwithstanding his death.”.

Printed by the Government Printer, Printing Office, Stanley, Falkland Islands.
Price: Nine Pounds & Forty Pence.

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THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

Vol. 17

17th March 2006

No. 4

The following draft of the **Road Traffic Bill 2006** is published in this Supplement for consultation purposes only.

Road Traffic Bill 2006

(No: of 2006)

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ROAD TRAFFIC BILL 2006

(No: of 2006)

(assented to: 2006)

(commencement: in accordance with section 1)

(published: 2006)

A BILL

for

AN ORDINANCE

To repeal the Road Traffic Ordinance (Title 63.1) and to re-enact it with amendments.

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 Road Traffic Ordinance 2006 and shall come into force on such date as may be fixed by the Governor by notice published in the *Gazette* provided that the Governor may by one or more notices so published fix different dates in relation to different provisions of this Ordinance¹ and for different purposes.

Interpretation

2.—(1) In this Ordinance —

“authorised insurer” means —

(a) a person or body of persons carrying on insurance business within Group 2 in Part II of Schedule 2 to the Insurance Companies Act 1982 and being a member of the Motor Insurer's Bureau (a company incorporated in England limited by guarantee and incorporated under the Companies Act 1929 of England on 14 June 1946); or

(b) a person or body of persons carrying on insurance business approved by the Governor to issue policies of insurance satisfying the requirements of section 109.

“carriage of goods” includes the haulage of goods;

¹ If the words in square brackets are to remain much more complex transitional provisions need to be a provision need to be contained in Schedule 9.

“carriageway” means a way constituting or comprised in a highway, being a way other than a cycle track) over which the public have a right of way for the passage of vehicles;

“chief police officer” means the senior officer for the time being of the Royal Falkland Islands Police and includes any other person for the time being lawfully acting as chief police officer;

“court of summary jurisdiction” means the Summary Court or the Magistrate’s Court;

“cycle” means a bicycle, a tricycle, or a cycle having four or more wheels, not being in any case a motor vehicle;

“the Director” means the Director of Public Works;

“disqualified” means disqualified for holding or obtaining a licence and “disqualification” is to be construed accordingly;

“driver”, where a separate person acts as a steersman of a motor vehicle, includes (except for the purposes of section 4) that person as well as any other engaged in the driving of the vehicle, and “drive” is to be interpreted accordingly;

“footpath” means a highway over which the public have a right of way on foot only, not being a footway;

“footway” means a way comprised in a highway which also comprises a carriageway, being a way over which the public have a right of way on foot only²;

“goods” includes goods or burden of any description;

“goods vehicle” means a motor vehicle constructed or adapted for use for the carriage of goods, or a trailer so constructed or adapted;

“highway authority” means the Crown, that is to say, Her Majesty the Queen in right and title of Her Government of the Falkland Islands;

“highway maintainable at public expense” means a highway is maintainable at the public expense for the purposes of the Highways Act 1980 in its application to the Falkland Islands;

“invalid carriage” means a vehicle, the weight of which does not exceed 254 kilograms, whether mechanically propelled or not, specially designed and constructed and not merely adapted, for the use of a person, being a person suffering from some physical defect or disability and which is used solely by such a person³;

² An example of a footway is the footway lying on the south side of Ross Road. Examples of footpaths are the pedestrian ways running between Goss Road and Ross Road East. The distinction is important because, for example, under the Bill it would be lawful for an invalid carriage to use a footway, but the Bill would not render it lawful for an invalid carriage to use a footpath.

³ This is indifferent terms from the definition of “invalid carriage” in the existing Road Traffic Ordinance.

“licence” means a licence to drive a motor vehicle granted under Part IV;

“maximum laden weight” means whichever of the following is appropriate in the circumstances of the case —

(a) the maximum laden weight at which a vehicle or trailer may lawfully, subject to any over-riding restrictions, be used on a publicly maintainable highway; and

(b) the maximum aggregate laden weight at which an articulated vehicle consisting of a tractor and any semi-trailer drawn by it may lawfully, subject to an over-riding restrictions, be used on a publicly maintainable highway,

“motor car” means a mechanically propelled vehicle, not being a motor cycle or an invalid carriage, which is constructed itself to carry a load of passengers and the weight of which unladen —

(a) if it is constructed solely for the carriage of passengers and their effects, is adapted to carry not more than seven passengers exclusive of the driver and does not exceed 3050 kilograms.

(b) if it is constructed or adapted for use for the conveyance of goods or burden of any description, does not exceed 3050 kilograms, or 3500 kilograms if the vehicle carries a container or containers for holding for the purposes of its propulsion any fuel which is wholly gaseous at 17.5 Celsius under a pressure of 1.013 bar or plant and materials for producing such fuel.

(c) does not exceed 2450 kilograms in a case not falling within either of the foregoing paragraphs (a) or (b),

“motor cycle” means a mechanically propelled vehicle, not being an invalid carriage, [with less than four wheels] and the weight of which unladen does not exceed 410 kilograms⁴,

“motor tractor” means a mechanically propelled vehicle which is not constructed itself to carry a load, other than excepted articles, and the weight of which unladen does not exceed 7370 kilograms;⁵

“motor vehicle” means a mechanically propelled vehicle, other than one which is an invalid carriage, intended or adapted for use on roads;

⁴ The definition would not, as it stands (if the words within square brackets are included) extend to a “quad bike” which I understand the Police tax as a motorcycle. This means, for example, that the rider of a quad bike would not be required to wear a crash helmet, and would be treated as a motor car. We need carefully to consider quad bikes as some of them may not be fit for use on roads. Quad bikes can be used on roads in the UK subject to a number of conditions e.g. as to lights and wing mirrors. A further point is whether riders of quad bikes or motor tricycles should be required to wear crash helmets?

⁵ This definition is taken from section 185(1) of the Road Traffic Act 1988. In view of the terms of the definition is it necessary to make special provision in relation to driving licences for motor tractors exceeding 3500 kilograms in weight?

“owner”, in relation to a vehicle which is the subject of a hiring agreement or hire-purchase agreement means the person in possession of the vehicle under the agreement;

“passenger vehicle” means a vehicle constructed solely for the carriage of passengers and their effects;

“private hire vehicle” means a vehicle constructed or adapted to seat fewer than nine passengers which is made available with a driver to the public for hire for the purpose of carrying passengers, and which is not a licensed taxi or public service vehicle⁶;

“provisional licence” means a licence granted under section 74(4);

“public place” includes any place to which the public are for the time being admitted, whether or not on payment of any admission or other charge or subject to conditions,

“repealed Ordinance” means the Road Traffic Ordinance (Title 63.1);

“road” means any road, street, thoroughfare, highway, lane court, alley, passage, or open place used or frequented by the public, or to which the public have access and to which this Ordinance applies by virtue of section 3(1) ;

“traffic sign” means any object or device (whether fixed or portable) for conveying, to traffic on roads or any specified class of traffic, warnings, information, requirements, restrictions or prohibitions of any description —

(a) specified by regulations made, or having effect, under this Ordinance; or

(b) authorised by or under any other written law,

and any line or mark on a road for so conveying such warnings, information, requirements, restrictions or prohibitions;

“trailer” means a vehicle drawn by a motor vehicle.

(2) For the purposes of subsection (1) —

(a) a side-car attached to a motor vehicle is to be regarded as forming part of the vehicle to which it is attached and is being a trailer;

(b) in a case where a motor vehicle is so constructed that a trailer may be partial superimposition be attached to the vehicle in such a manner as to cause a substantial part of the weight of the trailer to be borne by the vehicle, that vehicle is to be deemed to be a vehicle itself constructed to carry a load; and

⁶ This definition is taken from section 1(1)(a) of the Private Hire Vehicles (London) Act 1998

(c) in the case of a motor vehicle fitted with a crane, dynamo, welding plant or other special appliance or apparatus which is a permanent or essentially permanent fixture, the appliance or apparatus is not to be deemed to constitute a load or goods or burden of any description, but is to be deemed to form part of the vehicle.

(3) The Governor may by regulations under this subsection vary any of the maximum or minimum weights specified in subsection (1) and regulations under this subsection may have effect either generally or in the case of vehicles of any class specified in the regulations.

(4) Unless it falls within subsection (5), a vehicle so constructed that it can be divided into two parts both of which are vehicles and one of which is a motor vehicle shall (when not so divided) be treated for the purposes of this Ordinance as that motor vehicle with the other part attached as a trailer.

(5) A passenger vehicle so constructed that —

(a) it can be divided into two parts, both of which are vehicles and one of which is a motor vehicle, but cannot be so divided without the use of facilities normally available only at a workshop, and

(b) passengers carried by it when not so divided can at all times pass from either part to the other,

shall (when not so divided) be treated for the purposes of this Ordinance as a single motor vehicle⁷.

(6) In subsection (4) and (5) "passenger vehicle" means a vehicle constructed or adapted for use solely or principally for the carriage of passengers.

(7) For the purposes of this Ordinance —

(a) a mechanically propelled vehicle being an implement for cutting grass which is controlled by a pedestrian and is not capable of being used or adapted for any other purpose,

(b) any other mechanically propelled vehicle controlled by a pedestrian which may be specified by regulations made by the Governor for the purposes of this subsection and subsection (8), and

(c) an electrically assisted pedal cycle or scooter of such a class as may be prescribed by regulations so made,

is to be treated as not being a motor vehicle⁸.

⁷ This definition covers e.g. "bendy buses" and some kinds of "motor homes".

⁸ As a consequence, the provisions of this Bill as to driving licences, insurance and vehicle licences would not apply to them.

(8) In subsection (7) “controlled by a pedestrian” means that the vehicle either —

(a) is constructed or adapted for use only under such control or

(b) is constructed or adapted for use either under such control or under the control of a person carried on it, but is not for the time being in use under, or proceeding under, the control of a person carried on it.

(9) References in this Ordinance to a class of vehicles are to be interpreted as references to a class defined or described by reference to any characteristics of the vehicles or to any other circumstances whatsoever (and accordingly as authorising the use of “category” to indicate a class of vehicles however defined or described).

(10) In relation to driving licences which came into force before the relevant date, any reference in this Ordinance to the counterpart of a licence shall be construed as references to the licence itself.

(11) In subsection (10), “the relevant date” means such date as is the date of commencement of regulations under section 75(2) providing for the issue of driving licences consisting of a photocard and a counterpart.

(12) Any reference in this Ordinance to an Act by name is a reference to the Act of the United Kingdom Parliament of that name in its application to the Falkland Islands.

(13) In Part XI of this Ordinance —

(a) “authorised person” has the meaning given by section 172(8);

“driver”, except in section 179 means, in relation to an alleged fixed penalty offence, the person by whom, assuming the offence to have been committed, it was committed;

“proceedings”, except in relation to proceedings for enforcing payment of a sum registered under section 188, means criminal proceedings;

(b) references to a notice requesting a hearing in respect of an offence are references to a notice indicating that the person giving the notice wishes to contest liability for the offence or seeks a determination by a court with respect to the appropriate punishment for the offence, and

(c) references to an offence include an alleged offence.

(14) For the purposes of this Ordinance, an offence involves obligatory disqualification if it is an offence specified in column 1 of Part I of Schedule 4 or an offence specified in column 1 in Part II of that Schedule and either —

(a) the word “obligatory” (without qualification) appears in column 4 (in the case of Part I) or column 2 (in the case of Part II) against the offence, or

(b) that word appears there qualified by conditions or circumstances related to the offence which are satisfied or obtain.

(15) For the purposes of this Ordinance, an offence involves discretionary disqualification if it is an offence specified in column 1 of Part II of that Schedule and either—

(a) the word “discretionary” (without qualification) appears in column 4 (in the case of Part I) or column 2 (in the case of Part II) against the offence, or

(b) the word appears there qualified by conditions or circumstances related to the offence which are satisfied or obtain.

(16) For the purposes of this Ordinance , an offence involves obligatory endorsement if it is an offence specified in column 1 of Part I of Schedule 4 or an offence specified in column 1 of Part II of that Schedule and either—

(a) the word “obligatory” (without qualification appears in column 5 (in the case of Part I) or column 3 (in the case of Part II) against the offence, or

(b) that word appears there qualified by conditions relating to the offence which are satisfied.

(17) In Part XI, the expressions listed in the left hand column of the following Table are respectively defined or (as the case may be) fall to be construed in accordance with the provisions listed in the right hand column of that Table in relation to those expressions.

Table	
<i>Expression</i>	<i>Relevant provision</i>
Authorised person	section 172(8)
Conditional offer	section 192(2)
Fixed penalty	section 171
Fixed penalty notice	section 170
Fixed penalty offence	section 169
Notice to owner	sections 180(4) and 192(2)
Official form	section 185(4)
Owner	section 184(1)
Period allowed for response to a notice	section 180(5)
Statutory statement of facts	Part II of Schedule 6
Statutory statement of hiring	Part I of Schedule 6
Statutory statement of ownership	Part I of Schedule 6
Suspended enforcement period	section 170(3)(a)
Time of the alleged offence	section 180(3)

Application

3.—(1) This Ordinance applies to any road, street, thoroughfare, highway, lane court, alley, passage, or open place used or frequented by the public, or to which the public have access —

(a) within Stanley,

(b) within a distance of four miles from any point on the boundary of Stanley⁹;

(c) to which this Ordinance has been declared to apply by an Order made by the Governor under this paragraph,¹⁰ or

(d) to which this Ordinance applies by virtue of the continuation in force, by section 273 and Schedule 9 to this Ordinance, of Orders made under section 2 and other provisions of the repealed Ordinance designating them as roads to which that Ordinance applied¹¹.

(2) Without prejudice to their application by virtue of subsection (1) of this section —

(a) sections 4 to 16 of this Ordinance apply to driving by any person of a mechanically propelled vehicle on any highway which is a carriageway and in those sections “road” includes such a carriageway;¹² and

(b) sections 17 to 19 of this Ordinance apply to all highways.

⁹ The corresponding provision of the present Road Traffic Ordinance reads “with a radius of four miles of the boundary...”. It is thought that what is said in paragraph (b) must be what was intended.

¹⁰ This sub-paragraph replaces the provisions of section 2(1) of the present Road Traffic Ordinance to the same effect.

¹¹ The Orders referred will continue in force as if they had been made under clause 3(1)(c) (if enacted).

¹² This is a new provision the intent of which is to apply the serious driving offences to the roads which have been built under the road programme even though the whole of the Road Traffic Ordinance has not been applied (e.g. the provisions requiring driving licences and those imposing a requirement for compulsory third party insurance do not apply).

PART II PRINCIPAL ROAD SAFETY PROVISIONS

Driving offences

Causing death by dangerous driving¹³

4. A person commits an offence who causes the death of another person by driving a mechanically propelled vehicle dangerously on a road or other public place¹⁴.

Dangerous driving

5. A person commits an offence who drives a mechanically propelled vehicle dangerously on a road or other public place.

Meaning of dangerous driving¹⁵

6.—(1) For the purposes of sections 4 and 5 of this Ordinance, a person is to be regarded as driving dangerously if (and subject to subsection (2) of this section, only if) —

(a) the way he drives falls far below what would be expected of a competent and careful driver, and

(b) it would be obvious to a competent and careful driver that driving in that way would be dangerous.

(2) A person is also to be regarded as driving dangerously for the purposes of sections 4 and 5 if would be obvious to a competent and careful driver that driving a vehicle in its current state would be dangerous.

¹³ This clause and the following clause are intended to replace the offences of causing death by reckless driving and reckless driving under the present Road Traffic Ordinance which represented the Falkland Islands equivalent of sections 1 and 2 of the English Road Traffic Act 1988 *as originally enacted*. Those provisions concentrate too much on the driver's attitude rather than the objective standard of his driving because the statutory test in section 17 of the present Ordinance requires the court to be satisfied either that the accused had not given any thought to the possibility that there might be any risk of causing serious injury to any person or of damage to property or, having recognised that there was some risk involved, nevertheless to have gone on to take that risk. What is dangerous driving is defined in cl. 6 which is intended to impose an objective test. Past Senior Magistrates have suggested the amendments to the present law contained in clauses 5 and 6.

¹⁴ Note that this clause and clause 5 (as do the corresponding UK provisions)) refer to "a mechanically propelled vehicle" and not a motor vehicle and therefore include within their ambit mechanically propelled vehicles which are not intended to be driven on roads (see definition of "motor vehicle").

¹⁵ This clause replicates section 2A of the Road Traffic Act 1988. The determination of what amounts to driving dangerously is thus to be by means of a test which concentrates on the nature of the driving rather than the defendant's state of mind. So far as the standard of driving is concerned, the test to be applied is objective in nature. The intention of the UK Government in relation to the corresponding provision of the Road Traffic Act 1988 was that the standard of driving should be judged in absolute terms, taking no account of factors such as inexperience, age or disability (although such factors are relevant in sentencing). In *R v Marison* [1997] RTR 457 the English Court of Appeal said that the driving of a vehicle where it was the driver of the vehicle who was in a dangerously defective state rather than the vehicle was capable of amounting to dangerous driving in terms of the definition (diabetic driver who was aware that there was a real risk of him suffering sudden hypoglycaemic attack).

(3) In subsections (1) and (2) of this section “dangerous” refers to danger either of injury to any person or of serious damage to property; and in determining for the purposes of those subsections what would be expected of, or obvious to, a competent and careful driver in a particular case, regard shall be had not only to the circumstances of which he could be expected to be aware but also to any circumstances shown to be within the knowledge of the accused.

(4) In determining for the purposes of subsection (2) of this section the state of a vehicle, regard may be had to anything attached to or carried on or in it and to the manner in which it is attached or carried.

Careless and inconsiderate driving

7. A person commits an offence who drives a mechanically propelled vehicle on a road or other public place without due care and attention, or without reasonable consideration for other persons using the road or place.

Motor vehicles: drink and drugs

Causing death by careless driving when under the influence of drink or drugs

8.—(1) A person commits an offence who causes the death of another person by driving a mechanically propelled vehicle on a road or other public place without due care and attention, or without reasonable consideration for other persons using the road or place, and —

(a) he is, at the time when he is driving, unfit to drive through drink or drugs, or

(b) he has consumed so much alcohol that the proportion of it in his breath, blood or urine at the time exceeds the prescribed limit, or

(c) he is, within 18 hours after that time, required to provide a specimen in pursuance of section 12 of this Ordinance, but without reasonable excuse fails to provide it.

(2) For the purposes of this section a person shall be taken to be unfit to drive at any time when his ability to drive properly is impaired.

(3) Subsection (1)(b) and (c) do not apply in relation to a person driving a mechanically propelled vehicle other than a motor vehicle¹⁶.

Driving, or being in charge, when under the influence of drink or drugs

9.—(1) A person commits an offence who, when driving or attempting to drive a mechanically propelled vehicle on a road or other public place is unfit to drive through drink or drugs.

(2) Without prejudice to subsection (1) of this section, a person commits an offence who is unfit to drive through drink or drugs when in charge of a mechanically propelled vehicle which is on a road or other public place.

¹⁶ The distinction is that the definition of “motor vehicle” in clause 2 limits motor vehicles to those intended or adapted for use on roads

(3) For the purposes of subsection (2) of this section, a person shall be deemed not to have been in charge of a mechanically propelled vehicle if he proves that at the material time the circumstances were such that there was no likelihood of his driving it so long as he remained unfit to drive through drink or drugs¹⁷.

(4) The court may, in determining whether there was such a likelihood as is mentioned in subsection (3), disregard any injury to him and any damage to the vehicle.

(5) For the purposes of this section —

(a) “drug” includes any substance used as a medicine,

(b) a person shall be taken to be unfit to drive if his ability to drive properly for the time being is impaired.

(6) A police officer may arrest a person without warrant if he has reasonable cause to suspect that the person is or has been committing an offence under this section.

(7) For the purpose of arresting a person under the power conferred by subsection (6) of this section, a police officer may enter (if need be by force) any place where the person is or where the police officer, with reasonable cause suspects him to be.

Driving or being in charge of a motor vehicle with alcohol concentration above prescribed limit

10.—(1) A person commits an offence who —

(a) drives or attempts to drive a motor vehicle¹⁸ on a road or other public place, or

(b) is in charge¹⁹ of a motor vehicle on a road or other public place²⁰,

after consuming so much alcohol that the proportion of it in his breath, blood or urine²¹ exceeds the prescribed limit.

¹⁷ In a prosecution under the provision of the Road Traffic Act 1988 corresponding to clause 10(1)(b) a man was supervising his wife while she was driving under a provisional licence. He had consumed alcohol in excess of the prescribed limit but claimed there was no likelihood of his driving while in that state. The court found that he might have taken control of the vehicle as a “last resort” and this precluded him from successfully running the defence. The man lost his appeal against conviction.

¹⁸ The effect of the use of the words “motor vehicle” is that the offence cannot be committed in respect of a mechanically propelled vehicle which is not intended or adapted for use on roads

¹⁹ See footnote 10

²⁰ See definition of “public place” in cl.2. Courts in England and the Falkland Islands have found that a public house car park intended for use only by customers may, depending on the circumstances, be a public place.

²¹ The corresponding provision of the existing Road Traffic Ordinance omits “blood or urine”. The effect of this has been that the police have been unable to proceed to require a driver to provide a sample of blood or urine when the breath analysis apparatus at the police station has been out of order. This gives rise to difficulties when a person alleges that he is physically unable (e.g. because of asthma or emphysema) satisfactorily to provide a breath sample.

(2) It is a defence for a person charged with an offence under subsection (1)(b) to prove that at the time he is alleged to have committed that offence the circumstances were such that there was no likelihood of his driving the vehicle while the proportion of alcohol in his breath, blood or urine remained likely to exceed the prescribed limit.

(3) The court may in determining whether there was such a likelihood as is mentioned in subsection (2) disregard any injury to him and any damage to the vehicle.

Breath tests²²

11.—(1) Where a police officer in uniform has reasonable cause to suspect —

(a) that a person driving or attempting to drive or in charge of a motor vehicle on a road or other public place has alcohol in his body or has committed a traffic offence while the vehicle was in motion; or

(b) that a person has been driving or attempting to drive or been in charge of a motor vehicle on a road or other public place with alcohol in his body and that that person still has alcohol in his body; or

(c) that a person has been driving or attempting to drive or been in charge of a motor vehicle on a road or other public place and has committed a traffic offence whilst the vehicle was in motion,

he may, subject to section 14 of this Ordinance, require him to provide a specimen of breath for a breath test.

(2) If an accident occurs owing to the presence of a motor vehicle on a road or other public place, a police officer²³ may, subject to section 14 of this Ordinance, require any person who he has reasonable cause to believe was driving or attempting to drive or in charge of the vehicle at the time of the accident to provide a specimen of breath for a breath test.

(3) A person may be required under subsection (1) or subsection (2) of this section to provide a specimen at or near the place where the requirement is made or, if the requirement is made under subsection (2) and the police officer thinks fit, at a police station specified by the police officer.

(4) A person commits an offence who, without reasonable excuse, fails to provide a specimen of breath when required to do so in pursuance of this section.

(5) A police officer may arrest a person without a warrant if —

²² This clause corresponds to section 23 of the existing Road Traffic Ordinance. It does not differ from the existing provision except (a) that it extends the definition of "traffic offence", and (b) that it makes provision for cases where only this Part (serious road traffic offences) applies only by virtue of clause 3(2) (roads built under the Roads Programme to which the existing Road Traffic Ordinance has not been applied by Order declaring them to be roads for the purpose of that Ordinance). does not differ from the existing provision.

²³ A police officer making a requirement under this subsection would not be required to be in uniform (and is not required to be under the corresponding provision of the Road Traffic Act 1988).

(a) as a result of a breath test he has reasonable cause to suspect that the proportion of alcohol in that person's breath exceeds the prescribed limit; or

(b) that person has failed to provide a specimen of breath for a breath test when required to do in pursuance of this section and the police officer has reasonable cause to suspect that he has alcohol in his body.

but a person shall not be arrested by virtue of this subsection when he is at a hospital as a patient.

(6) A police officer may, for the purpose of requiring a person to provide a specimen of breath under subsection (2) of this section in a case where he has reasonable cause to suspect that the accident involved injury to another person or of arresting him in such a case under subsection (5) of this section, enter (if need be by force) any place where that person is or where the police officer, with reasonable cause suspects him to be²⁴.

(7) In this section "traffic offence" means any provision of this Ordinance except Parts XI and XIV.²⁵

Provision of specimens for analysis

12.—(1) In the course of an investigation into whether a person has committed an offence under section 8, 9 or 10 of this Ordinance, a police officer may, subject to the following provisions of this section and to section 14 of this Ordinance require him —

(a) to provide two specimens of breath for analysis by means of a device of a type approved by the Governor, or

(b) to provide a specimen of blood or urine for a laboratory test.

(2) A requirement under this section to provide specimens of breath can only be made at a police station.

(3) A requirement under this section to provide a specimen of blood or urine can only be made at a police station or at a hospital; and it cannot be made at a police station unless —

(a) the police officer making the requirement has reasonable cause to believe²⁶ that for medical reasons a specimen of breath cannot be provided or should not be required,

(b) at the time the requirement is made a device or a reliable device of the type mentioned in subsection (1)(a) of this section is not available at the police station or if it is then for any reason not practicable²⁷ to use such a device there,

²⁴ This is to prevent a person involved in a Road Traffic accident rushing home and escaping a requirement to provide a breath test e.g. by locking his front door and refusing to open it.

²⁵ This is modelled on the corresponding provision of the Road Traffic Act 1988 (section 6(7))

²⁶ This will usually be because the person required has alleged he cannot provide it for medical reasons.

²⁷ In *Chief Constable of Avon and Somerset Constabulary v Kelliher* [1986] Crim LR 635 it was held that this included the situation where no police officer trained in the use of the device was available.

(c) a device of the type mentioned in subsection (1)(a) of this section has been used at the police station but the police officer who required the specimens of breath has reasonable cause to believe that the device has not provided a reliable indication of the proportion of alcohol in the breath of the person concerned, or the suspected offence is an offence under section 8 or 9 of this Ordinance and the police officer making the requirement has been advised by a medical practitioner that the condition of the person required to produce the specimen might be due to some drug;

but may then be made notwithstanding that the person required to provide the specimen has already provided or been required to provide two specimens of breath.

(4) If the provision of a specimen other than a specimen of breath may be required in pursuance of this section the question whether it is to be a specimen of blood or a specimen of urine shall be decided by the police officer making the requirement, but if a medical practitioner is of the opinion that for medical reasons a specimen of blood cannot or should not be taken the specimen shall be a specimen of urine.

(5) A specimen of urine shall be provided within one hour of the requirement for its provision having been made and after the provision of a previous specimen of urine.

(6) A person commits an offence who, without reasonable excuse, fails to provide a specimen when required to do so in pursuance of this section.

(7) A police officer must, on requiring any person to provide a specimen in pursuance of this section, warn him that a failure to provide it may render him liable to prosecution.

Choice of specimens of breath

13.—(1) Subject to subsection (2) of this section, of any two specimens of breath provided by any person in pursuance of section 12 that with the lower proportion of alcohol in the breath shall be used and the other shall be disregarded.

(2) If the specimen with the lower proportion of alcohol contains no more than 50 microgrammes of alcohol in 100 millilitres of breath, the person who provided it may claim that it should be replaced by such specimen as may be required under section 12(4) of this Act and, if he then provides such a specimen, neither specimen of breath shall be used.

(3) The Governor may by regulations substitute another proportion of alcohol in the breath for that specified in subsection (2) of this section²⁸, but any such regulations shall not come into force until they have been approved by a resolution of the Legislative Council.

Protection for hospital patients

14.—(1) While a person is at hospital as a patient he shall not be required to provide a specimen of breath for a breath test or to provide a specimen for a laboratory test unless the medical

²⁸ Such a provision does not appear in the present Road Traffic Ordinance, although it appears as section 8(2) in the Road Traffic Act 1988.

practitioner in immediate charge of his care has been notified of the proposal to make the requirement, and —

(a) if the requirement is then made, it shall be for the provision of a specimen at the hospital, but

(b) if the medical practitioner objects on the ground specified in subsection (2) of this section, the requirement shall not be made.

(2) The ground on which the medical practitioner may object is that the requirement or the provision of a specimen or, in the case of a specimen of blood or urine, the warning required under section 12(7) of this Ordinance would be prejudicial to the proper care and treatment of the patient.

Detention of persons affected by alcohol or drug

15.—(1) Subject to subsections (2) and (3) of this section, a person required to provide a specimen of breath, blood or urine may afterwards be detained at a police station until it appears to the police officer that, were that person then driving or attempting to drive a mechanically propelled vehicle on a road, he would not be committing an offence under section 9 or 10 of this Ordinance.

(2) A person shall not be detained in pursuance of this section if it appears to a police officer that there is no likelihood of his driving or attempting to drive a mechanically propelled vehicle whilst his ability to drive properly is impaired or whilst the proportion of alcohol in his breath, blood or urine exceeds the prescribed limit²⁹.

(3) A police officer must consult a medical practitioner on any question arising under this section as to whether a person's ability to drive properly is or might be impaired through drugs and must act on the medical practitioner's advice³⁰.

Interpretation of sections 8 to 15

16.—(1) The following provisions apply for the interpretation of sections 8 to 15 of this Ordinance.

(2) In those sections —

“breath test” means a preliminary test for the purpose of obtaining, by means of a device of a type approved by the Governor, an indication whether the proportion of alcohol in a person's blood is likely to exceed the prescribed limit;

“drug” includes any intoxicant other than alcohol;

“fail” includes refuse;

²⁹ This does not necessarily require the person to be detained until he “passes” a breath test.

³⁰ This places a burden on medical staff particularly at night. An equivalent provision appears in RTA 1988. It may be that in the circumstances of the Falkland Islands it will not be necessary frequently to seek a medical practitioner's advice pursuant to this provision.

“hospital” means an institution which provides medical or surgical treatment for in-patients or out-patients;

“the prescribed limit” means, as the case may require —

- (a) 35 microgrammes of alcohol in 100 millilitres of breath;
- (b) 80 microgrammes of alcohol in 100 millilitres of blood; or
- (c) 107 microgrammes of alcohol in 100 millilitres of urine,

or such other proportion as may be prescribed by regulations made by the Governor with the approval of the Legislative Council.

(3) A person does not provide a specimen of breath for a breath test or for analysis unless the specimen —

- (a) is sufficient to enable the test or analysis to be carried out, and
- (b) is provided in such a way as to enable the objective of the test or analysis to be satisfactorily achieved.

(4) A person provides a specimen of blood if and only if he consents to its being taken by a medical practitioner or a nurse and it is so taken³¹.

Motor racing and motoring events on public highways

Motor racing on highways

17. A person commits an offence who promotes or takes part in a race or trial of speed between motor vehicles on a highway³².

Regulation of motoring events on highways³³

18.—(1) A person commits an offence who promotes or takes part in a competition or trial (other than a race or trial of speed) involving the use of motor vehicles on a highway unless the competition or trial —

- (a) is authorised, and
- (b) is conducted in accordance with any conditions imposed,

³¹ S.11(4) of the English Road Traffic Act only allows a specimen of blood to be taken by a medical practitioner, but there seems to be no good reason why it should not be taken by a nurse.

³² It is irrelevant as to whether it is a road

³³ Such events (“treasure hunts” and rallies) have not so far as is known yet taken place *on roads* in the Falkland Islands. This clause and the following clause are modelled on sections 13 and 13A of the Road Traffic Act 1988. Note that the offence is not limited to “roads” as defined but includes all highways.

by or under regulations under this section.

(2) The Governor may by regulations authorise or provide for authorising, the holding of competitions or trials (other than races or trials of speed) involving the use of motor vehicles on highways either —

(a) generally, or

(b) as regards any locality or area of the Falkland Islands, or as regards any class or description of competition or trial or any particular competition or trial,

subject to such conditions, including competitions requiring the payment of fees, as may be imposed by or under the regulations.

(3) Regulations under this section may —

(a) prescribe the procedure to be followed, and the particulars to be given, in connection with applications for authorisation under the regulations, and

(b) make different provision for different classes or descriptions of competition or trial.

Disapplication of sections 4 to 6 for authorised motoring events

19.—(1) A person does not commit an offence under sections 4, 5 and 6 of this Ordinance by virtue of driving a vehicle in a public place other than a road if he shows that he was driving in accordance with an authorisation for a motoring event given under regulations made by the Governor.

(2) Regulations under this section may in particular —

(a) prescribe the persons by whom, and limit the circumstances in which and places in respect of which, authorisations may be given under the regulations;

(b) specify conditions which must be included among those incorporated in authorisations;

(c) provide for authorisations to cease to have effect in prescribed circumstances;

(d) provide for the procedure to be followed, the particulars to be given, and the amount (or the persons who are to determine the amount) of any fees to be paid in connection with applications for authorisations;

(e) make different provisions for different cases.

Protective measures: seat belts, helmets, etc

Seat belts: adults

20.—(1) The Governor may make regulations requiring, subject to such exceptions as may be prescribed, persons who are driving or riding in motor vehicles on a road to wear seatbelts of such description as may be prescribed.

(2) Regulations under this section —

(a) may make different provision in relation to different classes of vehicles, different descriptions of persons and different circumstances,

(b) shall include exceptions for —

(i) the users of vehicles constructed or adapted for the delivery of goods or mail to consumers or addressees, as the case may be, while engaged in making local rounds of deliveries,

(ii) the drivers of vehicles while performing a manoeuvre which includes reversing,

(iii) any person holding a valid certificate signed by a medical practitioner to the effect that it is inadvisable on medical grounds for him to wear a seat belt,

(c) may make any prescribed exceptions subject to such conditions as may be prescribed, and

(d) may prescribe cases in which a fee of a prescribed amount may be charged on an application for any certificate required as a condition of any prescribed exception.

(3) A person who drives or rides in a motor vehicle in contravention of regulations under this section commits an offence; but, notwithstanding any enactment or rule of law, no person other than the person actually committing the contravention commits that offence by reason of the contravention³⁴.

(4) If the holder of any such certificate as is referred to in subsection (2)(b) is informed by a police officer that he may be prosecuted for an offence under subsection (3), he is not in proceedings for that offence entitled to rely on the exception afforded to him by the certificate unless —

(a) it is produced to the police officer at the time he is so informed, or

(b) it is produced —

(i) within seven days after the date on which he is so informed, or

³⁴ This means that, for example, a person cannot be convicted of the offence of aiding and abetting an offence of contravention of regulations under this section.

(ii) as soon as is reasonably practicable,

at Stanley Police Station, or

(c) where it is not produced at Stanley Police Station, it is not reasonably practicable for it to be produced there before the day on which the proceedings are commenced.

- (5) For the purposes of subsection (4), the laying of the information shall be treated as the commencement of the proceedings.
- (6) Regulations under this section requiring the wearing of seat belts for persons riding in motor vehicles shall not apply to children under the age of fourteen years³⁵.

Restriction on carrying children not wearing seat belts in motor vehicles³⁶

21.—(1) Except as provided by regulations, where a child under the age of fourteen years is in the front of a motor vehicle, a person must not without reasonable excuse drive the vehicle on a road unless the child is wearing a seat belt in conformity with regulations.

(2) It is an offence for a person to drive a motor vehicle in contravention of subsection (1) of this section.

(3) Except as provided by regulations, where a child under the age of fourteen years is in the rear of the motor vehicle and any seat belt is fitted in the rear of that vehicle, a person must not without reasonable excuse drive the vehicle on a road unless the child is wearing a seat belt in conformity with regulations.

(4) Except as provided by regulations, where —

(a) a child who is under the age of twelve years and less than 150 centimetres in height is in the rear of a passenger car,

(b) no seat belt is fitted in the rear of the passenger car, and

(c) a seat in the rear of the passenger car is provided with a seat belt but is not occupied by any person, a person must not without reasonable excuse drive the passenger car on a road.

(5) It is an offence for a person to drive a motor vehicle in contravention of subsection (3) or (4) of this section.

³⁵ This subsection merely provides that *regulations under this section* shall not apply in relation to children under 14 years. The following section makes provision in relation to the wearing of seat belts by children. The UK legislation is extremely complex and practically incomprehensible for the layman to understand, and yet there appears to be no alternative to adopting it as the background to Falkland Islands law on the subject.

³⁶ The requirements in relation to the wearing of seatbelts by children will require careful consideration. There are practical problems in relation to the rear seats of some older Landrovers.

(6) Provision may be made by regulations —

(a) excepting from the prohibition in subsection (1), (3) or (4) of this section children of any prescribed description, vehicles of a prescribed class or the driving of vehicles in such circumstances as may be prescribed,

(b) defining in relation to any class of vehicle what part of the vehicle is to be regarded as the front of the vehicle for the purposes of subsection (1) or (4) of this section or as the rear of the vehicle for the purposes of subsection (3) or (4),

(c) prescribing for the purposes of subsection (1) or (3) of this section the descriptions of seat belt to be worn by children of any prescribed description and the manner in which such seat belt is to be fixed and used.

(7) Without prejudice to the generality of subsection (6) of this section, regulations made by virtue of paragraph (c) of that subsection may —

(a) make different provision in relation to different vehicles and different circumstances,

(b) authorise the wearing of a seat belt approved under the law of the United Kingdom or any other country.

(8) Regulations made for the purposes of subsection (3) or (4) of this section—

(a) shall include an exemption for any child holding a valid certificate signed by a medical practitioner to the effect that it is inadvisable on medical grounds for him to wear a seat belt, and

(b) may include an exemption for any child holding a certificate to the like effect which was issued in the United Kingdom or any other country and which, under the law of the country in which it was issued, is valid for purposes corresponding to those of this section,

but for such regulations may make either of those exemptions subject to such conditions as may be prescribed.

(9) If the driver of a motor vehicle is informed by a police officer that he may be prosecuted for an offence under subsection (5), he is not in proceedings for that offence entitled to rely on an exception afforded to a child by a certificate referred to in subsection (8) unless —

(a) it is produced to the police officer at the time he is so informed, or

(b) it is produced —

(i) within seven days after the date on which he is so informed, or

(ii) as soon as is reasonably practicable,

at Stanley Police station, or

(c) where it is not produced at Stanley Police station, it is not reasonably practicable for it to be produced there before the day on which the proceedings are commenced.

(10) For the purpose of subsection (9), the laying of the information on the accused shall be treated as the commencement of the proceedings.

(11) In this section —

“passenger car” means a motor vehicle which —

- (a) is constructed or adapted for use for the carriage of passengers and is not a goods vehicle,
- (b) has no more than eight seats in addition to the driver’s seat,
- (c) has four or more wheels.
- (d) has a maximum design speed exceeding 25 kilometres per hour, and
- (e) has a maximum laden weight not exceeding 3.5 tonnes,

“regulations” mean regulations made by the Governor under this section, and

“seat belt” includes any description of a restraining device for a child and any reference to wearing a seat belt is to be construed accordingly.

Safety equipment for children in motor vehicles

22.—(1) The Governor may make regulations prescribing (by reference to shape, construction or any other quality) types of equipment of any description to which this section applies that are recommended as conducive to the safety in the event of accident or prescribed classes of children in prescribed classes of motor vehicles.

(2) Regulations under this section may make provision for securing that when equipment of the type prescribed by the regulations is sold or offered for sale as equipment which is so conducive—

(a) appropriate information is provided in relation to it in such manner as may be prescribed, and

(b) inappropriate information is not provided in relation to it.

(3) Except in such circumstances as may be prescribed, if a person sells, or offers for sale, equipment of any description for which a type is prescribed under this section as equipment which is so conducive and that equipment —

(a) is not of a type so prescribed, or

(b) is sold or offered for sale in contravention of regulations under this section,

subject to subsection (5) of this section, he commits an offence.

(4) Except in such circumstances as may be prescribed, if a person sells, or offers for sale, equipment of any description for which a type is prescribed under this section as equipment conducive to the safety in the event of accident —

(a) of children not of a class prescribed in relation to equipment of that type or

(b) of children in motor vehicles not of a class prescribed in relation to equipment of that type,

subject to subsection (5) of this section, he commits an offence.

(5) A person shall not be convicted of an offence under this section if in good faith he relied upon information supplied to him by or on behalf of the person from whom he obtained the equipment.

(6) The provisions of Schedule 1 to this Ordinance shall have effect in relation to contraventions of this section.

(7) Regulations under this section may make different provision in relation to different circumstances.

(8) This section applies to equipment of any description for use in the motor vehicle consisting of —

(a) a restraining device for a child or for a carry cot, or

(b) equipment designed for use by a child in conjunction with any description of restraining device.

(9) References in this section to selling or offering for sale include respectively references to letting on hire and offering to let on hire.

Wearing of protective headgear

23.—(1) The Governor may make regulations requiring, subject to such exceptions as may be specified in the regulations, persons driving or riding (otherwise than in side-cars) on motor cycles of any class specified in the regulations to wear protective headgear of such description as may be so specified.

(2) A requirement imposed by regulations under this section shall not apply to any follower of the Sikh religion while he is wearing a turban.

(3) Regulations under this section may make a different provision in relation to different circumstances.

(4) A person who drives or rides on a motorcycle in contravention of regulations under this section commits an offence; but notwithstanding any enactment or rule of law no person other than the person actually committing the contravention is guilty of an offence by reason of the contravention unless the person actually committing the contravention is a child under the age of sixteen years.

Protective helmets for motor cyclists

24.—(1) The Governor may make regulations prescribing (by reference to shape, construction or any other quality) types of helmet recommended as affording protection to persons on or in motorcycles, or motorcycles of different classes, from injury in the event of accident.

(2) If a person sells, or offers for sale, a helmet as a helmet for affording such protection and the helmet is neither —

(a) of a type prescribed under this section, nor

(b) of a type authorised under regulations made under this section and sold or offered for sale subject to any conditions specified in the authorisation,

subject to subsection (3) of this section he commits an offence.

(3) Section 22(5) shall have effect in relation to an offence under this section as it has in relation to offences under section 22.

(4) The provisions of Schedule 1 to this Ordinance shall have effect in relation to contraventions of this section.

(5) In this section and that Schedule “helmet” includes any head-dress and references in this section to selling or offering for sale include respectively references to letting on hire and offering to let on hire.

Authorisation of head-worn appliances for use on motor cycles

25.—(1) The Governor may make regulations prescribing (by reference to shape, construction or any other quality) types of appliance of any description to which this section applies as authorised for use by persons driving or riding (otherwise than in side-cars on motorcycles of any class specified in the regulations).

(2) Regulations under this section —

(a) may impose restrictions or requirements with respect to the circumstances in which appliances of any type prescribed by the regulations may be used, and

(b) may make different provision in relation to different circumstances.

(3) A person commits an offence who, driving or riding on a motorcycle on a road uses an appliance of any description for which a type is prescribed under this section if the appliance —

(a) is not of a type so prescribed, or

(b) is otherwise used in contravention of regulations under this section.

(4) Subject to subsection (5) of this section, a person commits an offence who sells, or offers for sale, an appliance of any such description as authorised for use by persons on or in motorcycles, or motorcycles of any class, and that appliance is not of a type prescribed under this section as authorised for such use.

(5) Subsection (5) of section 22 of this Ordinance shall have effect in relation to an offence under this section as it has in relation to offences under section 22.

(6) The provisions of Schedule 1 to this Ordinance shall have effect in relation to contravention of subsection (4).

(7) This section applies to appliances of any description designed or adapted for use —

(a) with any headgear, or

(b) by being attached to or placed upon the head,

(as, for example, eye protectors or ear phones).

(8) References in this section to selling or offering for sale include respectively references to letting on hire and offering to let on hire.

Stopping on verges, etc, or in dangerous positions, etc

Prohibition of parking of heavy commercial vehicles on verges and footways

26.—(1) Subject to subsection (2) of this section, a person who parks a heavy commercial vehicle wholly or partly —

(a) on the verge of a road; or

(b) on a footway,

commits an offence.

(2) A person shall not be convicted of an offence under this section in respect of a vehicle if he proves to the satisfaction of the court —

(a) that it was parked in accordance with permission given by a police officer in uniform,

(b) that it was parked in contravention of this section for the purpose of saving life or extinguishing fire or meeting any other like emergency, or

(c) that it was parked in contravention of this section but the conditions specified in subsection (3) were satisfied.

(3) The conditions mentioned in subsection (2)(c) of this section are —

(a) that the vehicle was parked on the verge of a road or on a footway for the purpose of loading or unloading; and

(b) that the loading or unloading of the vehicle could not have been satisfactorily performed if it had not been parked on the footway or verge, and

(c) that the vehicle was not left unattended at any time when it was so parked.

Definition of “heavy commercial vehicle” for the purposes of section 26

27.—(1) In section 26 of this Ordinance, “heavy commercial vehicle” means any goods vehicle which has an operating weight exceeding 7.5 tonnes.

(2) The operating weight of a goods vehicle for the purposes of this section is —

(a) in the case of a motor vehicle not drawing a trailer or in the case of a trailer, its maximum laden weight,

(b) in the case of an articulated vehicle, its maximum laden weight (if it has one) and otherwise the aggregate maximum laden weight of all the individual vehicles forming part of that articulated vehicle, and

(c) in the case of a motor vehicle (other than an articulated vehicle) drawing one or more trailers, the aggregate maximum laden weight of the motor vehicle and the trailer or trailers attached to it.

(3) In this section “articulated vehicle” means a motor vehicle with a trailer so attached to it as to be partially superimposed upon it; and reference to the maximum laden weight of a vehicle are references to the total laden weight which must not be exceeded in the case of that vehicle if it is to be used in the Falkland Islands without contravening the provisions of the Highways (Weight Limits) Ordinance 2004 applying at the time of the parking of the heavy commercial vehicle on the road which the verge or footway referred to in section 26(1) relates.

(4) In this section, and in the definition of “goods vehicle” in section 2 of this Ordinance as it applies for the purposes of this section, “trailer” means any vehicle other than a motor vehicle.

Leaving vehicles in dangerous positions

28. If a person in charge of a vehicle causes or permits the vehicle or a trailer drawn by it to remain at rest on a road in such a position or in such condition or in such circumstances as to involve a danger of injury to other persons using the road, he commits an offence.

Causing danger to road-users

29.—(1) A person commits an offence if he intentionally and without lawful authority or reasonable excuse —

- (a) causes anything to be on or over a road, or
- (b) interferes with a motor vehicle, trailer or cycle, or
- (c) interferes (directly or indirectly) with traffic equipment,

in such circumstances that it would be obvious to a reasonable person that to do so would be dangerous.

(2) In subsection (1) “dangerous” refers to danger either of injury to any person while on or near a road, or of serious damage to property on or near a road; and in determining for the purpose of that subsection what would be obvious to a reasonable person in a particular case, regard should be had not only to the circumstances of which he could be expected to be aware but also to any circumstances shown to have been within the knowledge of the accused.

(3) In subsection (1) “traffic equipment” means —

- (a) anything lawfully placed on or near a road by the Crown as highway authority;
- (b) a traffic sign lawfully placed on or near a road by any other person;
- (c) any fence, barrier or light lawfully placed on or near a road by the Crown as highway authority or by a police officer or a person acting under the instructions (whether general or specific) of the chief police officer.

(4) For the purposes of subsection (3) of this section anything placed on or near a road shall unless the contrary is proved be deemed to have been lawfully placed there.

(5) In this section “road” does not include a footpath³⁷.

Other restrictions in interest of safety

Restriction of carriage of persons on motor cycles

30.—(1) No more than one person in addition to the driver may be carried on a motor cycle.

³⁷ But note the difference (see s.2(1)) between “footpath” and “footway”.

(2) No person in addition to the driver may be carried on a motor cycle otherwise than sitting astride the motor cycle and on a proper seat securely fixed to the motor cycle behind the driver's seat.

(3) If a person is carried on a motor cycle in contravention of this section, the driver of the motor cycle commits an offence.

Restriction of carriage of persons on bicycles

31.—(1) Not more than one person may be carried on a road on a bicycle not propelled by mechanical power unless it is constructed or adapted for the carriage of more than one person.

(2) In this section —

(a) references to a person carried on a bicycle include references to a person riding the bicycle, and

(b) "road" includes a footway and a footpath.

(3) If a person is carried on a bicycle in contravention of subsection (1) of this section, each of the persons carried commits an offence.

Tampering with motor vehicles

32. A person commits an offence who, while a motor vehicle is on a highway (whether or not the highway is a road to which this Ordinance applies) or on a parking place (whether provided by the Crown or not) he —

(a) gets onto the vehicle, or

(b) tampers with the brake or other part of its mechanism,

without lawful authority or reasonable cause³⁸.

Holding or getting on to vehicle in order to be towed or carried

33.—(1) If, for the purpose of being carried, a person without lawful authority or reasonable cause takes or retains hold of, or gets onto, a motor vehicle or trailer while in motion on a highway he commits an offence³⁹.

(2) If, for the purpose of being drawn, a person takes or retains hold of a motor vehicle or trailer while in motion on a highway he commits an offence.

³⁸ The essence of the offence is dangerous behaviour and it is irrelevant whether the dangerous behaviour in relation to the motor vehicle (which may cause an accident) is on a "road" to which the Road Traffic Ordinance generally applies or not for that reason the clause has been drafted in such a way that it will have effect e.g. in relation to roads in Camp which are not "roads" for the purposes of the Road Traffic Ordinance.

³⁹ The offences under this and the preceding and following clauses are not limited to "roads" as defined but may be committed in relation to any highway. For rationale, see following footnote.

Cycling offences and cycle racing

Dangerous cycling

34.—(1) A person who rides a cycle on a highway⁴⁰ dangerously commits an offence.

(2) For the purposes of subsection (1) a person is to be regarded as riding dangerously if (and only if) —

(a) the way he rides falls far below what would be expected of a competent careful cyclist, and

(b) it will be obvious to a competent and careful cyclist that riding in that way would be dangerous.

(3) In subsection (2) above “dangerous” refers to danger either of injury to any person or of serious damage to property; and in determining for the purposes of that subsection what would be obvious to a competent and careful cyclist in a particular case, regard shall be had not only to the circumstances of which he could be expected to be aware but also to any circumstances shown to have been within the knowledge of the accused.

Careless, and inconsiderate, cycling

35. If a person rides a cycle on a road without due care and attention, or without reasonable consideration for other persons using the road, he commits an offence.

Cycling when under influence of drink or drugs

36. A person who, when riding a cycle on a road or other public place, is unfit to ride through drink or drugs (that is to say, is under the influence of drink or a drug to such extent as to be incapable of having proper control of the cycle) commits an offence.

Electrically assisted pedal cycles or scooters⁴¹

37.—(1) An electrically assisted pedal cycle or scooter of a class specified in regulations under this Ordinance as being one which is not to be treated as being a motor vehicle shall not be driven on a road by a person under the age of fourteen.

(2) For the purposes of this section, “scooter” means a vehicle which is propelled by the action of feet of the rider or riders of the scooter upon the ground below the vehicle.

(3) A person who —

(a) drives such a pedal cycle or scooter, or

⁴⁰ This offence is not limited to roads to which all the provisions of the Road Traffic Ordinance apply. The essence of the offence is danger of injury or death to another person or serious damage to property.

⁴¹ N.B. The clause would not forbid electrically assisted pedal cycles or scooters of a class specified by regulations being driven on a footway.

(b) knowing or suspecting that another person is under the age of fourteen, causes or permits him to drive such a pedal cycle or scooter,

in contravention of subsection (1) of this section commits an offence.

Directions to traffic and to pedestrians and traffic signs

Drivers to comply with traffic directions

38.—(1) Where a police officer is for the time being engaged in the regulation of traffic in a road, a person driving or propelling a vehicle who neglects or refuses —

(a) to stop the vehicle, or

(b) to make it proceed in, or keep to, a particular line of traffic,

when directed to do so by the police officer in the execution of his duty commits an offence.

(2) Where —

(a) a traffic survey of any description is being carried out on or in the vicinity of a road, and

(b) a police officer gives to a person driving or propelling a vehicle a direction —

(i) to stop the vehicle,

(ii) to make it proceed in, or keep to, a particular line of traffic, or

(iii) to proceed to a particular point on or near the road on which the vehicle is being driven or propelled,

being a direction given for the purposes of the survey (but not a direction requiring any person to provide any information for the purposes of a traffic survey),

the person commits an offence if he neglects or refuses to comply with the direction.

(3) The power to give such a direction as is referred to in subsection (2) of this section for the purposes of a traffic survey shall be so exercised as not to cause any unreasonable delay to a person who indicates that he is unwilling to provide any information for the purposes of the survey.

Drivers to comply with traffic signs

39.—(1) Where a traffic sign, being a sign —

(a) of the prescribed size, colour and type, or

(b) of another character authorised by or under the provisions of any written law,

has been lawfully placed on or near a road, a person driving or propelling a vehicle who fails to comply with the indication given by the sign commits an offence.

(2) A traffic sign shall not be treated for the purposes of this section as having been lawfully placed unless either —

(a) the indication given by the sign is an indication of a statutory prohibition, restriction or requirement, or

(b) it is expressly provided by or under any provision of written law that this section shall apply to the sign or to signs of a type of which the sign is one;

and, where the indication mentioned in paragraph (a) of this subsection is of the general nature only of a prohibition, restriction or requirement to which the sign relates, a person shall not be convicted of failure to comply with the indication unless he has failed to comply with the prohibition, restriction or requirement to which the sign relates.

(3) For the purposes of this section a traffic sign placed on or near a road shall be deemed —

(a) to be of the prescribed size, colour and type or of another character authorised by written law, and

(b) subject to subsection (2) of this section (to have been lawfully so placed),

unless the contrary is proved.

(4) Where a traffic survey of any description is being carried out on or in the vicinity of a road, this section applies to a traffic sign by which a direction is given —

(a) to stop a vehicle,

(b) to make it proceed in, or keep to, a particular line of traffic, or

(c) to proceed to a particular point on or near the road on which the vehicle is being driven or propelled,

being a direction given for the purposes of the survey (but not a direction requiring any person to provide any information for the purposes of the survey).

(5) Regulations made by the Governor under this subsection may specify any traffic sign for the purposes of column 4 of the entry in Part I of Schedule 4 relating to offences under this section (offences committed by failing to comply with certain signs involving discretionary disqualification).

Directions to pedestrians

40. Where a police officer in uniform is for the time being engaged in the regulation of vehicular traffic in a road, a person on foot who proceeds across or along the carriageway in contravention of a direction to stop given by the police officer in the execution of his duty, either to persons on foot or to persons on foot and other traffic, commits an offence.

Promotion of road safety

Road code

41.—(1) The Road Code shall continue to have effect, and, where it has from time to time been revised in accordance with subsection (2), as so revised.

(2) The Governor may from time to time cause the Road Code to be revised by revoking, varying, amending or adding to the provisions of that Code in such manner as he thinks fit, but no revision of the Code prepared pursuant to this subsection shall have effect until such time as it has been approved by a resolution of the Legislative Council and has thereafter been published in the *Gazette*.

(3) A failure on the part of a person to observe a provision of the Road Code shall not of itself render that person liable to criminal proceedings but any such failure may in any proceedings (whether civil or criminal) be relied upon by any party to the proceedings as tending to establish or to negative any liability which is in question in those proceedings.

(4) The Road Code may incorporate either directly or by reference any provisions of the Highway Code specified in the Road Code.

(5) In this section “the Highway Code” means the Highway Code having effect in the United Kingdom under the provisions of section 38 of the Road Traffic Act 1988 or any statutory modification or re-enactment of that provision for the time being in force and “the Road Code” in subsection (1) of this section means the Road Code published under section 13(1) of the repealed Ordinance.

PART III CONSTRUCTION AND USE OF VEHICLES AND EQUIPMENT

Using vehicle in dangerous condition

Using vehicle in dangerous condition etc

42. A person commits an offence if he uses, or causes or permits another to use, a motor vehicle or trailer on a road when —

- (a) the condition of the motor vehicle or trailer, or of its accessories or equipment,
- (b) the purpose for which it is used,

(c) the number of passengers carried by it, or the manner in which they are carried, or

(d) the weight, position or distribution of its load, or the manner in which it is secured,

is such that the use of the motor vehicle or trailer involves a danger of injury to any person.

General regulation of construction, use etc

Regulation of construction, weight, equipment and use of vehicles

43.—(1) The Governor may make regulations generally as to the use of motor vehicles and trailers on roads, their construction and equipment and the conditions under which they may be so used. Subsections (2) to (4) of this section do not affect the generality of this subsection.

(2) In particular, the regulations may make provision with respect to any of the following matters —

(a) the width, height and length of motor vehicles and trailers and the load carried by them, the diameter of wheels, and the width, nature and condition of tyres, of motor vehicles and trailers,

(b) the emission or consumption of smoke, fumes or vapour and the emission of sparks, ashes and grit,

(c) noise,

(d) the maximum weight unladen of heavy locomotives and heavy motor cars, and the maximum weight laden of motor vehicles and trailers, and the maximum weight to be transmitted to the road or any specified area of the road by a motor vehicle or trailer of any class or by any part or parts of such a vehicle or trailer in contact with the road, and the conditions under which the weights may be required to be tested,

(e) the towing of or drawing of vehicles by motor vehicles,

(f) the number and nature of brakes, and for securing the brakes, silencers and steering gear are efficient and kept in proper working order,

(g) lighting equipment and reflectors,

(h) the testing and inspection by persons authorised by or under the regulations, of the brakes, silencers, steering gear, tyres, lighting equipment and reflectors of motor vehicles and trailers on any premises where they are (if the owner of the premises consents),

(i) speed limiters,

(j) the appliances to be fitted for —

- (i) signalling the approach of a motor vehicle, or
 - (ii) enabling the driver of a motor vehicle to become aware of the approach of another vehicle from the rear, or
 - (iii) intimating any intended change of speed or direction of a motor vehicle,
- and the use of any such appliance, and for securing that any such appliance is efficient and kept in proper working order,
- (k) for prohibiting the use of appliances fitted to motor vehicles for signalling their approach, being appliances for signalling by sound, at any time, or on or in any roads or localities, specified in the regulations.
- (3) The Governor may, as respects goods vehicles, make regulations under this section —
- (a) prescribing other descriptions of weight which are not to be exceeded in the case of such vehicles.
 - (b) providing that weights of any description or other particulars which are to be marked on particular goods vehicles may be determined in accordance with such regulations.
- (4) Regulations under this section with respect to lighting equipment and reflectors —
- (a) may require that lamps be kept lit at such times and in such circumstances as may be specified in the regulations, and
 - (b) may extend, in like manner as to vehicles and trailers, to vehicles of any description used on roads, whether or not they are mechanically propelled.
- (5) Regulations under this section with respect to speed limiters may include provision —
- (a) as to the checking and sealing of speed limiters by persons authorised in accordance with the regulations and the making of charges by them,
 - (b) imposing or providing for the imposition of conditions to be complied with by authorised persons,
 - (c) as to the withdrawal of authorisations.
- (6) In this Part “construction and use requirements” means requirements, whether applicable generally or at specified times or in specified circumstances, imposed under this section.

Breach of requirement as to brakes, steering gear or tyres

44. A person who —

(a) contravenes or fails to comply with a construction and use requirement as to brakes steering-gear or tyres, or

(b) uses on a road a motor vehicle or trailer which does not comply with such a requirement, or causes or permits a motor vehicle or trailer to be so used,

(c) commits an offence.

Breach of requirement as to weight: goods and passenger vehicles

45.—(1) A person who —

(a) contravenes or fails to comply with a construction and use requirement as to any description of weight applicable to —

(i) a goods vehicle, or

(ii) a motor vehicle or trailer adapted to carry more than eight passengers, or

(b) uses on a road a vehicle which does not comply with such a requirement, or causes or permits a vehicle to be so used,

commits an offence.

(2) In any proceedings for an offence under this section in which there is alleged contravention of or failure to comply with a construction and use requirement as to any description of weight applicable to a goods vehicle, it shall be a defence to prove either —

(a) that at the time when the vehicle was being used on the road —

(i) it was proceeding to a weighbridge which was the nearest available one to the place where the loading of the vehicle was completed for the purpose of being weighed, or

(ii) it was proceeding from a weighbridge after being weighed to the nearest point at which it was reasonably practicable to reduce the weight to the relevant limit, without causing an obstruction on any road, or

(b) in a case where the limit of that weight was not exceeded by more than five percent —

(i) that that limit was not exceeded at the time when the load of the vehicle was originally completed, and

(ii) that since that time no person has made any addition to the load.

Breach of other construction and use requirements

46. A person who —

(a) contravenes or fails to comply with any construction or use requirement other than one within section 44(a) or 45(1)(a) of this Ordinance; or

(b) uses on a road a motor vehicle or trailer which does not comply with such a requirement, or causes or permits a motor vehicle or trailer to be so used,

commits an offence.

Temporary exemption from application of regulations under section 43

47.—(1) Subject to subsections (2) to (4) of this section, where any regulations under section 43 contain provisions varying the requirements as regards the construction or weight of any class of vehicles, provision shall be made by the regulations for exempting from those provisions for such period, not being less than five years, as may be specified in the regulations any vehicle of that class registered under Part XIV of this Ordinance before the expiration of one year from the making of the regulations.

(2) No such provision contained in regulations under section 43 of this Ordinance as imposes or varies requirements with respect to the braking systems with which motor vehicles must be equipped shall be taken, for the purposes of subsection (1) of this section or of any other provision of the regulations, to be one relating to the construction of vehicles.

(3) Where regulations under section 43 of this Ordinance contain provisions varying the requirements as regards the construction or weight of any class of vehicle, and the Governor is satisfied —

(a) that it is requisite that those provisions shall apply at a date specified in the regulations to vehicles registered before the expiration of one year from the making of the regulations, or to such of them as are specified in the regulations, and

(b) that no undue hardship or inconvenience will be caused by their application then to those vehicles,

then, if the regulations state that the Governor is so satisfied, subsection (1) of this section shall not apply to those provisions.

(4) Subsection (1) of this section shall not apply in relation to —

(a) regulations made with respect to any description of weight of goods vehicles, other than their maximum unladen weight, or

(b) regulations made by virtue of section 43(3) of this Ordinance.

Tests of motor vehicles

Bringing into force of regulations under section 49⁴²

48. Regulations under section 49 shall not come into force until their bringing into force has been approved by a resolution of the Legislative Council.

Tests of satisfactory condition of vehicles

49.—(1) This section applies to all motor vehicles used on roads effect for the purpose of ascertaining whether the following requirements are complied with, namely —

(a) the prescribed statutory requirements relating to the construction and condition of motor vehicles or their accessories or equipment, and

(b) the requirement that the condition of motor vehicles should not be such that their use on a road would involve a danger of injury to any person.

(2) The Governor may by regulations make provision —

(a) for the examination of vehicles submitted for examination under this section, and

(b) for the issue, where it is found on such an examination that the requirements mentioned in subsection (1) are complied with, of a certificate (in this Ordinance referred to as a “test certificate”) that at the date of the examination the requirements were complied with in relation to the vehicle.

(3) Examinations for the purposes of this section shall be carried out by examiners appointed by the Governor under section 55 of this Ordinance.

(4) Where a test certificate is refused the examiner must issue a notification of the refusal stating the grounds of the refusal.

(5) The Governor if he makes regulations under subsection (2) shall include in those regulations provisions requiring the chief police officer to maintain records containing such particulars as may be required by such regulations of —

(a) vehicles submitted for examination under this section, and

(b) the carrying out of and the results of the examinations.

⁴² The following clauses are closely modelled on provisions of the Road Traffic Act 1988 in relation to what is commonly called “the MOT test”. However, it is not proposed that the requirements of imposed by regulations as to the standards of the test should replicate the requirements in force in the United Kingdom. Less stringent requirements have been imposed in other countries, and other overseas territories.

(6) Without prejudice to subsection (5) of this section, the Governor may make regulations under this section for the purpose of giving effect to this section and for prescribing anything authorised by this section and section 50 to be prescribed.

Regulations under section 49

50. Regulations under section 49 may, in particular, make provision as to —

- (a) the authorisation of examiners,
- (b) the imposition of conditions to be complied with by examiners,
- (c) the circumstances in which a person ceases to be an authorised examiner,
- (d) the manner in which, conditions under which and apparatus with which examinations are carried out, the maintenance of that apparatus in an efficient state, and the inspection of premises at which and apparatus with which examinations are being, or are to be being, carried out,
- (e) the supervision of examinations and of the premises at which examinations are carried out,
- (f) the manner in which applications may be made for the examination of vehicles under section 49, the manner in which and time within which appeals may be brought under subsection (4) of that section, the information to be supplied and documents to be produced on such an application, examination or appeal, the fees to be paid on such an application or appeal, and the repayment of the whole or part of the fee paid on such an appeal where it appears to the Chief Executive that there were substantial grounds for contesting the whole or part of the decision appealed against,
- (g) the form of, and particulars to be contained in, test certificates and notifications of the refusal of test certificates and the conditions which must be satisfied before such certificates and notifications may be issued,
- (h) the issue of duplicates or copies of test certificates and the fees to be paid on applications for such duplicates or copies,
- (i) the correction of errors in test certificates,
- (j) the keeping by authorised examiners of registers of test certificates in the prescribed form and containing the prescribed particulars, and the inspection of such registers by such persons and in such circumstances as may be prescribed, and
- (k) the keeping of records by authorised examiners and the providing by them of returns and information to the Chief Executive or the chief police officer, as the regulations may provide.

Evidence from records of vehicle examinations

51.—(1) A statement to which this section applies is admissible in any proceedings as evidence of any fact stated in it with respect to —

- (a) the issue of a test certificate in respect of a vehicle, and
- (b) the date of issue of such a certificate,

to the same extent as oral evidence of that fact is admissible in the proceedings.

(2) This section applies to a statement contained in a document purporting to be —

- (a) part of the records maintained under section 49(6),
- (b) a copy of a document forming part of those records, or
- (c) a note of any information contained in those records, and to be authenticated by a person authorised to do so by the Chief Executive.

(3) In this section —

“document” means anything in which information of any description is recorded;

“copied”, in relation to a document, means anything on to which information recorded in the document has been copied, by whatsoever means and whether directly or indirectly; and

“statement” means any representation of fact, however made.

Obligatory test certificates

52.—(1) A person who uses on a road at any time, or causes or permits to be so used, a motor vehicle to which this section applies, and as respects which no test certificate has been issued within the appropriate period before that time, commits an offence. In this section and in section 53, the “appropriate period” means a period of twelve months or such other period as may be prescribed.

(2) The motor vehicles to which this section applies at any time are those having a date of manufacture not less than three years before that time.

(3) This section does not apply to vehicles of such classes as may be prescribed and does not apply—

- (a) to the use of a vehicle before it is sold or supplied by retail; and
- (b) the use of a vehicle to which a motor dealer has assigned a mark under section 231 before it is registered by the chief police officer under section 228(2).

(4) The Governor may make regulations for the purposes of this section and may by such regulations exempt from subsection (1) of this section the use of vehicles —

(a) for such purposes as may be prescribed, or

(b) the use of vehicles in any such area or on such roads as may be prescribed⁴³.

(5) The Governor may by regulations under subsection (4) exempt from subsection (1) of this section the use of vehicles for such purposes as may be prescribed.

(6) For the purposes of this section the date of manufacture of a vehicle shall be taken to be the last day of the year during which it's final assembly is completed, except where after that day modifications are made to the vehicle before it is sold or supplied by retail, and in that excepted case shall be taken to be the last day of the year during which the modifications are completed.

(7) The Governor may by Order direct that subsection (2) of this section shall have effect with the substitution, for three years of such other period (not being more than ten years) as may be specified in the Order.

(8) Regulations under subsection (4) shall not come into force until they have been approved by resolution of the Legislative Council.

Supplementary provisions about test certificates

53.—(1) A test certificate issued in respect of a vehicle within the period of one month ending immediately before the date on which section 47 of this Ordinance first applies to the vehicle shall be treated for the purposes of that section as if issued at the end of that period.

(2) Where —

(a) within the appropriate period after a test certificate is issued or treated for the purposes of section 51 of this Ordinance as issued, but

(b) not earlier than one month before the end of that period,

a further test certificate is issued as respects the same vehicle, the further certificate shall be treated for the purposes of that section as if he should at the end of the appropriate period.

(3) Where the particulars contained in a test certificate in accordance with regulations made under section 49 of this Ordinance include a date of expiry falling later, but not more than one month later, than the end of the appropriate period after the date on which it issued —

(a) the certificate shall be deemed to have been issued in respect of the same vehicle as an earlier test certificate, and

⁴³ This would enable roads in Camp or in part of Camp to be exempted from the requirement for test certificates

(b) the date on which it was issued shall be deemed to have been a date falling within the last month of the appropriate period after the date on which that earlier certificate was issued or treated for the purpose of section 51 of this Ordinance as issued;

and any date of expiry contained in a test certificate shall be deemed to have been entered in accordance with regulations under section 49 unless the contrary is proved.

Appeals against determinations

54.—(1) Any person aggrieved by determination made on an examination under regulations under section 49 or 52(4) by the person in charge of the examination may appeal to the Chief Executive.

(2) On the appeal the Chief Executive must cause the vehicle to be re-examined by an officer appointed by him for the purpose and must make such determination on the basis of the re-examination as he thinks fit.

(3) Regulations under section 49 may make the like provision in relation to a determination on an appeal under this section as they make in relation to a determination on an examination under the regulations.

Vehicle examiners

Appointment of examiners

55.—(1) The Governor shall appoint such examiners as he considers necessary for the purpose of carrying out the functions conferred on them by this Ordinance.

(2) An examiner appointed under this section shall act under the general directions of the Governor.

(3) In this Part “vehicle examiner” means an examiner appointed under this section.

Testing vehicles on roads

Testing of condition of vehicles on roads

56.—(1) An authorised examiner may test a motor vehicle on a road for the purpose of —

(a) ascertaining whether the following requirements, namely —

(i) the construction and use requirements, and

(ii) the requirement that the condition of the vehicle is not such that its use on a road would involve a danger of injury on any person,

are complied with as respects the vehicle; and

(b) bringing to the notice of the driver any failure to comply with those requirements.

- (2) For the purpose of testing of vehicle under this section the examiner —
- (a) may require the driver to comply with his reasonable instructions; and
 - (b) may drive the vehicle.
- (3) A vehicle shall not be required to stop for a test except by a police officer in uniform.
- (4) The following persons may act as authorised examiners for the purposes of this section —
- (a) a person appointed as an examiner under section 55;
 - (b) a person appointed to act for the purposes of this section by the Governor; and
 - (c) a police officer authorised so to act by or on behalf of the chief police officer.
- (5) On the examiner proceeding to test a vehicle under this section, the driver may, unless the test is required under subsection (6) or (7) to be carried out forthwith, elect that the test shall be deferred to a time, and carried out at a place, fixed in accordance with Schedule 2 to this Ordinance, and the provisions of that Schedule shall apply accordingly.
- (6) Where it appears to a police officer that, by reason of an accident having occurred owing to the presence of the vehicle on a road, it is requisite that a test should be carried out forthwith, he may require it to be so carried out and, if he is not to carry it out himself, may require that the vehicle shall not be taken away until the test has been carried out.
- (7) Where in the opinion of a police officer the vehicle is apparently so defective that it ought not to be allowed to proceed without a test being carried out, he must require the test to be carried out forthwith.
- (8) If a person obstructs an authorised examiner acting under this section, or fails to comply with a requirement of this section or Schedule 2, he commits an offence.
- (9) In this section and in Schedule 2 —
- (a) “test” includes “inspect” or “inspection”, as the case may require; and
 - (b) references to a vehicle includes references to a trailer drawn by it.

Inspection of public passenger vehicles and goods vehicles

Inspection of public passenger vehicles and goods vehicles

57.—(1) A vehicle examiner —

- (a) may at any time, on production if so required of his authority, inspect any vehicle to which this section applies and for that purpose detain the vehicle during such time as is required for the inspection, and
 - (b) may at any time which is reasonable having in regard to the circumstances of the case enter any premises on which he has reason to believe that such a vehicle is kept.
- (2) The power conferred by subsection (1) of this section to inspect a vehicle includes power to test it and to drive it for the purpose of testing it.
- (3) A person commits an offence who intentionally obstructs an examiner in the exercise of his powers under subsection (1) of this section.
- (4) A vehicle examiner or a police officer in uniform may at any time require any person in charge of a vehicle to which this section applies and which is stationary on a road to proceed with the vehicle for the purpose of having it inspected under this section to any place where an inspection can be suitably carried out (not being more than five miles from the place where the requirement is made).
- (5) A person commits an offence who being in charge of a vehicle refuses or neglects to comply with a requirement made under subsection (4).
- (6) This section applies to —
- (a) goods vehicles;
 - (b) public service vehicles;
 - (c) taxis;
 - (c) motor vehicles which are not public service vehicles or taxis but are adapted to carry more than eight passengers.

Prohibition of unfit vehicles

Power to prohibit driving of unfit vehicles

58.—(1) If on any inspection of a vehicle under section 43, 49, 56 or 57 of this Ordinance it appears to a vehicle examiner that owing to any defects in the vehicle it is, or is likely to become, unfit for service, he may prohibit the driving of the vehicle on a road —

- (a) absolutely, or
- (b) for one or more specified purposes, or
- (c) except for one or more specified purposes.

(2) If on any inspection of a vehicle under any of the provisions mentioned in subsection (1) of this section it appears to an authorised police officer that owing to any defects in the vehicle driving it (or driving it for any particular purpose or purposes or for any except one or more particular purposes) would involve a danger of injury to any person, he may prohibit the driving of the vehicle on a road —

- (a) absolutely, or
- (b) for one or more specified purposes, or
- (c) except for one or more specified purposes.

(3) A prohibition under this section comes into force as soon as there is a notice under subsection (6) has been given if —

- (a) it is imposed by an authorised police officer, or
- (b) in the opinion of the vehicle examiner imposing it the defects in the vehicle in question are such that driving it, or driving it for any purpose within the prohibition, would involve a danger of injury to any person.

(4) Except where subsection (3) applies, a prohibition under this section shall (unless previously removed under section 61 of this Ordinance) come into force at such time not later than ten days from the date of the inspection as seems appropriate to the vehicle examiner imposing the prohibition, having regard to all the circumstances.

(5) A prohibition under this section shall continue in force until it is removed under section 61.

(6) A person imposing a prohibition under this section shall forthwith give notice in writing of the prohibition to the person in charge of the vehicle at the time of the inspection —

- (a) specifying the defects which occasioned the prohibition;
- (b) stating whether the prohibition is on all driving of the vehicle or driving it for one or more specified purposes or driving it except for one or more specified purposes (and, where applicable, specifying the purpose or purposes in question); and
- (c) stating whether the prohibition is to come into force immediately or at the end of a specified period.

(7) Where a notice has been given under subsection (6) of this section, any vehicle examiner or authorised police officer may grant an exemption in writing for the use of the vehicle in such manner, subject to such conditions and for such purpose as may be specified in the exemption.

(8) Where such a notice has been given, any vehicle examiner or authorised police officer may by endorsement on the notice vary its terms and, in particular, alter the time at which the prohibition is to come into force or suspend it if it has come into force.

(9) In this section “authorised police officer” means the chief police officer and any other police officer authorised to act for the purposes of this section by or on behalf of the chief police officer.

Prohibitions conditional on inspection

59.—(1) Where it appears to the person imposing a prohibition under section 58 that the vehicle is adapted to carry more than 8 passengers or is a public service vehicle not so adapted, the prohibition shall be imposed with a direction making it irremovable unless and until the vehicle has been inspected.

(2) In any other case, the prohibition may be imposed with a direction making it irremovable unless and until the vehicle has been inspected in accordance with this Part.

Unfit vehicles: offences

60. A person who —

(a) drives a vehicle in contravention of a prohibition under section 58; or

(b) causes or permits a vehicle to be driven in contravention of such a prohibition,

commits an offence.

Removal of prohibitions

61.—(1) Subject to the following provisions of this section, a prohibition under section 58 may be removed by any vehicle examiner or authorised police officer if he is satisfied that the vehicle is fit for service.

(2) If the prohibition has been imposed with a direction under section 59(1), the prohibition shall not be removed unless and until the vehicle has been inspected in accordance with the direction.

(3) If the prohibition has been imposed with a direction under section 59(3), the prohibition shall not be removed unless and until any prescribed requirements relating to the inspection of the vehicle have been complied with.

(4) A person aggrieved by the refusal of a vehicle examiner or authorised police officer to remove a prohibition may within fourteen days of the refusal appeal in writing to the Governor.

(5) The Governor may make such order on the appeal as he thinks fit.

(6) Where a vehicle examiner or authorised police officer removes a prohibition, he must forthwith give notice of the removal to the owner of the vehicle.

(7) The Governor may require the payment of fees, in accordance with prescribed scales and rates, for the inspection of a vehicle with a view to the removal of a prohibition and the payment of the fees may be required to be made in advance.

(8) The Governor may make regulations for prescribing anything which may be prescribed under this section and for regulating the procedure and fees payable on appeals to him under subsection (5) of this section.

Unroadworthy vehicles not to be sold and defective or unsuitable vehicle parts not to be fitted

Vehicles not to be sold in unroadworthy condition or altered so as to be unroadworthy⁴⁴

62.—(1) Subject to the provisions of this section no person shall supply a motor vehicle or trailer in an unroadworthy condition.

(2) In this section references to supply include —

(a) sell,

(b) offer to sell or supply, and

(c) expose for sale.

(3) For the purposes of subsection (1) of this section a motor vehicle or trailer is in an unroadworthy condition if —

(a) it is in such a condition that the use of it on a road in that condition would be unlawful by virtue of any provision made by regulations under section 43 as respects —

(i) brakes, steering gear or tyres, or

(ii) the construction, weight or equipment of vehicles, or

(b) it is in such a condition that its use on a road would involve a danger of injury to any person.

(4) Subject to the provisions of this section no person shall alter a motor vehicle or trailer so as to render its condition such that the use of it on a road in that condition —

(a) would be unlawful by virtue of any provision made as respects the construction, weight or equipment of vehicles by regulations under section 43; or

(b) would involve a danger of injury to any person.

⁴⁴ This provision is modelled on section 62 of the Road Traffic Act 1988. It should be noted that it applies to private sales as well as to sales by motor dealers. The object of the provision is the protection of the public. There have been a number of cases where motor vehicles have been altered in such a way as to make them so dangerous as to be unroadworthy, in one case contributing to a road fatality.

(5) A person who supplies or alters a motor vehicles or trailer in contravention of this section, or causes or permits it to be so supplied or altered, commits an offence.

(6) A person shall not be convicted of an offence under this section in respect of the supply or alteration of a motor vehicle or trailer if he proves —

(a) that it was supplied or altered, as the case may be, for export from the Falkland Islands, or

(b) that he had reasonable cause to believe that the vehicle or trailer would not be used on a road in the Falkland Islands or would not be so used until it had been put into a condition on which it might lawfully be so used.

(7) Paragraph (b) of subsection (6) shall not apply in relation to a person who, in the course of a trade or business —

(a) exposes a vehicle or trailer for sale, unless he also proves that he also proves that he took all reasonable steps to ensure that any prospective purchaser would be aware that its use in its current condition on a road in the Falkland Islands would be unlawful, or

(b) offers to sell a vehicle or trailer, unless he also proves that he took all reasonable steps to ensure that the person to whom the offer was made was aware of that fact.

(8) Nothing in the preceding provisions of this section affect the validity of a contract or any rights arising under a contract.

Fitting and supply of defective or unsuitable vehicle parts⁴⁵

63.—(1) A person commits an offence who —

(a) fits a vehicle part to a vehicle, or

(b) causes or permits a vehicle part to be fitted to a vehicle,

in such circumstances that the use of the vehicle on a road would, by reason of that part being fitted to the vehicle, involve a danger of injury to any person or constitute a contravention of or failure to comply with any of the construction and use requirements.

(2) A person shall not be convicted of an offence under subsection (1) of this section if he proves —

(a) that the vehicle to which the part was fitted was to be exported from the Falkland Islands, or

(b) that he had reasonable cause to believe that that vehicle —

⁴⁵ This provision is modelled on section 76 of the Road Traffic Act 1988 as amended by the Road Traffic Act 1991.

(i) would not be used on a road in the Falkland Islands, or

(ii) that it would not be so used until it had been put into a condition in which its use on a road would not constitute a contravention of or a failure to comply with any of the construction and use requirements and would not involve a danger of injury to any person.

(3) A person who —

(a) supplies a vehicle part or causes or permits a vehicle part to be supplied, and

(b) has reasonable cause to believe that the part is to be fitted to a motor vehicle, or to a vehicle of a particular class, or to a particular vehicle, if that part could not be fitted to a motor vehicle or, as the case may required, to a vehicle of that class or of a class to which the particular vehicle belongs, except in such circumstances that the use of the vehicle on a road would, by reason of that part being fitted to the vehicle, constitute a contravention of or failure to comply with any of the construction and use requirements or involve a danger of injury to any person.

(4) In this section references to supply include —

(a) sell, and

(b) offer to sell or supply.

(5) A person shall not be convicted of an offence under subsection (3) of this section in respect of the supply of a vehicle part if he proves —

(a) that the part was supplied for export from the Falkland Islands, or

(b) that he had reasonable cause to believe that —

(i) it would not be fitted to a vehicle used on a road in the Falkland Islands, or

(ii) it would not be so fitted until it had been put into such a condition that it would be fitted otherwise than in such circumstances that the use of the vehicle on a road would by reason of that part being fitted to the vehicle, constitute a contravention of or failure to comply with any of the construction and use requirements or involve a danger of injury to any person.

(6) An authorised examiner may at any reasonable hour enter premises where, in the course of business, vehicle parts are fitted to vehicles or are supplied and test and inspect any vehicle or vehicle part found on those premises for the purpose of ascertaining whether —

(a) a vehicle part has been fitted to the vehicle in such circumstances that the use of the vehicle on a road would, by reason of that part being fitted to the vehicle constitute a

contravention of or failure to comply with any of the construction and use requirements or involve a danger of injury to any person, or

(b) the vehicle part could not be supplied for fitting to a vehicle used on roads in the Falkland Islands without the commission of an offence under subsection (3) of this section.

(7) For the purpose of testing a motor vehicle and any trailer drawn by it the authorised examiner may drive it and for the purpose of testing a trailer may draw it with a motor vehicle.

(8) A person commits an offence who obstructs an authorised examiner acting under subsection (6) or (7) of this section.

(9) In subsections (6) to (8) of this section "authorised examiner" means a person who may act as an authorised examiner for the purposes of section 56 of this Ordinance, and any such person, other than a police officer in uniform, shall produce his authority to act for the purpose of subsections (6) and (7) of this section if required to do so.

(10) Nothing in this section shall affect the validity of a contract or of any rights arising under a contract.

Pedal cycles

Regulation of brakes, bells etc on pedal cycles

64.—(1) The Governor may make regulations as to the use on roads of cycles, their construction and equipment and the conditions under which they may be so used.

(2) In particular, but without prejudice to the generality of subsection (1) of this section, the regulations may make provision as to —

(a) the number, nature and efficiency of brakes and their maintenance in proper working order,

(b) the appliances to be fitted for signalling approach and their maintenance and proper working order, and

(c) the testing and inspection, by persons authorised under the regulations, of any equipment prescribed under this section and of lighting equipment and reflectors.

(3) Regulations under this section may be made so as to apply either generally or in such circumstances only as may be specified in the regulations.

(4) Regulations under this section as to the use on roads of cycles may prohibit the sale or supply, or the offer of a sale or supply, of a cycle for delivery in such a condition that the use of it on a road in that condition would be a contravention of the regulations, but no provision made by virtue of this subsection shall affect the validity of any contract or any rights arising under a contract.

(5) A person commits an offence who sells or supplies or offers to sell or supply a cycle in contravention of any prohibition imposed by regulations made by virtue of subsection (4) unless he proves —

(a) that it was sold, supplied or offered for export from the Falkland Islands, or

(b) that he had reasonable cause to believe that it would not be used on a road in the Falkland Islands, or would not be so used until it had been put into a condition in which it might lawfully be so used.

PART IV LICENSING OF DRIVERS OF VEHICLES

Requirement to hold licence

Drivers of motor vehicles to have driving licences⁴⁶

65.—(1) Except as is provided by this Ordinance or regulations under this Ordinance, a person commits an offence if he drives on a road a motor vehicle of any class otherwise than in accordance with a licence granted under this Part authorising him to drive a motor vehicle of that class.

(2) Except as provided by this Ordinance or regulations under this Ordinance, a person commits an offence who causes or permits another person to drive on a road a motor vehicle of any class otherwise than in accordance with a licence granted under this Part authorising that other person to drive a motor vehicle of that class.

(3) A person who —

(a) entered the Falkland Islands not more than twelve months previously;

(b) holds a licence (not being a provisional licence or a licence corresponding to such a licence) which is current and was issued under the law of —

(i) of any constituent part of the United Kingdom (including a British Forces driving licence);

⁴⁶ The provisions of the Bill relating to the issue etc of driving licences are very much based on the corresponding provisions of the Road Traffic Act 1988 as amended. Much of the British law (there is separate provision in Northern Ireland) is contained in Regulations made in 1996 which implement provisions of EU law. This resulted in changes to the categories of vehicles for licensing and testing purposes. This is relevant to the Falkland Islands as we now have exchange of licence provisions with Great Britain. It may be desirable to fall into step. The provisions of the Bill would enable but not require this. In relation to motorcycles, the British law on licensing of drivers is very different from present Falkland Islands law. In particular, learner drivers are not permitted to drive motorcycles which are not electric motor cycles or those which do not exceed 125cc whose maximum power output does not exceed 9kW and whose power to weight ratio does not exceed 100kW per metric ton.

(ii) any EU state or EEA state outside the United Kingdom; or

(iii) any other designated country or territory,

provided that—

(aa) he is not for the time being prohibited under that law from holding or obtaining a licence in that country or territory;

(bb) he is not disqualified by order of a court in the Falkland Islands from holding or obtaining a licence under this Part; and

(cc) he would not be disqualified by any provision of this Part by reason of his age or any other matter from being issued with a licence authorising him to drive the vehicle in question.

(4) For the purposes of this section “designated country” means a country designated by order under section 108(2) of the Road Traffic Act 1988.

Tests of competence to drive

66.—(1) A licence authorising the driving of motor vehicles of any class specified in that licence shall not be granted to any person unless he satisfies the chief police officer —

(a) that at some time during the period of two years ending with the date the application for the licence was made he has passed —

(i) the test of competence to drive prescribed by virtue of subsection (3), or

(ii) a test of competence which under subsection (6) is a sufficient test;

(b) that at some time he has held a full licence issued under this Part or the corresponding provisions of the repealed Ordinance authorising the driving of vehicles of that class;

(c) that at the time of the application for the licence he held a licence (not being a provisional licence or a licence corresponding to such a licence) which was current and was issued by an overseas authority competent to issue licences authorising persons to drive motor vehicles in the country, territory or part thereof where the licence was issued and which licence authorised him to drive in that country or territory motor vehicles of a corresponding class⁴⁷ and —

(i) he is not for the time being prohibited under the law of that country or territory from holding or obtaining a licence issued under the authority of that law to drive a motor vehicle of that class in that country or territory; and

⁴⁷ Should the countries be limited to countries specified in regulations? If so which countries?

(ii) he is not disqualified by order of a court in the Falkland Islands from holding or obtaining a licence authorising him to drive a motor vehicle of that class.

This subsection is subject to the provisions of this Part as to provisional licences and to the provisions of any regulations made under section 80(1)(f) of this Ordinance.

(2) For the purposes of subsection (1) of this section a licence which has been revoked under section 76(4) of this Ordinance or any corresponding provision of any overseas country or territory as a licence granted in error shall be disregarded.

(3) Regulations may make provision with respect to —

(a) the nature of tests of competence to drive for the purposes of this section and section 156⁴⁸;

(b) the qualifications, selection and appointment of persons by whom they may be conducted and the revocation of any appointment,

(c) evidence of the results of such tests,

and generally with respect to such tests.

(4) In particular, regulations may, without prejudice to the generality of subsection (3), provide—

(a) for requiring a person submitting himself for a test to provide a vehicle for the purposes of the test, in the case of prescribed classes of goods vehicle, loaded or unloaded as may be prescribed and, if requirements as respects loading are prescribed, loaded in accordance with the requirements,

(b) for requiring a fee, of such amount as may be specified in the regulations or, in such cases as may be prescribed, specified by such person as may be prescribed, to be paid by a person who submits himself for a test or applies for an appointment for a test,

and different regulations may be made with respect to tests of competence to drive different classes of vehicle.

(5) If regulations make provision for a test of competence to drive to consist of separate parts⁴⁹, they may make for each part —

(a) any provision that could be made for tests not consisting of separate parts, and

⁴⁸ Section 156 contains new provision enabling a court to require a person who is disqualified to take a test of competence to drive before his driving licence is restored.

⁴⁹ I understand that the driving test in the Falkland Islands now consists of a written part and a practical part.

(b) provisions for the supply by the chief police officer of forms for certificates evidencing the results and for charges to be made for the supply.

(6) For the purposes of subsection (1)(a)(ii), a test of competence shall be sufficient for the granting of a licence authorising the driving of —

(a) vehicles of any class, if at the time the test was passed it authorised the granting of a licence to drive vehicles of that class,

(b) vehicles of all classes which are designated by regulations as a group for the purposes of subsection (1)(a) of this section, if at the time the test was passed it authorised the granting of a licence to drive vehicles of any class included in the group, and

(c) vehicles of all classes included in another such group, if a person passing the test is treated by virtue of regulations made for the purposes of this paragraph as competent also to drive vehicles of a class included in that other group.

(7) If vehicles of any classes are designated by regulations as a group for the purposes of subsection (1)(b) of this section, a licence authorising the driving of vehicles of a class included in the group shall be deemed for the purposes of subsection (1)(b) to authorise the driving of —

(a) vehicles of all classes included in the group (except where regulations otherwise provide), and

(b) vehicles of all classes including in another such group, if a person holding the licence is treated by virtue of regulations as competent also to drive vehicles of a class included in that other group.

The reference in this subsection to a licence does not include a licence which has been revoked in pursuance of section 76(4) of this Ordinance.

Review of conduct of test

67.—(1) On the application of a person who has submitted himself for a test of competence to drive, the Magistrate's Court may determine whether the test was properly conducted in accordance with regulations.

(2) The court may, if it appears that the test was not so conducted —

(a) order that the applicant shall be eligible to submit himself for another test, and

(b) order that any fee payable by the applicant in respect of the test shall not be paid or, if it has been paid, shall be repaid.

(3) If regulations make provision for a test of competence to drive to consist of separate parts, this section applies in relation to each part as well as in relation to the whole of the test.

Physical fitness

Requirements as to physical fitness of drivers

68.—(1) An application for the grant of a licence or provisional licence must include a declaration by the applicant, in such form as the chief police officer may require, stating whether he is suffering or has at any time (or, if a period is prescribed for the purposes of this subsection, has during that period) suffered from any relevant disability or any prospective disability.

(2) In this Part —

(a) “disability” includes disease and the persistent misuse of drugs or alcohol, whether or not such misuse amounts to dependency,⁵⁰

(b) “relevant disability” in relation to any person means —

(i) any prescribed disability, and

(ii) any other disability likely to cause the driving of a vehicle by him in pursuance of a licence to be a source of danger to the public, and

(c) “prospective disability” in relation to any person means any other disability which —

(i) at the time of the application for the grant of a licence or, as the case may be, the material time for the purposes of the provision in which the expression is used, is not of such a kind that it is a relevant disability, but

(ii) by virtue of the intermittent or progressive nature of the disability or otherwise, may become a relevant disability in course of time.

(3) If it appears from the applicants declaration, or if on inquiry the chief police officer is satisfied from other information, that the applicant is suffering from a relevant disability, the chief police officer must, subject to the following provisions of this section, refuse to grant the licence.

(4) The chief police officer must not by virtue of subsection (3) refuse to grant a licence —

(a) on account of any relevant disability which is prescribed for the purposes of this paragraph, if the applicant has at any time passed a relevant test and it does not appear to the chief police officer that the disability has arisen or become more acute since that time or was, for whatever reason, not disclosed to the chief police officer at that time,

⁵⁰ “the persistent misuse of drugs or alcohol” has had to be declared on applications for driving licences in Great Britain since the coming into force of the Driving Licences (Community Driving Licence) Regulations 1996. Do we wish to have such a provision in the Falkland Islands and, if we do, should an automatic effect of a person being on the black list be that they are not permitted to drive?

(b) on account of any relevant disability which is prescribed for the purposes of this paragraph, if the applicant satisfies such conditions as may be prescribed with a view to authorising the grant of a licence or provisional driving licence to a person in whose case the disability is appropriately controlled,

(c) on account of any relevant disability which is prescribed for the purposes of this paragraph, if the application is for a provisional licence.

(5) Where as a result of a test of competence to drive or of information obtained the chief police officer is satisfied that the person who took the test or in relation to whom the information was obtained is suffering from a disability such that there is likely to be a danger to the public —

(a) if he drives any vehicle,

(b) if he drives a vehicle other than a vehicle of a particular class, or

(c) if he drives a vehicle except in accordance with particular conditions,

the chief police officer must serve notice in writing to that effect on that person and must include in the notice a description of the disability.

(6) Where a notice is served in pursuance of subsection (5)(a) of this section, then —

(a) if the disability is not prescribed under subsection (2) of this section, it shall be deemed to be so prescribed in relation to the person on whom the notice is served, and

(b) if the disability is prescribed for the purposes of subsection (4)(c) of this section it shall be deemed not to be so prescribed in relation to him.

(7) Where a notice is served in pursuance of subsection (5)(b) of this section, the chief police officer may —

(a) if the person on whom the notice is served is an applicant for a licence, grant him a licence limited to vehicles of the particular class specified in the notice, or

(b) if he held a licence which is revoked by the chief police officer and he complies with subsection (9) of this section, grant him a licence limited to vehicles of that class,

and, if the chief police officer so directs in the notice, his entitlement to drive other classes of vehicle by virtue of section 69(4) shall be limited as specified in the notice.

(8) Where a notice is served in pursuance of subsection (5)(c) of this section, the chief police officer may —

(a) if the person on whom the notice is served is an applicant for a licence, grant him a licence authorising him to drive vehicles subject to the particular conditions specified in the notice, or

(b) if he held a licence which is revoked by the chief police officer and he complies with subsection (9), grant him a licence authorising him to drive vehicles subject to those conditions,

and, if the chief police officer so directs in the notice, any entitlement which the person has to drive vehicles by virtue of section 75(5) shall be subject to conditions as specified in the notice.

(9) A person complies with this subsection if —

(a) he surrenders the existing licence (including where appropriate its counterpart), and

(b) where the chief police officer requires, he produces evidence of his name, address, sex and date and place of birth and a photograph which is a current likeness of him.

(10) If he considers it appropriate to do so, the chief police officer may, after serving a notice under any of the paragraphs of subsection (5) of this section, serve a further notice under that paragraph or a notice under another of those paragraphs, and on his serving the later notice the notice previously served shall cease to have effect and any licence previously granted in accordance with it shall be revoked by the later notice.

(11) In subsection (5) of this section the references to a test of competence to drive and to information obtained under the relevant powers are references respectively to a test of competence to drive conducted pursuant to section 66(3).

(12) A person whose licence is revoked by virtue of subsection (10) of this section must deliver the licence and its counterpart, if any, to the chief police officer forthwith after the revocation and the person commits an offence who, without reasonable excuse fails to do so.

(13) A person who holds a licence authorising him to drive a motor vehicle of any class and who drives a motor vehicle of that class on a road commits an offence if the declaration included in accordance with subsection (1) of this section in the application on which the licence was granted was one which he knew to be false.

Revocation of licence because of disability or prospective disability

69.—(1) If the chief police officer is at any time satisfied on enquiry —

(a) that a licence holder is suffering from a relevant disability, and

(b) the chief police officer would be required by section 68(3) of this Ordinance to refuse an application for the licence made by him at that time,

the chief police officer may serve notice in writing on the licence holder revoking the licence with effect from such date as may be specified in the notice, not being earlier than the date of service of the notice.

(2) If the chief police officer is at any time satisfied on enquiry that a licence holder is suffering from a prospective disability, the chief police officer may —

(a) serve notice in writing on the licence holder revoking the licence with effect from such date as may be specified in the notice, not being earlier than the date of service of the notice, and

(b) on receipt of the licence so revoked and its counterpart, if any, and of application made for the purposes of this subsection, grant to the licence holder, free of charge, a new licence for a period determined by the chief police officer under section 77(1)(b) of this Ordinance.

(3) A person whose licence is revoked under subsection (1) or (2) of this section must deliver up the licence and its counterpart, if any, to the chief police officer forthwith after the revocation and a person commits an offence who, without reasonable excuse, fails to do so.

Provision of information etc relating to disabilities

70.—(1) If at any time during the period for which his licence remains in force a licence holder becomes aware —

(a) that he is suffering from a relevant or prospective disability which he has not previously disclosed to the chief police officer, or

(b) that a relevant or prospective disability from which he has at any time suffered (and which has been previously so disclosed) has become more acute since the licence was granted,

the licence holder must forthwith notify the chief police officer in writing of the nature and extent of his disability.

(2) The licence holder is not required to notify the chief police officer under subsection (1) of this section if—

(a) the disability is one from which he has not previously suffered, and

(b) he has reasonable grounds for believing that the duration of the disability will not extend beyond the period of three months beginning with the date on which he first becomes aware that he suffers from it.

(3) A person who fails without reasonable excuse to notify the chief police officer as required by subsection (1) commits an offence.

(4) A person who holds a licence authorising him to drive a motor vehicle of any class and who drives a motor vehicle of that class on a road commits an offence if at any earlier time while the licence was in force he was required by subsection (1) of this section to notify the chief police officer but has failed without reasonable excuse to do so.

(5) If the prescribed circumstances apply in relation to a person who is an applicant for, or the holder of, a licence or if the chief police officer has reasonable grounds for believing that a person who is an applicant for, or the holder of, a licence may be suffering from a relevant or prospective disability, subsection (6) of this section applies for the purpose of enabling the Chief police officer to satisfy himself whether or not that person may be suffering from that or any other relevant or prospective disability.

(6) The chief police officer may by notice in writing served on the applicant or holder —

(a) require the applicant or holder to provide him, within such reasonable time as may be specified in the notice, with such an authorisation as is mentioned in subsection (7) of this section, or

(b) require him, as soon as practicable, to arrange to submit himself for examination by a government medical officer for the purpose of determining whether or not he suffers or has at any time suffered from a relevant or prospective disability, or

(c) except where the application is for, or the licence held is, a provisional licence, require him to submit himself for such a test of competence to drive as the chief police officer directs in the notice.

(7) The authorisation referred to in subsection (6)(a) of this section —

(a) shall be in such form and contain such particulars as may be specified in the notice by which it is required to be provided, and

(b) shall authorise any government medical officer who may at any time have given medical advice or attention to the applicant or licence holder to release to the chief police officer any information which he may have, or which may be available to him, with respect to the question whether, and if so to what extent, the applicant or licence holder concerned may be suffering, or may at any time have suffered, from a relevant or prospective disability.

(8) If he considers it appropriate to do so in the case of any applicant or licence holder, the chief police officer —

(a) may include in a single notice under subsection (6) of this section requirements under more than one paragraph of that subsection, and

(b) may at any time after the service of a notice under that subsection serve a further notice or notices under that subsection.

(9) If any person on whom a notice is served under subsection (6) —

(a) fails without reasonable excuse to comply with a requirement contained in the notice, or

(b) fails any test of competence which he is required to take as mentioned in paragraph (c) of that subsection,

the chief police officer may exercise his powers under sections 68 and 69 of this Ordinance as if he were satisfied that the applicant or licence holder concerned is suffering from a relevant disability which is not prescribed for the purposes of any paragraph of section 68(2) of this Ordinance or, if the chief police officer so determines, as if he were satisfied that the applicant or licence holder concerned is suffering from a prospective disability.

Driving after refusal or revocation of licence

71.—(1) A person commits an offence who drives a motor vehicle of any class on a road otherwise than in accordance with a licence authorising him to drive a motor vehicle of that class if —

(a) at any earlier time, the chief police officer —

(i) has in accordance with section 68(3) of this Ordinance refused to grant such a licence,

(ii) has under section 69(1) or (2) revoked such a licence, and

(b) since that earlier time he has not been granted a licence under this Part authorising him to drive a motor vehicle of that or a corresponding class.

(2) Subsection (1) of this section has effect subject to the provisions of any regulations authorising a person who holds an overseas licence to drive a motor vehicle of the class in question or a corresponding class.

Notification of refusal of insurance on grounds of health

72. If an authorised insurer refuses to issue to any person such a policy of insurance as complies with the requirements of Part VII on the ground that the state of health of that person is not satisfactory, or on grounds which include that ground, the insurer shall as soon as possible notify the chief police officer of that refusal and of the full name, address, sex and date of birth of that person as disclosed by him to the insurer.

Driving with uncorrected defective eyesight

73.—(1) A person who drives a motor vehicle on a road while his eyesight is such (whether through a defect which cannot be or one which is not for the time being sufficiently corrected) that he cannot comply with any requirement as to eyesight prescribed under this Part for the purposes of tests of competence to drive, commits an offence.

(2) A police officer having reason to suspect that a person driving a motor vehicle may be guilty of an offence under subsection (1) of this section may require him to submit to a test for the

purpose of ascertaining whether, using no other means of correction than he used at the time of driving, he can comply with the requirement concerned.

(3) A person who refuses to submit to a test required pursuant to subsection (2) of this section commits an offence.

Granting of licences, their form and duration

Grant of licences

74.—(1) Subject in the case of licences to drive large goods vehicles or passenger-carrying vehicles to Part V, the chief police officer must grant a licence to a person who —

(a) makes an application for it in such manner and containing such particulars as the Chief police officer may specify and pays the fee (if any) which is prescribed,

(b) provides the chief police officer with such evidence or further evidence in support of the application as the chief police officer may require,

(c) surrenders to the chief police officer any previously licence granted to him under this Ordinance or the repealed Ordinance or provides the chief police officer with an explanation for not surrendering it which the chief police officer considers adequate,

(d) is not, in accordance with any provision of this Ordinance, subject to a current disqualification which is relevant to the licence he applies for and is not prevented from obtaining it by the provisions of section 66 of this Ordinance.

(2) Where any licence to be granted to an applicant would be in the form of a photocard or incorporate a likeness of the applicant, the chief police officer may require the applicant to provide a photograph which is a current likeness of him.

(3) If the application for the licence states that it is made for the purpose of enabling the applicant to drive a motor vehicle with a view to passing a test of competence to drive, any licence granted in pursuance of the application shall be a provisional licence for that purpose, and nothing in section 66 shall apply to such a licence.

(4) A provisional licence —

(a) shall be granted subject to prescribed conditions,

(b) shall, in any cases provided for the purposes of this paragraph, be restricted so as to authorise only the driving of vehicles of the classes so prescribed,

(c) may, in the case of a person appearing to the chief police officer to be suffering from a relevant disability or a prospective disability, be restricted so as to authorise only the driving of vehicles.

Form of licence

75.—(1) Every licence or provisional licence shall be in such form as may be specified by regulations.

(2) Regulations made for the purposes of subsection (1) may provide that a licence shall be in two parts —

(a) the first consisting of a photocard of such description, and containing such information, as is prescribed by those regulations; and

(b) the other (“the counterpart”) being in such form and containing such information as is so prescribed.

(3) The licence shall —

(a) state whether, apart from subsection (4), it authorises its holder to drive motor vehicles of all classes or of certain classes only and, in the latter case, specify those classes;

(b) specify (in such manner as the chief police officer may determine) the restrictions on the driving of vehicles of any class in pursuance of the licence to which its holder is subject by virtue of section 77 and any conditions on the driving of vehicles of any class in pursuance of the licence to which the holder is subject, and

(c) in the case of a provisional licence, the licence or its counterpart shall specify (in such manner as the chief police officer may determine) the conditions subject to which it is granted.

(4) The chief police officer may specify different descriptions of photocards, and different forms of licences not in the form of a photocard, for different cases and may determine the form of licence to be granted in any case.

(5) Subject to subsections (6), (7) and (8) of this section a person who holds a licence which authorises its holder to drive motor vehicles of certain classes only not being —

(a) a provisional licence, or

(b) any other prescribed description of licence,

may drive motor vehicles of all other classes subject to the same conditions as if he were authorised by a provisional licence to drive motor vehicles of those other classes.

(6) Subsection (5) of this section does not authorise a person to drive a vehicle of a class for the driving of which he could not by reason of the provisions of section 77 of this Ordinance, lawfully hold a licence.

(7) In such cases or as respects such classes of vehicles as the Governor may by regulations prescribe the provisions of subsections (5) and (6) of this section shall not apply or shall apply subject to such limitations as he may prescribe.

(8) Subsection (5) of this section does not authorise a person on whom a notice under section 68(5)(b) has been served to drive motor vehicles otherwise than in accordance with the limits specified in the notice.

Duration of licences

76.—(1) In so far as a licence authorises its holder to drive motor vehicles of classes other than any prescribed class of goods vehicle or any prescribed class of passenger-carrying vehicle, it shall, unless previously revoked or surrendered, remain in force, subject to subsection (2) —

(a) except in a case falling within paragraph (b) or (c) of this subsection, for the period ending on the seventieth anniversary of the applicant's date of birth or for a period of three years, whichever is the longer,

(b) except in a case falling within paragraph (c) of this subsection, if the chief police officer so determines in the case of a licence to be granted to a person appearing to him to be suffering from a relevant or prospective disability, for such period of not more than three years and not less than one year as the chief police officer may determine, and

(c) in the case of a licence granted in exchange for a subsisting licence and in pursuance of an application requesting a licence for the period authorised by this paragraph, for a period equivalent to the remainder of that for which the subsisting licence was granted,

and any such period shall begin with the date on which the licence in question is expressed to come into force.

(2) In so far as a licence authorises its holder to drive any prescribed class of goods vehicle or passenger-carrying vehicle, it shall, unless previously revoked, suspended or surrendered, remain in force —

(a) except in a case falling within paragraph (c) or (d) of this subsection —

(i) for the period ending on the forty-fifth anniversary of the applicant's date of birth or for a period of five years, whichever is the longer, or

(ii) where the applicant's age at the date on which the licence is come into force will exceed forty-five but not sixty-five years, for the period ending on the sixty-sixth anniversary of the applicant's date of birth or for a period of five years, whichever is the shorter,

(b) except in a case falling within paragraph (d) of this subsection, where the applicant's age at that date will exceed sixty-five years, for a period of one year,

(c) except in a case falling within paragraph (b) or (d) of this subsection, if the chief police officer so determines in the case of a licence to be granted to a person appearing to him to be suffering from a relevant or prospective disability, for such period of not more than three years and not less than one year as the chief police officer may determine, and

(d) in the case of a licence granted in exchange for a subsisting licence and in pursuance of an application requesting a licence for the period authorised by this paragraph, for a period equal to the remainder of that for which the subsisting licence was granted,

and any such period shall begin with the date on which the licence in question is expressed to come into force.

(3) Where, in accordance with the preceding provisions of this section, a licence in the form of a photocard remains in force for a period of more than ten years, the holder of the licence must surrender it and its counterpart to the chief police officer not later than the period of ten years beginning with —

(a) the date shown on the licence as the date of its issue, or

(b) if the licence was granted by way of renewal or replacement of a licence bearing the same photograph, the date shown on the earliest licence bearing that photograph as the date of issue of that licence.

(4) Where it appears to the chief police officer—

(a) that a licence granted by him to any person was granted in error or with an error or omission in the particulars specified in the licence, or

(b) that the counterpart of licence granted by him to any person is required to be endorsed in pursuance of any provision of law or was issued with an error or omission in the particulars specified in the counterpart or required to be endorsed upon it, or

(c) that the particulars specified in the licence granted by him to any person or in its counterpart do not comply with any requirement imposed since the licence was granted by any provision made by or having effect under any enactment,

the chief police officer may serve notice in writing on that person revoking the licence and requiring him to surrender the licence to the and its counterpart forthwith to the chief police officer and it shall be the duty of person served with the notice to comply with that requirement.

(5) Where the name or address of the licence holder as specified in the licence ceases to be correct, its holder must forthwith surrender the licence and any counterpart of that licence to the chief police officer.

(6) A person commits an offence who without reasonable excuse fails to comply with the duty under subsection (2), (3) or (4) of this section.

Disqualification (otherwise than on conviction)

Disqualification of persons under age

77.—(1) A person is disqualified for holding or obtaining a licence to drive a motor vehicle of a class specified in the following Table if he is under the age specified in relation to it in the second column of the Table —

TABLE ⁵¹	
<i>Class of Motor Vehicles</i>	<i>Age (in years)</i>
1. Motor Bicycle	16
2. Agriculture or Forestry Tractor	17
3. Small Vehicle	17
4. Medium-sized Goods Vehicle	18
5. Other Motor Vehicle	21

(2) The Governor may by regulations provide that subsection (1) of this section shall have effect as if for the classes of vehicles and the ages specified in the Table in that subsection there were substituted different classes of vehicles and ages or different classes of vehicles or different ages.

(3) The regulations may —

- (a) apply to persons of a class specified in or under the regulations,
- (b) apply in circumstances so specified,
- (c) impose conditions or create exemptions or provide for the imposition of conditions or the creation of exemptions,
- (d) contain such transitional and supplemental provisions (including provisions amending section 82 (interpretation of this Part) and section 80 (regulations under Part V) as the Governor considers necessary or expedient.

Disqualification to prevent duplication of licences

78. A person is disqualified from obtaining a licence authorising him to drive a motor vehicle of any class so long as he is the holder of another licence authorising him to drive a motor vehicle of that class, whether the licence is suspended or not.

⁵¹ This Table does not include invalid carriages because Executive Council in January 2003 decided that the provisions of the Road Traffic Ordinance (other than those relating to damage to an invalid carriage etc) should not apply to invalid carriages.

Effects of disqualification

Obtaining licence, or driving, while disqualified

79.—(1) A person commits an offence if, while disqualified for holding or obtaining a licence, he —

(a) obtains a licence, or

(b) drives a motor vehicle on a road.

(2) A licence obtained by a person who is disqualified is of no effect (or where the disqualification relates only to vehicles of a particular class, is of no effect in relation to vehicles of that class).

(3) A police officer in uniform may arrest without warrant any person driving a motor vehicle on a road whom he has reasonable cause to suspect of being disqualified.

(4) Subsections (1) and (3) of this section do not apply in relation to disqualification by virtue of section 77 of this Ordinance.

(5) Subsections (1)(b) and (3) of this section do not apply in relation to disqualification by virtue of section 78 of this Ordinance.

(6) In the application of subsections (1) and (3) of this section to a person whose disqualification is limited to the driving of motor vehicles of a particular class by virtue of section 78) or section 88 of this Ordinance, the references to disqualification for holding or obtaining a licence and driving motor vehicles are references to disqualification for holding or obtaining a licence to drive and driving motor vehicles of that class.

Miscellaneous

Regulations

80.—(1) The Governor may make regulations for any purpose for which regulations may be made under the provisions of this Part and for prescribing anything which may be prescribed under any of those provisions, and otherwise for the purpose of carrying any of those provisions into effect.

(2) In particular, but without prejudice to the generality of subsection (1) of this section, the regulations may make provision with respect to —

(a) licences under this Part and counterparts of such licences,

(b) preventing a person holding more than one licence,

(c) providing for the issue of licences and counterparts of licences in place of licences or counterparts of licences lost or defaced on payment of such fee, and compliance with such requirements, as may be prescribed,

(d) facilitating identification of holders of licences,

(e) the correspondence of one class of motor vehicle with another class of motor vehicle or of one test of competence to drive with another (whatever the law under which the classification is made or the test conducted),

(f) the effect of a change in the classification of motor vehicles on licences then in force or issued or on the right to or the subsequent granting of licences; and

(g) enabling a person —

(i) whose entitlement to the grant of a licence to drive a class of motor vehicle is preserved by regulations made by virtue of paragraph (f), and

(ii) who satisfies such conditions as may be prescribed,

to drive (and be employed in driving) that class of motor vehicle while he applies for the licence to be granted to him,

and different regulations may be made as respects different classes of vehicles or as respects the same class of vehicle in different circumstances.

(3) The regulations may —

(a) make different provisions for different circumstances,

(b) provide for exemptions from any provisions of the regulations, and

(c) contain such incidental and supplemental provisions as the Governor considers expedient for the purposes of the regulations,

and nothing in the other provisions of this Part shall be construed as prejudicing the generality of the preceding provisions of this subsection.

Service of notices

81. A notice authorised to be served on any person under this Part or Part V of this Ordinance may be served on him by delivering it to him or by leaving it at his proper address or by sending it to him by post and for the purposes of this section the proper address of any person shall be his latest address known to the person serving the notice.

Interpretation

82. In this Part —

“counterpart” in relation to a licence under this Part, means a document in such form as the chief police officer may determine, issued with the licence, containing such information as he determines and designed for the endorsement of particulars relating to the licence;

“disability” has the meaning given by section 68(2)(a);

“disqualified” means disqualified for holding or obtaining a licence (or in case where the disqualification is limited, a licence to drive motor vehicles of the class to which the disqualification relates) and “disqualification” is to be interpreted accordingly;

“full licence” means a licence other than a provisional licence;

“large goods vehicle” means a motor vehicle (not being a medium-sized goods vehicle) which is constructed or adapted to carry or to haul goods and the permissible maximum weight of which exceeds 7.5 tonnes;

“licence” (except where the context otherwise requires) means a licence to drive a motor vehicle granted under this Part of this Ordinance;

“medium-sized goods vehicle” means a motor vehicle —

- (a) which is constructed or adapted to carry or to haul goods,
- (b) which is not adapted to carry more than 9 persons inclusive of the driver, and
- (c) the permissible maximum weight of which exceeds 3.5 but not 7.5 tonnes,

and includes a combination of such a motor vehicle and a trailer where the relevant maximum weight of the trailer does not exceed 750 kilogrammes;

“motor cycle” means a motor vehicle which has two wheels and includes a combination of such a motor vehicle and a side-car⁵²;

“passenger-carrying vehicle” means —

- (a) a large passenger-carrying vehicle, that is to say, a vehicle used for carrying passengers which is constructed or adapted to carry more than sixteen passengers, or
- (b) a small passenger-carrying vehicle, that is to say, a vehicle used for carrying passengers for hire or reward which is constructed or adapted to carry more than eight but not more than sixteen passengers,

and includes a combination of such a motor vehicle and a trailer;

⁵² We need to deal with motor-trikes and quads

“permissible maximum weight” (of whatever description), means —

(a) in the case of a motor vehicle which neither is an articulated goods vehicle nor is drawing a trailer, the relevant maximum weight of the vehicle,

(b) in the case of an articulated goods vehicle —

(i) when drawing only a semi-trailer, the relevant maximum train weight of the articulated goods vehicle combination,

(ii) when drawing a trailer as well as a semi-trailer, the aggregate of the relevant maximum train weight of the articulated goods vehicle combination and the relevant maximum weight of the trailer,

(iii) when drawing a trailer but not a semi-trailer, the aggregate of the relevant maximum weight of the articulated goods vehicle and the relevant maximum weight of the trailer,

(iv) when drawing neither a semi-trailer nor a trailer, the relevant maximum weight of the vehicle,

(c) in the case of a motor vehicle (not being an articulated goods vehicle) which is drawing a trailer, the aggregate of the relevant maximum weight of the motor vehicle and the relevant maximum weight of the trailer;

“prospective disability” has the meaning given by section 68(2)(c) of this Ordinance;

“provisional licence” means a licence granted by virtue of section 74(2) of this Ordinance;

“relevant disability” has the meaning given by section 68(2)(b) of this Ordinance;

“relevant maximum weight”, in relation to a motor vehicle or trailer, means the authorised weight for that motor vehicle or trailer assigned on application under section 4(1) or, as the case may be, section 4(4) of the Highways (Weight Limits) Ordinance 2004⁵³;

“relevant maximum train weight”, in relation to an articulated goods vehicle combination, means the authorised weight assigned to that vehicle;

“semi-trailer” means a trailer which is constructed or adapted to be drawn by a tractor unit and includes a vehicle which is not itself a motor vehicle but has some or all of its wheels driven by the drawing vehicle;

“small vehicle” means a motor vehicle (other than an invalid carriage or motor cycle) which —

(a) is not constructed or adapted to carry more than nine persons inclusive of the driver, and

⁵³ No 8 of 2004

(b) has a maximum gross weight not exceeding 3.5 tonnes,
and includes a combination of such a vehicle and a trailer; and
“test of competence to drive” means such a test conducted under section 66 of this Ordinance.

PART V

LICENSING OF DRIVERS OF LARGE GOODS VEHICLES⁵⁴ AND PASSENGER-CARRYING VEHICLES

Licensing of drivers of large goods vehicles and passenger-carrying vehicles

83.—(1) Licences under Part IV to drive motor vehicles of classes which include large goods vehicles or passenger-carrying vehicles or large goods vehicles or passenger-carrying vehicles of any class shall be granted by the chief police officer in accordance with this Part and shall, insofar as they authorise the driving of large goods vehicles or passenger-carrying vehicles, be otherwise subject to this Part in addition to Part IV.

(2) In this Part —

“large goods vehicle driver’s licence” means a licence under Part IV of this Ordinance insofar as it authorises a person to drive large goods vehicles of any class; and

“passenger-carrying vehicle driver’s licence” means a licence under Part IV of this Ordinance insofar as it authorises a person to drive passenger-carrying vehicles of any class.

Grant of licences: fitness as regards conduct

84.—(1) The chief police officer shall not grant to an applicant a large goods vehicle driver’s licence or a passenger-carrying vehicle driver’s licence unless he is satisfied, having regard to his conduct, that he is a fit person to hold the licence applied for.

(2) On an application being made to him for a licence to which subsection (1) of this section relates, the chief police officer shall determine whether the applicant for the licence is or is not, having regard to his conduct, a fit person to hold a licence to drive large goods vehicles or passenger-carrying vehicles, as the case may be.

(3) The chief police officer may require the applicant for the licence to furnish to him such information as he may require and may, by notice to the applicant, require the applicant to attend before him at the time and place specified by him to furnish the information and to answer such questions (if any) relating to his application as the chief police officer may put to him.

(4) If the applicant fails without reasonable excuse to furnish information to or attend before or answer questions properly put by the chief police officer when required to do so under

⁵⁴ The provisions in relation to large goods vehicle licences would replace the present provisions in relation to HGV licences. These provisions will more readily enable a person holding a Falkland Islands LGV licence to exchange it in GB for an equivalent licence there.

subsection (3) of this section, the chief police officer may decline to proceed further with the application and, if he does so, shall notify the applicant of his decision not to proceed further with the application and shall refuse to grant the licence.

(5) A person who is aggrieved by a decision of the chief police officer to refuse to grant a large goods vehicle driver's licence or a passenger-carrying vehicle driver's licence to him may, within twenty-eight days of the notification to him of the chief police officer's decision to refuse the application, by notice in writing, appeal to the Magistrate's Court.

Conditions of certain licences

85.—(1) The following licences, that is to say —

(a) a large goods vehicle or passenger-carrying vehicle driver's licence issued as a provisional licence; and

(b) a full large goods vehicle or passenger-carrying vehicle driver's licence granted to a person under the age of 21,

shall be subject to the prescribed conditions, and if the holder of the licence fails, without reasonable excuse, to comply with any of the conditions he commits an offence.

(2) It is an offence for a person knowingly to cause or permit another person who is under the age of 21 to drive a large goods vehicle of any class or a passenger-carrying vehicle of any class in contravention of the prescribed conditions to which that other person's licence is subject.

Revocation or suspension of licences

86.—(1) A large goods vehicle or passenger-carrying vehicle driver's licence —

(a) must be revoked if there come into existence, in relation to its holder, such circumstances relating to his conduct as may be prescribed;

(b) must be revoked or suspended if his conduct is such as to make him unfit to hold such a licence;

and where the licence is suspended under paragraph (b) of this subsection it shall during the time of suspension be of no effect.

(2) Where it appears that the conduct of the holder of a licence falls within both paragraph (a) and (b) of subsection (1) of this section, proceedings shall be taken or continued under paragraph (a) and not under paragraph (b) and accordingly the power to suspend the licence, rather than revoke it, shall not be available.

(3) Regulations made for the purposes of this section or of section 88(2) —

(a) may make different provision for large goods vehicles and for passenger-carrying vehicles and for different descriptions of persons, and

(b) shall provide for the determination of the cases in which under section 88(2)(a) of this Ordinance, a person whose licence has been revoked is to be disqualified indefinitely or for a period and, if for a period, for the determination of the period.

Revocation or suspension of licences: consideration of conduct

87.—(1) Any question arising under section 86(1)(b) as to whether a person is or is not, by reason of his conduct, fit to hold a large goods vehicle or passenger-carrying vehicle driver's licence shall be determined by the chief police officer.

(2) Where under subsection (1) of this section the chief police officer determines that the holder of the licence is not fit to hold a large goods vehicle or passenger-carrying vehicle driver's licence, as the case may be, he shall also determine whether the conduct of the holder of the licence is such as to require the revocation of the licence or only its suspension; and, if the former, whether the holder of the licence should be disqualified under section 88(2)(a) (and, if so, for what period) or under section 88(2)(b).

(3) The chief police officer may require the holder of the licence to furnish him with such information as he may require and may, by notice to the holder, require him to attend before the chief police officer at the time and place specified by the chief police officer to furnish the information and to answer such questions (if any) relating to the subject matter of the reference as the chief police officer may put to him.

(4) If the holder of the licence fails without reasonable excuse to furnish information to or attend before or answer questions properly put by the chief police officer and when required to do so under subsection (3) of this section, the chief police officer may revoke the licence or suspend it for such period as he thinks fit.

(5) Section 84(5) shall have effect so as to grant a right of appeal against a revocation or suspension of licence under this section as it does to confer a right of appeal against the refusal of the chief police officer to grant a licence under section 84(1).

Disqualification on revocation of licence

88.—(1) Where in pursuance of section 86(1)(a) the chief police officer revokes a person's large goods vehicle or passenger-carrying vehicle driver's licence, the chief police officer must, in accordance with the regulations made in pursuance of section 86(3), order that person to be disqualified indefinitely or for the period determined in accordance with the regulation.

(2) Where in pursuance of section 86(1)(b) the chief police officer revokes a person's large goods vehicle or passenger-carrying vehicle driver's licence, the chief police officer may —

(a) order the holder to be disqualified indefinitely or for such period as the chief police officer thinks fit, or

(b) except where the licence is a provisional licence, if it appears to the chief police officer that, owing to the conduct of the holder of the licence, it is expedient to require him to comply with the prescribed conditions applicable to provisional licences under Part IV until

he passes the prescribed test of competence to drive large goods vehicles or passenger-carrying vehicles of any class, order him to be disqualified for holding or obtaining a full licence until he passes such a test.

(3) Regulations may make provision for the application of subsections (1) and (2) of this section, in such circumstances and with such modifications as may be prescribed, where a person's large goods vehicle or passenger-carrying vehicle driver's licence is treated as revoked by virtue of section 157.

(4) If, while the holder of a large goods vehicle or passenger-carrying vehicle driver's licence is disqualified under subsection (1) of this section, the circumstances prescribed for the purposes of section 86(1)(a) cease to exist in his case, the chief police officer must, on an application made to him for the purpose, remove the disqualification.

(5) Where the holder of a large goods vehicle or passenger-carrying vehicle driver's licence is disqualified under subsection (2)(a) of this section, the chief police officer may, in such circumstances as may be prescribed, remove the disqualification.

(6) Where the holder of a full licence is disqualified under subsection (2)(b) of this section, the chief police officer must not afterwards grant him a full licence to drive a large goods vehicle or passenger-carrying vehicle of any class unless satisfied that he has since the disqualification passed the prescribed test of competence to drive vehicles of that class, and until he passes that test any full licence obtained by him shall be of no effect.

(7) So long as the disqualification under subsection (1) or (2)(a) of this section of the holder of a large goods vehicle or passenger-carrying vehicle driver's licence continues in force, a large goods vehicle or passenger-carrying vehicle driver's licence must not be granted to him and any such licence obtained by him shall be of no effect.

(8) In this section "disqualified" —

(a) in a case of revocation on the ground of the conduct of the holder of the licence as a driver, means disqualified for holding or obtaining a licence under Part IV to drive large goods vehicles of the prescribed classes and passenger-carrying vehicles of the prescribed classes; and

(b) in a case of revocation of a passenger-carrying vehicle driver's licence on the ground of the conduct of the holder otherwise than as a driver, means disqualified for holding or obtaining a licence under Part IV to drive passenger-carrying vehicles of the prescribed classes.

Revoked or suspended licences: surrender, return and endorsement

89.—(1) Where, in pursuance of section 86, the chief police officer revokes a licence, he must serve notice on the holder of the licence requiring him to deliver the licence and its counterpart, if any, forthwith to him, and it shall be the duty of the holder of the licence to comply with the requirement.

(2) Where, in pursuance of section 86, the chief police officer suspends a licence, he must serve notice on the holder of the licence requiring him to deliver the licence and its counterpart to the chief police officer and it shall be the duty of the holder of the licence to comply with the requirement.

(3) Any holder of a licence who fails without reasonable excuse to comply with his duty under subsection (1) or (2) commits an offence.

(4) On the delivery of a licence and its counterpart, if any, by a person to the chief police officer on revocation of a licence in pursuance of subsection (1) of this section, the chief police officer must issue to him, on payment of such fee (if any) as may be prescribed, a licence authorising the driver of the classes of vehicles which are unaffected by the revocation.

Appeal to Magistrate's Court

90.—(1) A person who, being the holder of or an applicant for, a large goods vehicle or passenger-carrying vehicle driver's licence is aggrieved by the chief police officer's —

(a) refusal or failure to grant such a licence in pursuance of section 84 (1) or section 84(4) of this Ordinance,

(b) suspension or revocation of such a licence in pursuance of section 86 or section 87(4) of this Ordinance, or

(c) ordering of disqualification under section 88(2) of this Ordinance,

may, after giving to the chief police officer notice of his intention to do so, appeal to the Magistrate's Court.

(2) On any appeal under subsection (1) of this section the chief police officer shall be the respondent.

(3) On any appeal under subsection (1) of this section the court may make such order as it thinks fit and the order shall be binding on the chief police officer.

Regulations

91.—(1) The Governor may make regulations for any purpose for which regulations may be made under this Part of this Ordinance and for prescribing anything which may be prescribed under this Part of this Ordinance and generally for the purpose of carrying out the provisions of this Part of this Ordinance into effect.

(2) Regulations under this section may in particular require applicants for tests of competence under Part IV to drive large goods vehicles or passenger-carrying vehicles or for large goods vehicle or passenger-carrying vehicle driver's licences (whether full or provisional) to have such qualifications, experience and knowledge as may be prescribed and, in particular, where they are to be authorised to drive large goods vehicles or passenger-carrying vehicles of any class at an

age below the normal minimum age for driving vehicles of that class, to fulfil such requirements as to training as may be prescribed.

(3) In subsection (2) of this section “normal minimum age for driving”, in relation to the driving of vehicles of any class, means the age which is in force under section 77 in relation to that class of vehicle.

(4) Regulations under this section may make different provision in respect of different classes of vehicles or in respect of the same class of vehicles in different circumstances.

(5) Regulations under this section may provide that a person who contravenes or fails to comply with any specified provision of the regulations commits an offence.

(6) The Governor may by regulations provide that this Part of this Ordinance shall not apply to large goods vehicles or passenger-carrying vehicles of such classes as may be prescribed either generally or in such circumstances as may be prescribed.

Interpretation

92.—(1) In this Part of this Ordinance —

“conduct” means —

(a) in relation to an applicant for or the holder of a large goods vehicle driver’s licence, his conduct as a driver of a motor vehicle, and

(b) in relation to an applicant for or the holder of a passenger-carrying vehicle driver’s licence, his conduct both as a driver of a motor vehicle and in any other respect relevant to his holding a passenger-carrying vehicle driver’s licence;

“counterpart”, in relation to a licence to drive under Part IV of this Ordinance, has the same meaning as in that Part;

“full licence” means a large goods vehicle or passenger-carrying vehicle driver’s licence other than a provisional licence;

“large goods vehicle” means a motor vehicle (not being a medium-sized goods vehicle within the meaning of Part IV of this Ordinance) which is constructed or adapted to carry or haul goods and the permissible maximum weight of which exceeds 7.5 tonnes;

“passenger-carrying vehicle” means —

(a) a large passenger-carrying vehicle, that is to say, a vehicle used for carrying passengers which is constructed or adapted to carry more than 16 passengers, or

(b) a small passenger-carrying vehicle, that is to say, a vehicle used for carrying passengers for hire or reward which is constructed or adapted to carry more than 8 but not more than 16 passengers,

and includes a combination of such a motor vehicle and a trailer;

"notice" means notice in writing and "notify" shall be construed accordingly;

"prescribed" means, unless the context otherwise requires, prescribed by regulations under section 91 of this Ordinance;

"provisional licence" means a licence granted by virtue of section 74 (3) of this Ordinance, and

"permissible maximum weight" has the same meaning as in Part IV of this Ordinance.

PART VI LICENSING OF TAXIS AND PRIVATE HIRE VEHICLES

Taxi licences

Grant of taxi licences

93.—(1) The chief police officer may licence taxis to ply for hire in the Falkland Islands but shall not grant a taxi licence in respect of a vehicle unless he is satisfied—

(a) that the vehicle is—

(i) suitable for use as a taxi;

(ii) in a suitable mechanical condition;

(iii) safe;

(b) that the bodywork, seating and interior furnishings of the vehicle are in good condition; and

(c) that there is in force in respect of the vehicle a policy of insurance satisfying the requirements of subsection (5) of this section.

(2) A taxi shall at all times it plies for hire bear a sign in such form as may be approved by the chief police officer bearing the word "Taxi" in such dimensions of lettering as he may require and that sign shall be illuminated at all times the vehicle plies for hire during the hours of darkness.

(3) A person commits an offence who uses a licensed taxi to ply for hire in contravention of a requirement of subsection (2).

(4) Subject to this section, a licence under this section may —

- (a) be granted on such conditions,
- (b) be in such form, and
- (c) be subject to revocation or suspension in such event,

as subject to this and any regulations under this Part, and in the absence of regulations prescribing the same, may be determined by the chief police officer. A licence under this section shall, if not revoked or suspended, be in force for one year

(5) It shall be a condition of every taxi licence that all times it plies for hire there is in force a policy of insurance issued by an approved insurer in such form as the chief police officer may approve, and such amounts as shall be prescribed by regulations, which in addition to any other insurance required by this Ordinance to be maintained in respect of a motor vehicle used on a road, indemnifies the driver of the taxi and the owner of it (if different) from any claim for death or personal injuries suffered by any passenger in the taxi carried for hire and reward and such other risks as may be prescribed by regulations under this Part.

(6) An application fee of such amount (if any) as is prescribed shall be payable —

- (a) by any applicant for a licence under this section, on making the application for the licence;
- (b) by any applicant for the submission of any motor vehicle the subject of the application to any test or examination, or any part of a test or examination, with respect to any matter of fitness, on making the application for the taking or re-taking of the test, examination or part; and
- (c) by any person granted a licence under this section, on the grant of a licence.

(7) In paragraph (b) of subsection (6) “matter of fitness” means —

- (a) any matter as respects which the chief police officer must be, or requires to be, satisfied before granting a licence under this section; or
- (b) any matter such that, if the chief police officer is not satisfied with respect to the matter, he may refuse to grant a licence under this section.

(8) Subject to subsection (9), the owner of the taxi and the driver each commit an offence if any condition of a taxi licence is contravened.

(9) The driver of the taxi does not commit an offence under subsection (7) if he shows that the contravention did not arise from any act or omission on his part or that, if it did, that he did not

know, and ought not reasonably to have been aware, that the condition in question would be thereby contravened.

Further provisions in relation to licensed taxis

94.—(1) If any unlicensed taxi plies for hire, the owner of the taxi commits an offence.

(2) Where the owner of a taxi commits an offence under subsection (1) of this section, the driver of the taxi, if he is not the owner, commits an offence under this subsection unless he proves that he was unaware that the taxi was an unlicensed taxi.

(3) A person commits an offence who, being the owner or driver of a vehicle, which is not licensed as a taxi under section 93, uses the vehicle at any time while there is displayed on or within the vehicle a sign or notice intimating that the vehicle is a taxi, provided it is a defence for a person who is the driver of, but not the owner, of the vehicle to show that he did not know, and ought not reasonably to have been aware, that the vehicle was not so licensed.

(4) The owner of a licensed taxi shall present the vehicle for inspection and testing by or on behalf of the chief police officer within such period and at such place as the chief police officer may by notice reasonably require.

(5) The owner shall (without prejudice to section 128) report any accident to a licensed taxi materially affecting—

(a) the safety, performance or appearance of the vehicle, or

(b) the comfort or convenience of persons carried in the vehicle

to the chief police officer or to a police officer at Stanley police station as soon as reasonably practical and in any case within 72 hours of the accident occurring.

(6) If the ownership of a licensed taxi changes, the person who was previously the owner shall within 14 days of the change give notice to the chief police officer of that fact and the name and address of the new owner.

(7) A person who without reasonable excuse contravenes any of the provisions of this section commits an offence.

(8) Nothing in this Ordinance shall be construed so as to prevent the driver of a taxi contracting to carry passengers on the basis that he shall be free during the course of the journey, subject to the seating available in the taxi, to carry other passengers under a separate contract, provided an unreasonable diversion or delay in the completion of the first-mentioned contract is not thereby occasioned.⁵⁵

⁵⁵ In the UK, taxis are ordinarily hired for exclusive use by the person contracting and those accompanying him, but it is frequently the practice in Stanley for taxis to pick up other passengers on the way, for the same or another destination. This subclause makes provision for this.

Licensing taxi drivers

Taxis to be driven by licensed drivers

95.—(1) The chief police officer may licence persons to be drivers of taxis.

(2) No taxi shall ply for hire unless it is under the charge of a driver having a licence granted by the chief police officer under this section.

(3) If any taxi plies for hire in contravention of this section —

(a) the person driving the taxi, and

(b) the owner of the taxi, unless he proves that the driver acted without his knowledge or consent,

each commit an offence.

(4) A licence under this section may —

(a) be granted on such conditions,

(b) be in such form, and

(c) be subject to revocation or suspension in such event as may be prescribed and, if not revoked or suspended, shall be in force for three years.

(5) A person shall not be licensed to drive a taxi unless the chief police officer is satisfied that he holds and has held for at least 12 months a licence authorising to drive a motor car in the Falkland Islands⁵⁶ and that he is a fit and proper person to hold a licence to drive a taxi⁵⁷.

(6) A fee of such amount (if any) as may be prescribed shall be paid —

(a) by any applicant for a licence under this section, on making the application for the licence;

(b) by any applicant for the taking or re-taking of any test or examination, or any part of a test or examination, with respect to any matter of fitness, on making the application for the taking or re-taking of the test, examination or part; and

(c) by any person granted a licence under this section, on the grant of the licence.

(7) In paragraph (b) of subsection (6) of this section “matter of fitness” means —

⁵⁶ Should a minimum age be required?

⁵⁷ “Fit and proper person”. A person who is a sex offender, or is “on the blacklist” or even if he has a driving licence has a bad driving record might not be regarded as a fit and proper person.

(a) any matter as respects which the chief police officer must be satisfied before granting a licence under this section; or

(b) any matter such that, if the chief police officer is not satisfied with respect to the matter, he may refuse to grant a licence under this section.

(8) Regulations may provide for different amounts to be payable under subsection (6) of this section for different purposes or different cases.

(9) Where a vehicle falls within the definition of "passenger-carrying vehicle" in section 82 and is a taxi, a licence under this section, as well as a licence under Part V must be held by the driver of the vehicle⁵⁸.

Fitness of licensed taxis

96. (1) A police officer or other person authorised by the chief police officer may at any reasonable time inspect, and test for the purpose of ascertaining its fitness, any vehicle to which a taxi licence relates.

(2) If a police officer or other person so authorised is not satisfied as to the fitness of such a vehicle he may by notice to the owner of the vehicle —

(a) require the owner to make the vehicle available for further inspection and testing at such reasonable time and place as may be specified in the notice; and

(b) if he thinks fit suspend the licence relating to that vehicle until a police officer or other person authorised by the chief police officer is satisfied as to the fitness of the vehicle.

(3) A notice under subsection (2) shall state the grounds on which the licence is being suspended and the suspension shall take effect immediately the notice is served on the owner of the vehicle.

(4) A licence suspended under subsection (2)(b) shall remain suspended until such time as a police officer or other person authorised by the chief police officer by notice to the owner notifies that the licence is again in force.

(5) If a licence remains suspended at the end of a period of two months beginning on the day on which a notice under subsection (2)(b) was served on the owner of the vehicle a police officer or other person authorised by the chief police officer may by notice served on the owner of the vehicle direct that the licence be revoked with effect at the end of the period of 21 days beginning with the day on which the owner is served with the notice.

(6) The owner of the vehicle may appeal against a notice under subsection (2)(b) or (5) to the Magistrate's Court.

Private hire vehicle sand public service vehicles

Licensing of private hire vehicles⁵⁹

97.—(1) A vehicle shall not be used as a private hire vehicle on a road unless a private hire vehicle licence is in force in respect of that vehicle.

(2) If a vehicle is used in contravention of this section the driver and owner of that vehicle each commit an offence.

(3) The owner of any vehicle constructed or adapted to seat not more than 8 passengers⁶⁰ may apply to the chief police officer for a private hire vehicle licence.

(4) The chief police officer shall grant a private hire vehicle licence if he is satisfied —

(a) that the vehicle —

(i) is suitable in type, size and design for use as a private hire vehicle;

(ii) is safe, comfortable and in a suitable mechanical condition for that use; and

(b) that there is in force a policy of insurance issued by an approved insurer in such form as the chief police officer may approve, and such amounts as shall be prescribed by regulations, which in addition to any other insurance required by this Ordinance to be maintained in respect of a motor vehicle used on a road, indemnifies the driver of the taxi and the owner of it (if different) from any claim for death or personal injuries suffered by any passenger in the taxi carried for hire and reward and such other risks as may be prescribed by regulations under this Part;

(c) that any further requirements which may be prescribed are met.

⁵⁹ It is important to distinguish between taxis and private hire vehicles. A taxi can "ply for hire". It can stand at a taxi stand and accept trade from all and sundry. A number of taxis in Stanley currently do that by parking in convenient spots in the centre of Stanley waiting for custom. A taxi can also accept telephone bookings, just as a private hire vehicle can. The fares charged by taxis are (overseas) regulated and provision is contained in this Bill for doing so. No provision is made for regulating the fares of private hire vehicles. A taxi is normally obliged, subject to exceptions, to accept the custom of anybody who hails it in the street and regulations under this Bill could so provide. A private hire vehicle could not do that because that would constitute "plying for hire". There are a number of vehicles whose owners seek custom from tourists when cruise ship visits or advertise trips to various tourist attractions. They do not seek to undertake a general taxi business. These vehicles are best licensed as private hire vehicles, but it is necessary to make provision for them to be allowed to accept custom while stationed in the carpark or in the forecourt of the Jetty Centre on days when cruise ships call in Stanley (otherwise they would be plying for hire). There is no power in the Bill to limit the number of private hire cars which can be licensed.

⁶⁰ A motor vehicle used for carrying more than eight passengers for hire or reward is a public service vehicle. A public service vehicle licence must be obtained in respect of the vehicle and the driver will require a public service vehicle driver's licence. These licences are divided into classes in accordance with the number of seats in the vehicle they authorise the driver to drive.

(5) A private hire vehicle licence —

- (a) must relate to one vehicle only, (but a person may hold more than one private hire vehicle licence);
- (b) shall be granted subject to such conditions (if any) as may be prescribed and any other conditions the chief police officer may think fit;
- (c) shall be in such form and contain such particulars as the chief police officer may think fit; and
- (d) shall be granted for one year or for such shorter period as the chief police officer may consider appropriate in the circumstances of the case.⁶¹

(6) An applicant for a private hire licence may appeal to the Magistrate's Court against a decision not to grant such a licence or against any condition (other than a prescribed condition) to which the licence is subject.

Licensing of public service vehicles

98.—(1) A vehicle shall not be used as a public service vehicle unless a public service vehicle licence is in force in respect of that vehicle.

(2) If a vehicle is used in contravention of this section the driver and owner of that vehicle each commit an offence.

(3) The owner of any vehicle constructed or adapted so as to seat passengers may apply to the chief police officer for a public service vehicle licence.

(4) The chief police officer shall grant a public service vehicle licence if he is satisfied —

(a) that the vehicle —

- (i) is suitable in type, size and design for use as a public service vehicle;
- (ii) is safe, comfortable and in a suitable mechanical condition for that use; and

(b) that there is in force a policy of insurance issued by an approved insurer in such form as the chief police officer may approve, and such amounts as shall be prescribed by regulations, which in addition to any other insurance required by this Ordinance to be maintained in respect of a motor vehicle used on a road, indemnifies the driver of the taxi and the owner of it (if different) from any claim for death or personal injuries suffered by any passenger in the public service vehicle carried for hire and reward and such other risks as may be prescribed by regulations under this Part;

⁶¹ This might be, effectively, for the duration of the tourist season (say from November to March)

(c) that any further requirements which may be prescribed are met.

(5) A public service vehicle licence —

(a) must relate to one vehicle only, (but a person may hold more than one public service vehicle licence);

(b) shall be granted subject to such conditions (if any) as may be prescribed and any other conditions the chief police officer may think fit;

(c) shall be in such form and contain such particulars as the chief police officer may think fit; and

(d) shall be granted for one year or for such shorter period as the chief police officer may consider appropriate in the circumstances of the case.⁶²

(6) An applicant for a public service licence may appeal to the Magistrate's Court against a decision not to grant such a licence or against any condition (other than a prescribed condition) to which the licence is subject.

Obligations of owners of vehicles licensed as private hire vehicle or as public service vehicle

99.—(1) This section applies to any vehicle in respect of which a private hire licence or public service vehicle licence is held.

(2) The owner shall present the vehicle for inspection and testing by or on behalf of the chief police officer within such period and at such place as the chief police officer may by notice reasonably require.

(3) The owner shall (without prejudice to section 128) report any accident to the vehicle materially affecting —

(a) the safety, performance or appearance of the vehicle, or

(b) the comfort or convenience of persons carried in the vehicle,

to the chief police officer or to a police officer at Stanley police station as soon as reasonably practical and in any case within 72 hours of the accident occurring.

(4) If the ownership of the vehicle changes, the person who was previously the owner shall within 14 days of the change give notice to the chief police officer of that fact and the name and address of the new owner.

⁶² This might be, effectively, for the duration of the tourist season (say from November to March)

(5) A person who without reasonable excuse contravenes any of the provisions of this section commits an offence.

Fitness of licensed vehicles

100.—(1) A police officer or other person authorised by the chief police officer may at any reasonable time inspect, and test for the purpose of ascertaining its fitness, any vehicle to which a private hire vehicle or public service vehicle licence relates.

(2) If a police officer or other person so authorised is not satisfied as to the fitness of such a vehicle he may by notice to the owner of the vehicle —

(a) require the owner to make the vehicle available for further inspection and testing at such reasonable time and place as may be specified in the notice; and

(b) if he thinks fit suspend the licence relating to that vehicle until a police officer or other person authorised by the chief police officer is satisfied as to the fitness of the vehicle.

(3) A notice under subsection (2) shall state the grounds on which the licence is being suspended and the suspension shall take effect immediately the notice is served on the owner of the vehicle.

(4) A licence suspended under subsection (2)(b) shall remain suspended until such time as a police officer or other person authorised by the chief police officer by notice to the owner notifies that the licence is again in force.

(5) If a licence remains suspended at the end of a period of two months beginning on the day on which a notice under subsection (2)(b) was served on the owner of the vehicle a police officer or other person authorised by the chief police officer may by notice served on the owner of the vehicle direct that the licence be revoked with effect at the end of the period of 21 days beginning with the day on which the owner is served with the notice.

(6) The owner of the vehicle may appeal against a notice under subsection (2)(b) or (5) to the Magistrate's Court.

Requirement for private hire vehicle driver's licences and public service vehicle driver's licences

101.—(1) A vehicle shall not be used as a private hire vehicle or public service vehicle on a road unless the driver holds a private hire vehicle driver's licence (in the case of a private hire vehicle) or a public service vehicle driver's licence issued under Part V (in the case of a public service vehicle).

(2) The driver and the owner of a vehicle each commit an offence if it is used in contravention of subsection (1).

(3) The chief police officer may licence persons to be drivers of private hire vehicles.

(4) A licence under this section may —

- (a) be granted on such conditions,
 - (b) be in such form, and
 - (c) be subject to revocation or suspension in such event as may be prescribed and, if not revoked or suspended, shall be in force for three years.
- (5) A person shall not be licensed to drive a private hire vehicle unless the chief police officer is satisfied that he holds and has held for at least 12 months a licence authorising him to drive a motor car in the Falkland Islands and that he is a fit and proper person to hold a licence to drive a private hire vehicle.
- (6) A fee of such amount (if any) as may be prescribed shall be paid —
- (a) by any applicant for a licence under this section, on making the application for the licence;
 - (b) by any applicant for the taking or re-taking of any test or examination, or any part of a test or examination, with respect to any matter of fitness, on making the application for the taking or re-taking of the test, examination or part; and
 - (c) by any person granted a licence under this section, on the grant of the licence.
- (7) In paragraph (b) of subsection (6) of this section “matter of fitness” means —
- (a) any matter as respects which the chief police officer must be satisfied before granting a licence under this section; or
 - (b) any matter such that, if the chief police officer is not satisfied with respect to the matter, he may refuse to grant a licence under this section.
- (8) Regulations may provide for different amounts to be payable under subsection (6) of this section for different purposes or different cases.

Suspension and revocation of licences

Suspension and revocation of licences under this Part

102.—(1) Without prejudice to the previous provisions of this Part, the chief police officer may suspend or revoke a licence under this Part for any reasonable cause including (without prejudice to the generality of this subsection) any ground mentioned in any subsequent subsection of this section.

(2) A taxi licence, private hire vehicle or public service licence may be suspended or revoked by the chief police office if —

- (a) he is no longer satisfied that the licence holder is fit to hold the licence;

(b) the licence holder has failed to comply with any condition of the licence or any other obligation imposed on him by or under this Part; or

(c) he is no longer satisfied that the vehicle to which it relates is fit for use as a taxi, private hire vehicle or public service vehicle, as the case may be.

(3) A taxi driver's licence or a private hire vehicle driver's licence may be suspended or revoked by the chief police officer if—

(a) the licence holder has, since the grant of the licence, been convicted of an offence involving dishonesty, indecency or violence;

(b) if the name of the licence holder appears on the sex offenders register or the chief police officer is for any other reason no longer satisfied that he is fit to hold such a licence;

(c) the licence holder has failed to comply with any condition of the licence or any other obligation placed on him by or under this Part.

(4) Where the chief police officer has decided to suspend or revoke a licence under this section—

(a) he shall give notice of the decision and the grounds of it to the licence holder; and

(b) the suspension or revocation takes effect at the end of the period of 21 days beginning with the day on which that notice is served.

(5) If the chief police officer is of the view that the interests of public safety require the suspension or revocation of a licence to have immediate effect, and the chief police officer includes a statement of that opinion and the reasons for it in the notice of suspension or revocation, the suspension or revocation takes effect when the notice is served on the licence holder.

(6) The licence holder upon a notice under this section has been served may appeal to the Magistrate's Court against a decision under this section to suspend or revoke a licence.

Appeals

103.—(1) This section applies to any appeal which lies under this Part to the Magistrate's Court against a decision of the chief police officer, a police officer or a person authorised by the chief police officer in relation to, or an application for, a licence under this Part.

(2) Any such appeal shall be by way of complaint for an order and the Magistrate's Courts Act 1980 shall apply to the proceedings.

(3) The time within which a person may bring such an appeal is 21 days from the date on which the notice of the decision appealed against was served on him.

(4) In the case of a decision where an appeal lies, the notice of the decision shall state the right of appeal to the Magistrate's Court and the time within which such an appeal may be brought.

(5) An appeal to the Supreme Court against any decision of the Magistrate's Court lies at the instance of any party to the proceedings in the Magistrate's Court.

(6) Where on an appeal the court varies or reverses any decision of the chief police officer, a police officer or a person authorised by the chief police officer, the chief police officer shall give effect to by the chief police officer or, as the case may be, a police officer or a person authorised by the chief police officer.

(7) If any decision of the chief police officer against which a right of appeal is conferred by this Part—

(a) involves the execution of work or the taking of any action;

(b) makes it unlawful for any person to carry on a business which he was lawfully carrying on at the time of the decision.

the decision shall not take effect until the time for appealing has expired or (where an appeal is brought) until the appeal is disposed of or withdrawn.

(8) Subsection (7) does not apply in relation to a decision to suspend or revoke a licence if the notice of suspension or revocation states that, in the interests of public safety, the decision is to have immediate effect.

Taxis and private hire vehicles: miscellaneous offences

104.—(1) Where regulations have been made pursuant to section 106(b)(v), the owner and the driver of a taxi commit an offence if it is used under a contract or purported contract for private hire at a rate of fares or charges greater than that fixed by such regulations.

(2) In subsection (1) "contract" means —

(a) a contract made otherwise than while the relevant taxi is plying for hire or when waiting at a taxi stand; and

(b) a contract made otherwise than with or through the driver of the relevant taxi while it is so plying or waiting.

(3) The driver of a taxi or private hire vehicle commits an offence if he without reasonable cause unnecessarily prolongs, in distance or in time, the journey for which the taxi or private hire vehicle was hired.

(4) A person commits an offence who —

(a) wilfully obstructs a police officer or a person authorised by the chief police officer, in either case acting in pursuance of this Part;

(b) without reasonable excuse fails to comply with any requirement properly made to him by such a police officer or such a person; or

(c) without reasonable cause fails to give such a police officer or such a person any other assistance or information he may reasonably require for the purpose of the performance of his functions under this Part.

Savings for vehicles used for funerals and weddings

105. Nothing in this Part applies to vehicles the use of which as a private hire vehicle is limited to use in connection with funerals and weddings.

Regulations for the purposes of this Part

106. The Governor may make regulations —

(a) as to any matter which it is convenient or necessary to prescribe for the purposes of or in connection with the exercise of the functions of the chief police officer under the previous provisions of this Part;

(b) without prejudice to the generality of paragraph (a) —

(i) prescribing the manner and form in which any application to the chief police officer under any previous provision of this Part shall be made;

(ii) fees to be payable by applicants for and persons granted a licence under any previous provision of this Part;

(iii) providing that the chief police officer (without prejudice to the previous provisions of this Part) may revoke such a licence if at any time the chief police officer ceases to be satisfied as to the mechanical fitness and safety of the vehicle to which it relates;

(iv) regulating the number of persons to be carried in any taxi, private hire vehicle or public service vehicle and requiring that number to be shown on the vehicle;

(v) fixing the rates of fares, as well for time as distance, to be paid for taxis, and for securing the due publication of such fares;

(vi) for forming a table of distances in relation to any fare to be charged in relation to a taxi by distance, or by the preparation of a book, map, or plan⁶³;

⁶³ It should be noted that this section does NOT enable taximeters to be required. It enables taxi fares to be regulated. The Table could perhaps be carried in taxis and displayed at the Jetty Centre. There have been complaints by tourists of overcharging.

(vii) for securing the safe custody and re-delivery of any property accidentally left in any taxi, private hire vehicle or public service vehicle and fixing the charges to be paid in respect thereof, with power to cause such property to be sold or to be given to the finder in the event of its not being claimed within a certain time; and

(viii) limiting the number of taxis which may be licensed, and providing for the transfer of taxi licences.

Interpretation

107.—(1) In this Part —

“owner”, in relation to a vehicle, includes a person to whom a vehicle is hired under a hire purchase agreement or which is the subject of a sale to him under a conditional sale agreement;

“private hire vehicle” means a vehicle which is licensed under section 97; and

“public service vehicle” means a motor vehicle which—

(a) being a vehicle adapted to carry more than eight passengers, is used for carrying passengers for hire or reward; or

(b) being a vehicle not so adapted is used for carrying passengers, and not being licensed as a taxi or as a private hire vehicle is used for carrying passengers for hire or reward at separate fares in the course of a business of carrying passengers, and

“taxi” means a vehicle, other than a public service vehicle, whatever its form or construction and however it is propelled or drawn which is used in plying for hire or which is held out to be a taxi.

(2) For the purposes of this Part, a vehicle plies for hire if whether or not —

(a) it is in motion;

(b) word or gesture is used by the driver or any person on his behalf;

(c) it is in a road or other public place,

having regard to all the circumstances of the case, it solicits passengers for hire or reward.

PART VII THIRD-PARTY LIABILITIES

Compulsory insurance against third-party risks

Users of motor vehicles to be insured against third-party risks

108.—(1) Subject to the provisions of this Part of this Ordinance —

(a) a person must not use a motor vehicle on a road unless there is in force in relation to the use of the vehicle by that person such a policy of insurance as complies with the requirements of this Part, and

(b) a person must not cause or permit any other person to use a motor vehicle on a road unless there is in force in relation to the use of the vehicle by that person such a policy of insurance in respect of third-party risks as complies with the requirements of this Part.

(2) A person commits an offence who contravenes subsection (1).

(3) A person charged with using a motor vehicle in contravention of this section shall not be convicted if he proves —

(a) that the vehicle did not belong to him and was not in his possession under a contract of hiring or of loan,

(b) that he was using the vehicle in the course of his employment, and

(c) that he neither knew nor had reason to believe that there was not in force in relation to the vehicle such a policy of insurance as is mentioned in subsection (1) of this section.

(4) This Part does not apply to invalid carriages⁶⁴.

Requirements in respect of policies of insurance

109.—(1) In order to comply with the requirements of this Part of this Ordinance, a policy of insurance must satisfy the following conditions.

(2) The policy must be issued by an authorised insurer.

(3) Subject to subsection (4) of this section, the policy —

(a) must insure such person, persons or classes of persons as may be specified in the policy in relation to any liability which may be incurred by him or them in respect of the death of or bodily injury to any person or damage to property caused by, or arising out of, the use of the vehicle on a road in the Falkland Islands,

⁶⁴ This clause reflects the corresponding provision in the Road Traffic Act 1988.

(b) must also insure him or them in respect of any liability which may be incurred by him or them under the provisions of this Part relating to payment for emergency treatment.

(4) The policy shall not, by virtue of subsection (3)(a) of this section, be required —

(a) to provide insurance of more than the prescribed amount in respect of all such liabilities as may be incurred in respect of death of or bodily injury to any person caused by, or arising out of, any one accident involving the vehicle;

(b) to provide insurance of more than the prescribed amount in respect of all such liabilities as may be incurred in respect of damage to property caused by, or arising out of, any one accident involving the vehicle;

(c) to cover liability in respect of the death, arising out of and in the course of his employment of a person in the employment of a person insured by the policy or of bodily injury sustained by such a person arising out of and in the course of his employment;

(d) to cover liability in respect of damage to the vehicle;

(e) to cover liability in respect of damage to goods carried for hire or reward in or on the vehicle or in or on any trailer (whether or not coupled) drawn by the vehicle;

(f) to cover any liability of a person in respect of damage to property in his custody or under his control, or

(g) to cover any contractual liability.

(5) In the case of a person —

(a) carried in or upon a vehicle, or

(b) entering or getting on to, or alighting from, a vehicle,

the provisions of paragraph (c) of subsection (4) of this section do not apply unless cover in respect of the liability referred to in that paragraph is in fact provided pursuant to a requirement of the Employer's Liability (Compulsory Insurance) Ordinance 1996.

Issue and surrender of certificates of insurance and of security

110.—(1) A policy of insurance shall be of no effect for the purposes of this Part unless and until there is delivered by the insured to the person by whom the policy is effected a certificate (in this Part referred to as a "certificate of insurance") in the prescribed form and containing such particulars of any conditions subject to which the policy is issued and of any other matters as may be prescribed.

(2) Different form and the different particulars may be prescribed for the purposes of subsection (1) of this section in relation to different cases or circumstances.

(3) Where a certificate has been delivered under this section and the policy to which it relates is cancelled by mutual consent or by virtue of any provision in the policy, the person to whom the certificate was delivered must, within seven days from the taking effect of the cancellation —

(a) surrender the certificate to the person by whom the policy was issued, or

(b) if the certificate has been lost or destroyed, make a statutory declaration to that effect.

(4) A person who fails to comply with subsection (3) commits an offence.

Avoidance of certain exceptions to policies

111.—(1) Where a certificate of insurance has been delivered under section 110 to the person by whom a policy has been effected so much of the policy as purports to restrict the insurance of the persons insured by the policy by reference to any of the matters mentioned in subsection (2) of this section shall, as respects such liabilities as are required to be covered by a policy under section 108, be of no effect.

(2) Those matters are —

(a) the age or physical or mental condition of persons driving the vehicle;

(b) the condition of the vehicle;

(c) the number of persons that the vehicle carries;

(d) the weight or physical characteristics of the goods that the vehicle carries,

(e) the time at which or the areas within which the vehicle is used,

(f) the horse power or cylinder capacity or value of the vehicle,

(g) the carrying on the vehicle of any particular apparatus, or

(h) the carrying on the vehicle of any particular means of identification other than any means of identification required to be carried by or under any law of the Falkland Islands.

(3) Nothing in subsection (1) of this section requires an insurer to pay any sum in respect of the liability of any person otherwise than in or towards the discharge of that liability.

(4) Any sum paid by an insurer or the giver of a security in or towards the discharge of any liability of any person which is covered by the policy by virtue only of subsection (1) of this section is recoverable by the insurer from that person.

(5) A condition in a policy issued or given for the purposes of this Part providing —

(a) that no liability shall arise under the policy, or

(b) that any liability so arising shall cease,

in the event of some specified thing being done or omitted to be done after the happening of the event giving rise to a claim under the policy or security, shall be of no effect in connection with such liabilities as are required to be covered by a policy under section 108.

(6) Nothing in subsection (5) of this section shall be taken to render void any provision in a policy requiring the person insured to pay to the insurer any sums which the latter may have become liable to pay under the policy and which had been applied to the satisfaction of the claims of third parties.

(7) Notwithstanding anything in any enactment, a person issuing a policy of insurance under section 108 shall be liable to indemnify the persons or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of those persons or classes of persons.

Avoidance of certain agreements as to liability towards passengers

112.—(1) This section applies where a person uses a motor vehicle in circumstances such that under section 108 there is required to be in force in relation to his use of it such a policy of insurance in respect of third-party risks as complies with the requirements of this Part.

(2) If any other person is carried in or upon the vehicle while the user is so using it, any antecedent agreement or understanding between them (whether intended to be legally binding or not) shall be of no effect so far as it purports or might be held —

(a) to negative or restrict any such liability of the user in respect of persons carried in or upon the vehicle as is required by section 109 of this Ordinance to be covered by a policy of insurance, or

(b) to impose any conditions with respect to the enforcement of any such liability of the user.

(3) The fact that a person so carried has willingly accepted as his the risk of negligence on the part of the user shall not be treated as negating any such liability of the user.

(4) For the purposes of this section —

(a) references to a person being carried in or upon a vehicle include references to a person entering or getting on to, or alighting from, the vehicle, and

(b) the reference to an antecedent agreement is to one made at any time before the liability arose.

Duty of insurers to satisfy judgment against persons insured against third-party risks

113.—(1) This section applies where, after a certificate of insurance has been delivered under section 110 to the person by whom a policy has been effected, a judgment to which this subsection applies is obtained.

(2) Subsection (1) applies to judgments relating to a liability with respect to any matter where liability with respect to that matter is required to be covered by a policy of insurance under section 109 and either —

(a) it is a liability covered by the terms of the policy to which the certificate relates, and the judgment is obtained against any person who is insured by the policy, or

(b) it is a liability, other than an excluded liability, which would be so covered if the policy insured all persons and the judgment is obtained against any person other than one who is insured by the policy.

(3) In deciding for the purposes of subsection (2) of this section whether a liability is or would be covered by the terms of a policy, so much of the policy as purports to restrict the insurance of the persons insured by the policy by reference to the holding by the driver of a licence authorising him to drive it shall be treated as of no effect.

(4) In subsection (2)(b) of this section “excluded liability” means a liability in respect of the death of, or bodily injury, to, or damage to the property of any person who, at the time of the use which gave rise to the liability, was allowing himself to be carried in or upon the vehicle and knew or had reason to believe that the vehicle had been stolen or unlawfully taken, not being a person who —

(a) did not know and had no reason to believe that the vehicle had been stolen or unlawfully taken until after the commencement of the journey, and

(b) could not reasonably have been expected to have alighted from the vehicle.

In this subsection the reference to a person being carried in or upon vehicle includes a reference to a person entering or getting on to, or alighting from, the vehicle.

(5) Notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, he must, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment —

(a) as regards liability in respect of death or bodily injury, any sum payable under the judgment in respect of the liability, together with any sum which, by virtue of any enactment relating to interest on judgments, is payable in respect of interest on that sum,

(b) as regards liability in respect of damage to property any sum required to be paid under subsection (6) of this section, and

(c) any amount payable in respect of costs.

(6) This subsection requires —

(a) where the total of any amount paid, payable or likely to be payable under the policy in respect of damage to property caused by, or arising out of, the accident in question does not exceed the prescribed amount, the payment of any sum payable under the judgment in respect of the liability, together with any sum which, by virtue of any enactment relating to interest on judgments, is payable in respect of interest on that sum,

(b) where that total exceeds the prescribed sum, the payment of either —

(i) such proportion of any sum payable under the judgment in respect of the liability as the prescribed sum bears to that total, together with the same proportion of any sum which, by virtue of any enactment relating to interest on judgments, is payable in respect of interest on that sum, or

(ii) the difference between the total of any amounts already paid under the policy in respect of such damage and the prescribed sum, together with such proportion of any sum which, by virtue of any enactment relating to interest on judgments, is payable in respect of interest on any sum payable under the judgment in respect of the liability as the difference bears to that sum,

which ever is the less, unless not less than the prescribed sum has already been paid under the policy or security in respect of such damage (in which case nothing is payable).

(7) Where an insurer becomes liable under this section to pay an amount in respect of a liability of a person who is insured by a policy or whose liability is covered by a security, he is entitled to recover from that person —

(a) that amount, in a case where he became liable to pay it by virtue only of subsection (3) of this section, or

(b) in a case where that amount exceeds the amount for which he would, apart from the provisions of this section, be liable under the policy in respect of that liability, the excess.

(8) Where an insurer becomes liable under this section to pay an amount in respect of a liability of a person who is not insured by a policy, he is entitled to recover that amount from the person or from any person who —

(a) is insured by the policy by the terms of which the liability would be covered if the policy insured all persons, and

(b) caused or permitted the use of the vehicle which gave rise to the liability.

(9) In this section “liability covered by the terms of the policy” means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel, or has avoided or cancelled, the policy or security.

Exceptions to section 113

114.—(1) No sum is payable by an insurer under section 113 —

(a) in respect of any judgment unless, before or within seven days after the commencement of the proceedings in which the judgment was given, the insurer had notice of the beginning of the proceedings, or

(b) in respect of any judgment so long as execution on the judgment is stayed pending an appeal, or

(c) in connection with any liability if, before the happening of the event which was the cause of the death or bodily injury or damage to property giving rise to the liability, the policy was cancelled by mutual consent or by virtue of any provision contained in it, and also —

(i) before the happening of that event the certificate was surrendered to the insurer, or the person to whom the certificate was delivered made a statutory declaration stating that the certificate had been lost or destroyed, or

(ii) after the happening of that event, but before the expiration of a period of fourteen days from the taking effect of the cancellation of the policy, the certificate was surrendered to the insurer, or the person to whom it was delivered made a statutory declaration stating that the certificate had been lost or destroyed, or

(iii) either before or after the happening of that event, but within the period of fourteen days, the insurer has commenced proceedings under this Ordinance in respect of the failure to surrender the certificate.

(2) Subject to subsection (3) of this section, no sum is payable by an insurer under section 113 if, in an action commenced before, or within three months after, the commencement of the proceedings in which the judgment was given, he has obtained a declaration —

(a) that, apart from any provision contained in the policy or security, he is entitled to avoid it on the ground that it was obtained —

(i) by the non-disclosure of a material fact, or

(ii) by a representation of fact which was false in some material particular, or

(b) if he has avoided the policy on the ground that he was entitled to do so apart from any provision contained in it,

and, for the purposes of this section, “material” means of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk, and if so, at what premium and on what conditions.

(3) An insurer who has obtained such a declaration as is mentioned in subsection (2) of this section in an action does not by reason of that become entitled to the benefit of that subsection as respects any judgment obtained in proceedings commenced before the commencement of that action unless before, or within seven days after, the commencement of that action he has given notice of it to the person who is the plaintiff in those proceedings specifying the non-disclosure or false representation on which he proposes to rely.

(4) A person to whom notice of such an action is so given is entitled, if he thinks fit, to be made a party to it.

Bankruptcy of insured not to affect claims by third parties

115.—(1) Where, after a certificate of insurance has been delivered under section 110 to the person by whom a policy has been effected, any of the events mentioned in subsection (2) of this section happens, the happening of that event shall not affect any liability of that person as is required to be covered by a policy of insurance under section 109.

(2) In the case of the person by whom the policy was effected or to whom the security was given, the events referred to in subsection (1) of this section are —

- (a) that he becomes bankrupt or make a composition or arrangement with his creditors;
- (b) that he dies and his estate falls to be administered as an insolvent estate;
- (c) if that person is a company —
 - (i) a winding-up order or an administration order is made with respect to the company,
 - (ii) a resolution for a voluntary winding-up is passed with respect to the company,
 - (iii) a receiver or manager of the company's business or undertaking is duly appointed,
 - (iv) possession is taken by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in or subject to the charge.

(3) Subsection (1) has effect notwithstanding anything in the Third-Parties (Rights against Insurers) Act 1930 in its application to the Falkland Islands and nothing in subsection (1) of this section affects any rights conferred by that Act on the person to whom the liability was incurred, being rights so conferred against the person by whom the policy was issued.

Duty to give information as to insurance where claim made

116.—(1) A person against whom a claim is made in respect of any such liability as is required to be covered by a policy of insurance under section 109 must, on demand by or on behalf of the person making the claim —

- (a) state whether or not, in respect of that liability —

- (i) he was insured by a policy having effect for the purposes of this Part,
 - (ii) he would have been so insured if the insurer had not avoided or cancelled the policy, and
- (b) if he was or would have been so insured —
- (i) give such particulars with regard to that policy as was specified in any certificate of insurance delivered in respect of that policy under section 110, or
 - (ii) where no such certificate was delivered under that section, give the following particulars, that is to say, the registration mark or other identifying particulars of the vehicle concerned, the number or other identifying particulars of the insurance policy issued in respect of the vehicle, the name of the insurer and the period of the insurance cover.

(2) A person who fails without reasonable excuse to comply with the provisions of subsection (1) of this section, or wilfully makes a false statement in reply to any such demand as is referred to in that subsection, commits an offence.

Power to require evidence of insurance on application to pay vehicle tax

117. Provision may be made by regulations under this Part for requiring a person paying vehicle tax under this Ordinance in respect of a motor vehicle to prove that there is in force the necessary policy of insurance in relation to the use of the vehicle by the applicant or by other persons on his order or with his permission.

Payments for treatment of traffic casualties

Payment for treatment of traffic casualties⁶⁵

118.—(1) Subject to subsection (2) of this section, where —

- (a) a payment, other than a payment under section 119, is made (whether or not without admission of liability) in respect of the death of, or bodily injury, to any person arising out of the use of a motor vehicle on a road, and
- (b) the payment is made by an authorised insurer, the payment being made under or in consequence of a policy issued under section 109,

the insurer must pay the expenses reasonably incurred by the hospital in affording the treatment, after deducting from the expenses any monies actually received in payment of a specific charge for the treatment, not being monies received under any contributory scheme.

⁶⁵ The provisions of clause 118-120 reflect corresponding provisions in the Road Traffic Act 1988.

(2) The amount to be paid shall not exceed such amount as may be prescribed and different amounts may be prescribed for persons treated as in-patients and for persons treated as out-patients.

(3) For the purposes of this section "expenses reasonably incurred" means —

(a) in relation to a person who receives treatment at a hospital as an in-patient, an amount for each day he has maintained in that hospital representing the average daily cost, for each in-patient of the maintenance of the hospital and the staff of the hospital and the maintenance and treatment of the in-patients in the hospital, and

(b) in relation to a person who receives treatment at a hospital as an out-patient, reasonable expenses actually incurred.

Payment for emergency treatment of traffic casualties

119.—(1) Subsection (2) of this section applies where —

(a) medical or surgical treatment or examination is immediately required as a result of bodily injury (including fatal injury) to a person caused by, or arising out of, the use of a motor vehicle on a road, and

(b) the treatment or examination so required (in this Part referred to as "emergency treatment") is effected by a government medical officer.

(2) The person who is using the vehicle at the time of the event out of which the bodily injury arose must, on a claim being made in accordance with the provisions of section 120, pay to the practitioner (or, where emergency treatment is effected by more than one practitioner, to the practitioner by whom it is first effected) —

(a) the prescribed fee in respect of each person in whose case the emergency treatment is effected by him, and

(b) a sum, in respect of any distance in excess of two miles which he must cover in order —

(i) to proceed from the place from which he is summoned to the place where the emergency treatment is carried out by him, and

(ii) to return to the first mentioned place,

equal to the prescribed rate for every complete mile and additional part of a mile of that distance.

(3) Where emergency treatment is first effected in a hospital, the provisions of subsections (1) and (2) above with respect to payment of a fee shall, so far as applicable, but subject (as regards the recipient of a payment) to the provisions of section 120, with the substitution of references to the hospital for references to a legally qualified medical practitioner.

(4) Liability incurred under this section by the person using a vehicle shall, where the event out of which it arose was caused by the wrongful act of another person, be treated for the purposes of any claim to recover damage by reason of that wrongful act as damage sustained by the person using the vehicle.

Supplementary provisions as to payment for treatment

120.—(1) A claim for payment under section 119 may be made at the time when the emergency treatment is effected, by oral request of the person who was using the vehicle, and if not so made must be made by request in writing served on him within fourteen days from the day on which the emergency treatment was effected.

(2) Any such request in writing —

(a) must be signed by the claimant, or in the case of a hospital, by an administrative officer of the hospital claiming the payment,

(b) must state the name and address of the claimant, the circumstances in which the emergency treatment was effected, and that it was first effected by the claimant or, in the case of a hospital, in the hospital, and

(c) may be served by delivering it to the person who was using the vehicle or by sending it in a pre-paid letter addressed to him at his usual or last known address.

(3) A payment made under section 119 shall operate as a discharge, to the extent of the amount paid, of any liability of the person who was using the vehicle, or of any other person, to pay any sum in respect of the expenses or remuneration of the practitioner or hospital concerned of or for effecting the emergency treatment.

General

Regulations

121.—(1) The Governor may make regulations for any purpose for which regulations may be made under this Part and for prescribing anything which may be prescribed under this Part and generally for the purpose of carrying this Part into effect.

In this Part “regulations” means regulations under this section and “prescribed” means prescribed by regulations.

(2) In particular, but without prejudice to the generality of subsection (1) of this section, the regulations may make provision —

(a) as to forms to be used for the purposes of this Part,

(b) as to applications for and the issue of certificates of insurance and any other documents which may be prescribed, and as to the keeping of records of documents and the providing of

particulars of them or the giving of information with respect to them to the Governor or to the chief police officer,

(c) as to the issue of copies of any such certificates or other documents which are lost or destroyed, and

(d) as to the custody, production, cancellation and surrender of any such certificates or other documents.

Interpretation

122.—(1) In this Part—

“hospital” means any institution operated by the Crown which provides medical or surgical treatment for in-patients;

“policy of insurance” includes a covering note, and

“under the owner’s control” means, in relation to a vehicle, that it is being driven by the owner or by a servant of the owner in the course of his employment or is otherwise subject to the control of the owner.

(2) In any provision of this Part relating to the surrender, or the loss or destruction, of a certificate of insurance, references to such a certificate —

(a) shall, in relation to policies under which more than one certificate is issued, be construed as references to all certificates, and

(b) shall, where any copy has been issued of any certificate, be construed as including a reference to that copy.

(3) In this Part of this Ordinance, any reference to an accident includes a reference to two or more causally related accidents.

PART VIII POWERS OF POLICE OFFICERS AND DUTIES OF DRIVERS, FORGERY, FALSE STATEMENTS ETC

Powers of police officers to stop vehicles

123.—(1) A person driving a mechanically propelled vehicle on a road must stop the vehicle on being required to do so by a police officer in uniform.

(2) A person riding a cycle on a road must stop the cycle on being required to do so by a police officer in uniform.

(3) A person who fails to comply with this section commits an offence.

Powers of police officers to require production of driving licence

124.—(1) Any of the following persons —

- (a) a person driving a motor vehicle on a road,
- (b) a person whom a police officer has reasonable cause to believe to have been the driver of the motor vehicle at a time when an accident occurred owing to its presence on a road,
- (c) a person whom a police officer has reasonable cause to believe to have committed an offence in relation to the use of a motor vehicle on a road, or
- (d) a person —
 - (i) who supervises the holder of a provisional licence while the holder is driving a motor vehicle on a road, or
 - (ii) whom a police officer has reasonable cause to believe was supervising the holder of a provisional licence while driving, at a time when an accident occurred owing to the presence of the vehicle on a road or at a time when an offence is suspected or having been committed by the holder of the provisional licence in relation to the use of the vehicle on a road,

must, on being so required by a police officer, produce his licence and its counterpart for examination, so as to enable the police officer to ascertain the name and address of the holder of the licence, the date of issue, and the authority by which they were issued.

(2) If —

(a) the chief police officer has —

- (i) revoked a licence under section 68, 69 or 76 of this Ordinance, or
- (ii) revoked or suspended a large goods vehicle driver's licence or a passenger-carrying vehicle driver's licence under section 86 of this Ordinance, and

(b) the holder of the licence fails to deliver it and its counterpart to the Chief police officer in pursuance of section 68, 69, 76 or 89 (as the case may be),

a police officer may require him to produce the licence and its counterpart and upon their being produced may seize them and deliver them to the chief police officer.

(3) Where a police officer has reasonable cause to believe that the holder of a licence, or any other person, has knowingly made a false statement for the purpose of obtaining the grant of the licence, the police officer may require the holder of the licence to produce it and its counterpart to him.

(4) Where a person has been required under any provision of written law to produce a licence and its counterpart to a court and fails to do so, a police officer may require him to produce them and, upon their being produced, may seize them and deliver them to the court.

(5) If a person required under the preceding provisions of this section to produce a licence and its counterpart fails to do so, subject to subsections (6) and (7), he commits an offence.

(6) Subsection (5) does not apply where a person required on any occasion under the preceding provisions of this section to produce a licence and its counterpart —

(a) produces on that occasion a current receipt for the licence and its counterpart issued under section 174 and, if required to do so, produces the licence and its counterpart immediately on their return at Stanley Police Station or elsewhere to a police officer in uniform; or

(b) within seven days after that occasion produces such a receipt at Stanley Police Station or to a police officer in uniform and, if required to do so produces the licence and its counterpart at Stanley Police Station or to a police officer in uniform immediately on their return.

(7) In proceedings against any person for the offence of failing to produce a licence and its counterpart it shall be a defence for him to show that —

(a) within seven days after the production of his licence and its counterpart was required he produced them in person at Stanley Police Station or if at the time in question he resided more than six miles from the boundary of Stanley he sent them by post to or caused another person to deliver them at Stanley Police Station, or

(b) he produced them in person at Stanley Police Station as soon as was reasonably practicable, or

(c) that at the time in question he resided more than six miles from the boundary of Stanley and that it was not reasonably practicable for him to produce them at Stanley Police Station or send them by post so as to arrive there or cause them to be delivered there before the day on which the proceedings were commenced,

and for the purposes of this subsection —

(i) “the time in question” means the time when the requirement to produce the licence and its counterpart was made;

(ii) the service of the complaint on the accused shall be treated as the commencement of the proceedings.

(8) In this section “licence” means a licence under Part IV or any other licence authorising the holder to drive a motor vehicle on a road in the Falkland Islands.

Powers of police officers to obtain names and addresses of drivers and others, and to require production of evidence of insurance and test certificates

125.—(1) Any of the following persons —

- (a) a person driving a motor vehicle (other than an invalid carriage) on a road, or
- (b) a person whom a police officer has reasonable cause to believe to have been the driver of a motor vehicle (other than an invalid carriage) at a time when an accident occurred owing to its presence on a road, or
- (c) a person whom a police officer has reasonable cause to believe to have committed an offence in relation to the use on a road of a motor vehicle (other than an invalid carriage),

must, on being so required by a police officer, give his name and address and the name and address of the owner of the vehicle and produce the following documents for examination.

(2) Those documents are —

- (a) the relevant certificate of insurance;
- (b) in relation to a vehicle to which section 52, a test certificate issued in respect of the vehicle as is mentioned in subsection (1) of that section.

(3) Subject to subsection (4) a person who fails to comply with a requirement under subsection (1) commits an offence.

(4) A person shall not be convicted of an offence under subsection (3) by reason only of failure to produce any certificate or other evidence if in proceedings against him for the offence he shows that —

(a) within seven days after the date on which the production of the certificate or other evidence was required —

(i) it was produced at Stanley Police Station, or

(ii) if he was residing more than six miles from the boundary of Stanley at the time he was required under subsection (1) to produce the certificate, the certificate was sent to Stanley Police Station by post;

(b) it was produced at Stanley Police Station as soon as was reasonably practicable; or

(c) it was not reasonably practicable for it to be produced there before the day on which the proceedings were commenced,

and for the purposes of this paragraph (c) of this subsection the service of the complaint on the accused shall be treated as the commencement of the proceedings.

(5) A person —

(a) who supervises the holder of a provisional licence granted under Part IV of this Ordinance while the holder is driving on a road a motor vehicle (other than an invalid carriage), or

(b) whom a police officer has reasonable cause to believe was supervising the holder of such a licence while driving, at a time when an accident occurred owing to the presence of the vehicle on a road or at a time when an offence is suspected of having been committed by the holder of the provisional licence in relation to the use of the vehicle on a road, must, on being so required by a police officer, give his name and address and the name and address and the name and address of the owner of the vehicle.

(6) A person who fails to comply with a requirement under subsection (5) commits an offence.

(7) In this section “owner”, in relation to a vehicle which is the subject of a hiring agreement, includes each party to the agreement.

Duty to give name and address

Failure to give, or giving false, name and address in case of dangerous or careless or inconsiderate driving or cycling

126. Any of the following persons —

(a) the driver of a mechanically propelled vehicle who is alleged to have committed an offence under section 4, 7 or 8 of this Ordinance, or

(b) the rider of a cycle who is alleged to have committed an offence under section 34 or 35 of this Ordinance,

who refuses, on being so required by any person having a reasonable ground for so requiring, to give his name and address, or gives a false name or address, commits an offence.

Pedestrian contravening police officer’s direction to stop to give name and address

127. A police officer may require a person committing an offence under section 40 of this Ordinance to give his name and address, and if that person fails to do so he commits an offence.

Duties in case of accident

Duty of driver to stop, report accident and give information or documents

128.—(1) This section applies in a case where, owing to the presence of a mechanically propelled vehicle on a road, an accident occurs by which —

(a) personal injury is caused to a person other than the driver of that mechanically propelled vehicle, or

(b) damage is caused —

- (i) to a vehicle other than that mechanically propelled vehicle or a trailer drawn by the mechanically propelled vehicle, or
- (ii) to an animal other than an animal in or on that mechanically propelled vehicle or a trailer drawn by that mechanically propelled vehicle, or
- (iii) to any other property constructed on, fixed to, growing in or otherwise forming part of the land on which the road or place in question is situated or land adjacent to such land.

(2) The driver of the mechanically propelled vehicle must stop and, if required to do so by any person having reasonable grounds for so requiring, give his name and address and also the name and address of the owner and the identification marks of the vehicle.

(3) If for any reason the driver of the mechanically propelled vehicle does not give his name and address under subsection (2), he must report the accident.

(4) A person who fails to comply with subsection (2) or (3) commits an offence.

(5) If, in a case where this section applies by virtue of subsection (1)(a), the driver of the motor vehicle does not at the time of the accident produce such a certificate of insurance as is mentioned in section 125(2)(a) of this Ordinance —

(a) to a police officer, or

(b) to some person who, having reasonable grounds for so doing, has required him to produce it,

the driver must report the accident and produce such a certificate or other evidence.

This subsection does not apply to the driver of an invalid carriage.

(6) To comply with the duty under this section to report an accident or to produce such a certificate of insurance as is mentioned in section 165(2)(a) of this Ordinance, the driver —

(a) must do so at a police station or to a police officer, and

(b) must do so as soon as is reasonably practicable and, in any case, within 24 hours of the occurrence of the accident.

(7) A person who fails to comply with a duty under subsection (5) commits an offence, but he shall not be convicted by reason only of a failure to produce a certificate if, within seven days after the occurrence of the accident, the certificate is produced at or sent by post to Stanley Police Station.

(8) In this section “animal” means horse, cattle, ass, mule, sheep, pig, goat or dog.⁶⁶

Other duties to give information or documents

Duty of owner of motor vehicle to give information for verifying compliance with requirement of compulsory insurance

129.—(1) For the purpose of determining whether a motor vehicle was or was not being driven in contravention of section 108 of this Ordinance on any occasion when the driver was required under section 125(1) or section 128 of this Ordinance to produce such a certificate of insurance as is mentioned in section 165(2)(a) of this Ordinance, the owner of the vehicle must give such information as he may be required, by or on behalf of the chief police officer, to give.

(2) A person who fails to comply with the requirement of subsection (1) of this section commits an offence.

(3) In this section “owner”, in relation to a vehicle which is the subject of a hiring agreement, includes each party to the agreement.

Duty to give information as to identity of driver etc in certain circumstances

130.—(1) This section applies —

(a) to any offence under the preceding provisions of this Ordinance except an offence under section 17, 23, 56(8), 57(5), 73 or 80.

(b) to any offence under sections 146, 147 and 148;

(c) to any offence against any other enactment relating to the use of vehicle on roads or highways which are not roads, except as may otherwise be provided by any enactment; and

(d) the manslaughter by the driver of a motor vehicle.

(2) Where the driver of a vehicle is alleged to have committed an offence to which this section applies —

(a) the person keeping the vehicle shall give such information as to the identity of the driver as he may be required to give by or on behalf of the chief police officer, and

(b) any other person shall if required as stated above give any information which it is in its power to give may lead to identification of the driver.

(3) Subject to the following provisions, a person who fails to comply with a requirement under subsection (2) commits an offence.

⁶⁶ This section is modelled on section 170 of the Road Traffic Act 1988 of England. That provision contains no duty to stop or report an accident when the animal injured or killed is a cat. If it is desired to include cats within the scope of the section, this can easily be done by amendment to subsection (8).

(4) A person shall not have committed an offence by virtue of paragraph (a) of subsection (2) if he shows that he did not know and could not with reasonable diligence have ascertained who the driver of the vehicle was.

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

(6) Where the alleged offender is a body corporate or the proceedings are brought against him by virtue of subsection (5) or subsection (11), subsection (4) shall not apply unless, in addition to the matters there mentioned, the alleged offender shows that no record was kept of the persons who drove the vehicle and that the failure to keep a record was reasonable.

(7) A requirement under subsection (2) may be made by written notice served by post; and where it is so made —

(a) it shall have effect as a requirement to give the information within the period of 28 days beginning with the day on which the notice is served, and

(b) the person on whom the notice is served shall not be guilty of an offence under this section if he shows either that he gave the information as soon as reasonably practicable after the end of that period or that it has not been reasonably practicable for him to give it.

(8) Where the person on whom a notice under subsection (7) above is to be served is a body corporate, the notice is duly served if it is served on the secretary or clerk of that body.

Forgery, false statements, etc

Forgery of documents etc

131.—(1) A person commits an offence who, with intent to deceive —

(a) forges, alters or uses a document or other thing to which this section applies, or

(b) lends to, or allows to be used by, any other person a document or other thing to which this section applies, or

(c) makes or has in his possession any document or other thing so closely resembling a document or other thing to which this section applies as to be calculated to deceive.

(2) This section applies to the following documents and other things —

(a) any licence under any Part of this Ordinance or, in the case of a licence to drive, any counterpart of such a licence,

(b) any licence issued in any place outside the Falkland Islands authorising any person to drive a motor vehicle of any class or type upon any road in the country in which that place is or in any part of that country and any counterpart of any such licence;

(c) any test certificate within the meaning of Part III of this Ordinance;

(d) any document which, in pursuance of section 66(3) of this Ordinance, is issued of evidence of the result of a test of competence to drive;

(e) any certificate of insurance under Part VII of this Ordinance;

(f) any document produced as evidence of insurance in pursuance of any regulations made under any provision of this Ordinance.

(3) In this section “forges” means makes a false document or other thing in order that it may be used as genuine.

False statements and withholding material information

132.—(1) A person commits an offence who knowingly makes a false statement for the purpose of —

(a) obtaining the grant of a licence under any Part of this Ordinance to himself or any other person;

(b) preventing the grant of any such licence; or

(c) procuring the imposition of a condition or limitation in relation to any such licence.

(2) A person commits an offence who makes a false statement or withholds any material information for the purpose of obtaining the issue of a certificate of insurance under Part VII of this Ordinance.

Power to seize articles in respect of which offences under sections 131 or 132 may have been committed

133.—(1) If a police officer has reasonable cause to believe that a document produced to him in pursuance of any of the preceding provisions of this Part of this Ordinance is a document in relation to which an offence has been committed under section 131 or 132 of this Ordinance, he may seize the document.

(2) Where a licence to drive or a counterpart of any such licence may be seized by a police officer under subsection (1) of this section, he may also seize the counterpart, the licence to drive (as the case may be) produced with it.

(3) When a document is seized under subsection (1) or (2) of this section, the person from whom it was taken shall unless —

(a) the document has been previously returned to him, or

(b) he has been previously charged with an offence under any of the sections mentioned in subsection (1) of this section,

be summoned before a court to account for his possession of the document.

(4) In this section “licence” includes a licence issued overseas and “counterpart” includes a counterpart of such a licence.

Application to the Crown

Application to the Crown of provisions of this Ordinance

134.—(1) Subject to the provisions of this section the foregoing provisions of this Ordinance apply to vehicles and persons in the public service of the Crown.

(2) Subject to regulations made under subsection (2) of section 77 of this Ordinance, that section (in so far as it prohibits persons under 21 from holding or obtaining a licence to drive motor vehicles or persons under 18 from holding or obtaining a licence to drive medium-sized goods vehicles) does not apply —

(a) in the case of motor vehicles owned by the Secretary of State for Defence and used for naval, military or air force purposes, or

(b) in the case of vehicles so used while being driven by persons for the time being subject to the orders of a member of the armed forces of the Crown.

(3) Section 125 of this Ordinance, in so far as it provides for the production of test certificates and the giving of names and addresses, applies to a person in connection with a vehicle to which section 52 of this Ordinance applies notwithstanding that he or the driver is or was at any material time in the public service of the Crown.

(4) Sections 135, 136, 142, 143 and 168 and the provisions connected with the licensing of drivers apply to vehicles and persons in the public service of the Crown.

(5) Where an offence under this Ordinance is alleged to have been committed in connection with a vehicle in the public service of the Crown any person actually responsible for that offence may be prosecuted for, and convicted of that offence and be sentenced in the manner provided by this Ordinance in respect of that offence.

(6) In subsection (4) “the provisions connected with the licensing of drivers” means sections 2(14) and (15), 137, 138, 144, 146 to 150, 152 and 154 to 167.

PART IX TRIAL

Preliminary

Requirement of warning etc for prosecutions for certain offences⁶⁷

135.—(1) Subject to section 136, a person shall not be convicted of an offence to which this section applies unless —

(a) he was warned at the time the offence was committed that the question of prosecuting him for some one or other of the offences to which this section applies would be taken into consideration, or

(b) within 14 days of the commission of the offence a summons for the offence was served on him, or

(c) within 14 days of the commission of the offence a notice of the intended prosecution specifying the nature of the alleged offence and the time and place where it is alleged to have been committed was —

(i) in the case of an offence under section 34 or 35 of this Ordinance (cycling offences) served on him;

(ii) in the case of any other offence, served on him or on the person, if any, registered as the keeper of the vehicle at the time of the commission of the offence.

(2) A notice required by this section to be served on any person may be served on that person —

(a) by delivering to him;

(b) by addressing it to him and leaving it at his last known address; or

(c) sending it by registered post or ordinary post addressed to him at his last known address.

(3) A notice shall be deemed for the purposes of subsection (1)(c) above to have been served on a person if it was sent by registered post address to him at his last known address, notwithstanding that the notice was returned as undelivered or was for any other reason not received by him.

(4) The requirements of subsection (1) shall in every case be deemed to have been complied with unless and until the contrary is proved.

(5) Schedule 3 to this Ordinance shows the offences to which this section applies.

⁶⁷ This clause is closely modelled on section 1 Road Traffic Offenders Act 1988, but the requirement there in effect reflects a requirement contained in section 241 of the Road Traffic Act 1960.

Requirement of warning etc: supplementary

136.—(1) The requirement of section 135(1) does not apply in relation to an offence if, at the time of the offence or immediately after it, an accident occurs owing to the presence on a road of the vehicle in respect of which the offence was committed.

(2) The requirement of section 135(1) does not apply in relation to an offence in respect of which —

(a) a fixed penalty notice (within the meaning of Part XI of this Ordinance) has been given or fixed under any provision of that Part; or

(b) a notice has been given under section 172(4).

(3) Failure to comply with the requirement of section 135(1) is not a bar to the conviction of the accused in a case where the court is satisfied —

(a) that neither the name and address of the accused nor the name and address of the registered keeper, if any, could with reasonable diligence have been ascertained in time for a summons or, as the case may be, a complaint to be served or for a notice to be served or sent in compliance with the requirement, or

(b) that the accused by his own conduct contributed to the failure.

(4) Failure to comply with the requirement of section 135(1) in relation to an offence is not a bar to the conviction of a person of that offence by virtue of the provisions of section 148 or section 6(3) of the Criminal Law Act 1967 (alternative verdicts on trial on indictment) in its application to the Falkland Islands, but a person is not to be convicted of an offence by virtue of either of those provisions if section 135 of this Ordinance applies to the offence with which he was charged and the requirements of section 135(1) was not satisfied in relation to the offence charged.

Duty of accused to provide licence

137. A person who is prosecuted for an offence involving obligatory or discretionary disqualification and who is the holder of a licence must —

(a) cause it to be delivered to the Courts Administrator not later than the day before the date appointed for the hearing, or

(b) post it, at such a time that in the ordinary course of the post it would be placed in the court's post box not later than that day, in a letter addressed to the Courts Administrator; or

(c) have it with him at the hearing,

and the foregoing obligations placed on him as respects the licence also apply as respects the counterpart of the licence.

Duty to include date of birth and sex in written plea of guilty

138. A person who gives a notification to the Courts Administrator in pursuance of section 12(4) of the Magistrates Courts Act 1980 (written pleas of guilty) in its application to the Falkland Islands in respect of an offence involving obligatory or discretionary disqualification or such other offence as may be prescribed by regulations under section 80 of this Ordinance, must include in the notification or intimation a statement of the date of birth and sex of the accused.

Evidence by certificate as to driver, user or owner

139.—(1) In any proceedings for an offence to which this section applies, a certificate in the prescribed form, purporting to be signed by a police officer and certifying that a person specified in the certificate stated to the police officer —

(a) that a particular mechanically propelled was being driven or used by, or belonged to, that person on a particular occasion, or

(b) that a particular mechanically propelled vehicle on a particular occasion was used by, or belonged to, a firm and that he was, at the time of the statement, a partner in that firm, or

(c) that a particular mechanically propelled vehicle on a particular occasion was used by, or belonged to, a corporation and that he was, at the time of the statement, a director, officer or employee of that corporation,

shall be admissible as evidence for the purpose of determining by whom the vehicle was being driven or used, or to whom it belonged, as the case may be, on that occasion.

(2) Nothing in subsection (1) above makes a certificate admissible as evidence in proceedings for an offence except in a case where and to the like extent to which oral evidence to the like effect would have been admissible in those proceedings.

(3) Nothing in subsection (1) above makes a certificate admissible as evidence in proceedings for an offence —

(a) unless a copy of it has, not less than seven days before the hearing or trial, been served in the prescribed manner on the person charged with the offence, or

(b) if that person, not later than three days before the hearing or trial or within such further time as the court may in special circumstances allow, serves a notice in the prescribed form and manner on the prosecutor requiring attendance at the trial of the person who signed the certificate.

(4) Where the proceedings mentioned in subsection (1) above are proceedings before a court of summary jurisdiction inquiring into an offence as examining justices this section shall have effect with the omission of —

(a) subsection (2), and

(b) in subsection (3), paragraph (b) and the word “or” immediately preceding it.

(5) In this section “prescribed” means prescribed by rules made by the Governor by order.

(6) Schedule 3 to this Ordinance shows the offences to which this section applies.

Proof, in summary proceedings, of identity of driver of vehicle

140.—(1) Where on the summary trial of an offence to which this section applies —

(a) it is proved to the satisfaction of the court, on oath or in manner prescribed by rules made under section 144 of the Magistrates’ Courts Act 1980, that a requirement under section 172(2) of the Road Traffic Act 1988 to give information as to the identity of the driver of a particular vehicle on the particular occasion to which the information relates has been served on the accused by post, and

(b) a statement in writing is produced to the court purporting to be signed by the accused that the accused was the driver of that vehicle on that occasion,

the court may accept that statement as evidence that the accused was the driver of that vehicle on that occasion.

(2) Schedule 3 to this Ordinance shows the offences to which subsection (1) above applies.

(3) Where on the summary trial of an alleged offence to which section 227(2) applies —

(a) it is proved to the satisfaction of the court or in a manner prescribed by rules made under section 144 of the Magistrates Courts Act 1980, that a requirement under section 227(2) of this Ordinance to give information as to the driver of a particular vehicle on the particular occasion to which the alleged offence relates has been served on the accused by post, and

(b) a statement in writing is produced to the court purporting to be signed by the accused that the accused was the driver of the vehicle on that occasion,

the court may accept that statement as evidence that the accused was the driver of that vehicle on that occasion.

Admissibility of records as evidence

141.—(1) This section applies to a statement contained in a document purporting to be —

(a) a part of the records maintained by the Chief police officer in connection with any functions exercisable by him under Part IV of this Ordinance or a part of any other records maintained by the Chief police officer with respect to vehicles, or

(b) a copy of a document forming part of those records, and to be authenticated by the Chief police officer or person authorised in that behalf by him.

(2) A statement to which this section applies shall be admissible in any proceedings as evidence of any fact stated in it to the same extent as oral evidence of that fact is admissible in those proceedings.

(3) In the preceding subsections —

“copy”, in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly;

“document” means anything in which information of any description is recorded; and

“statement” means any representation of fact, however made.

(4) In any case where —

(a) a person is convicted by a court of summary jurisdiction of an offence under this Ordinance,

(b) a statement to which this section applies is produced to the court in the proceedings,

(c) the statement specifies an alleged previous conviction of the accused of an offence involving obligatory endorsement or an order made on the conviction, and

(d) the accused is not present in person before the court when the statement is so produced,

the court may take account of the previous conviction or order as if the accused had appeared and admitted it.

(5) Section 104 of the Magistrates’ Courts Act 1980 in its application to the Falkland Islands (under which previous convictions may be adduced in the absence of the accused after giving him seven days’ notice of them) does not limit the effect of the subsection (4) above.

(6) In any case where —

(a) a statement to which this section applies is produced to a court of summary jurisdiction in any proceedings for an offence involving obligatory or discretionary disqualification other than an offence under any of the provisions mentioned in subsection (4)(a) above.

(b) the statement specifies an alleged previous conviction of an accused person of any such offence or any order made on the conviction,

(c) it is proved to the satisfaction of the court, on oath or in such manner as may be prescribed by rules under section 144 of the Magistrates’ Courts Act 1980 in its application to the Falkland Islands that not less than seven days before the statement is so produced a notice was served on the accused, in such form and manner as may be so prescribed,

specifying the previous conviction or order and stating that it is proposed to bring it to the notice of the court in the event of or, as the case may be, in view of his conviction, and

(d) the accused is not present in person before the court when the statement is so produced,

the court may take account of the previous conviction or order as if the accused has appeared and admitted it.

(7) Nothing in the preceding provisions of this section enables evidence to be given in respect of any matter other than a matter of a description prescribed by regulations made by the Governor.

(8) Where the proceedings mentioned in subsection (2) are proceedings before a court of summary jurisdiction inquiring into an offence as examining justices this section shall have effect as if —

(a) in subsection (2) the words “to the same extent as oral evidence of the fact is admissible in those proceedings” were omitted;

(b) in subsection (4) the word “and” were inserted at the end of paragraph (a);

(c) in subsection (4), paragraphs (c) and (d) and the words “as if the accused had appeared and admitted it”,

were omitted.

Use of specimens in proceedings for an offence under sections 8,9 or 10 and documentary evidence as to specimens in such proceedings⁶⁸

142.—(1) This section applies in respect of proceedings for an offence under sections 8, 9 or 10 of this Ordinance; and expressions used in this section have the same meaning as in sections 8 to 15 of this Ordinance.

(2) Evidence of the proportion of alcohol or any drug in a specimen of breath, blood or urine provided by the accused shall in all cases, (including cases where the specimen was not provided in connection with the alleged offence) be taken into account and, subject to subsection (3) of this section, it shall be assumed that the proportion of alcohol in the accused’s breath, blood or urine at the time of the alleged offence was not less than in the specimen⁶⁹.

(3) That assumption shall not be made if the accused proves —

⁶⁸ This clause reflects section 15 and 16 of the Road Traffic Offenders Act 1968

⁶⁹ Where a person is charged with an offence under clause 9, and the specimen provided by the person after a lapse of time shows an alcohol level below the prescribed limit, the prosecution may adduce evidence to show, by means of “back-calculation”, i.e. by calculation of the amount of alcohol eliminated in the period between driving and providing the specimen, that the proportion of alcohol in the person’s breath, blood or urine was above the prescribed limit when he was driving. The prosecution should not, however, seek to rely on evidence of back-calculation unless it is both easily understood and clearly establishes the presence of excess alcohol at the time the defendant was driving (*Gumbley v Cunningham* [1989] AC 281 HL)

- (a) that he consumed alcohol before he provided the specimen and —
- (i) in relation to an offence under section 8, after the time of the alleged offence, and
 - (ii) otherwise, after he had ceased to drive, attempt to drive or be in charge of a vehicle on a road or other public place, and
- (b) that had he not done so the proportion of alcohol in his breath, blood or urine would not have exceeded the prescribed limit and, if it is alleged that he was unfit to drive through drink, would not have been such as to impair his ability to drive properly.
- (4) A sample of blood shall be disregarded unless it was taken from the accused by his consent by a medical practitioner.⁷⁰
- (5) Where, at the time a specimen of blood or urine was provided by the accused, he asked to be provided with such a specimen, evidence of the proportion of alcohol or any drug found in the specimen is not admissible on behalf of the prosecution unless—
- (a) the specimen in which the alcohol or drug was found is one of two parts into which the specimen provided by the accused was divided at the time it was provided, and
 - (b) the other part was provided to the accused.
- (6) Evidence of the proportion of alcohol or a drug in a specimen of breath, blood or urine may, subject to subsections (5) (8) and (9) of this section, be given by the production of a document or documents purporting to be whichever of the following is appropriate, that is to say —
- (a) a statement automatically produced by the device by which the proportion of alcohol in a specimen of breath was measured and a certificate signed by a police officer (which may but need not be contained in the same document as the statement) that the statement relates to a specimen provided by the accused at the date and time shown in the statement, and
 - (b) a certificate signed by an authorised analyst as to the proportion of alcohol or any drug found in a specimen of blood or urine identified in the certificate.
- (7) Subject to subsections (8) and (9) of this section, evidence that a specimen of blood was taken from the accused with his consent by a medical practitioner may be given by the production of a document purporting to certify that fact and to be signed by a medical practitioner.
- (8) Subject to subsection (7) of this section —

⁷⁰ This follows the corresponding English legislation. Is there any good reason why a blood sample taken by a nurse should not be admissible? Most blood samples in hospitals are taken by nurses (or, in England, sometimes by laboratory technicians).

(a) a document purporting to be such a statement or such a certificate (or both such a statement and such a certificate) as is mentioned in subsection (6)(a) is admissible in evidence on behalf of the prosecution in pursuance of this section only if a copy of it either has been handed to the accused when the document was produced or has been served on him not later than seven days before the hearing, and

(b) any other document is so admissible only if a copy of it has been served on the accused not later than seven days before the hearing.

(9) A document purporting to be a certificate (or so much of a document as purports to be a certificate) is not so admissible if the accused, not later than three days before the hearing or within such further time as the court may in special circumstances allow, has served notice on the prosecutor requiring the attendance at the hearing of the person by whom the document purports to be signed.

(10) A copy of a certificate required by this section to be served on the accused or a notice required by this section to be served on the prosecutor may be served personally or sent by registered post or recorded delivery service.

(11) Where the proceedings mentioned in subsection (1) are proceedings before a court of summary jurisdiction inquiring into an offence as examining justices this section shall have effect with the omission of subsection (9).

(12) In this section "authorised analyst" means any person who by virtue of section 16(7) of the Road Traffic Offenders Act 1988 or any statutory modification or re-enactment thereof for the time being in force is an authorised analyst for the purposes of section 16 of that Act and authorised by the Governor to make analyses for the purposes of this section.

Speeding offences etc: admissibility of certain evidence

143.—(1) Evidence of a fact relevant to proceedings for an offence to which this section applies may be given by the production of —

(a) a record produced by a prescribed device, and

(b) (in the same or another document) a certificate as to the circumstances in which the record was produced signed by a police officer or by a person authorised by or on behalf of the chief police officer;

but subject to the following provisions of this section.

(2) This section applies to —

(a) any offence consisting in the contravention of a restriction imposed by or under any provision of written law upon the speed of any vehicle or any class, category or type of vehicle,

(b) any offence under any provision of written law consisting in the failure to comply with an indication given by a light signal that a vehicle is not to proceed.

(3) A record produced or measurement made by a prescribed device shall not be admissible as evidence of a fact relevant to proceedings for an offence to which this section applies unless —

(a) the device is of a type approved by the Governor, and

(b) any conditions subject to which the approval was given are satisfied.

(4) Any approval given by the Governor for the purposes of this section may be given subject to conditions as to the purposes for which, and the manner and other circumstances in which, any device of the type concerned is to be used.

(5) In proceedings for an offence to which this section applies, evidence —

(a) of a measurement made by a device, or of the circumstances in which it was made, or

(b) that a device was of a type approved for the purposes of this section, or that any conditions subject to which an approval was given were satisfied,

may be given by the production of a document which is signed as mentioned in subsection (1) above and which, as the case may be, gives particulars of the measurement or of the circumstances in which it was made, or states that the device was of such a type or that, to the best of the knowledge and belief of the person making the statement, all such conditions were satisfied.

(6) For the purposes of this section a document purporting to be a record of the kind mentioned in subsection (1) or to be a certificate or other document signed as mentioned in that subsection or in subsection (5), shall be deemed to be such a record, or to be so signed, unless the contrary is proved.

(7) Nothing in subsection (1) or (5) makes a document admissible as evidence in proceedings for an offence unless a copy of it has, not less than seven days before the hearing or trial, been served on the person charged with the offence; and nothing in those subsections makes a document admissible as evidence of anything other than the matters shown on a record produced by a prescribed device if that person, not less than three days before the hearing or trial or within such further time as the court may in special circumstances allow, serves a notice on the prosecutor requiring attendance at the hearing or trial of the person who signed the document.

(8) Where the proceedings for an offence to which this section applies are proceedings before a court of summary jurisdiction inquiring into an offence as examining justices this section shall have effect as if in subsection (7) the words from “and nothing” to the end of the subsection were omitted.

(9) In this section “prescribed device” means device of a description specified in an order made by the Governor.

Notification of disability

144. If in any proceedings for an offence committed in respect of a motor vehicle it appears to the court that the accused may be suffering from any relevant disability or prospective disability (within the meaning of Part IV of this Ordinance) the court must notify the chief police officer.

Verdict

Alternative verdicts: general

145.—(1) Where —

(a) a person charged with an offence under this Ordinance specified in the first column of the Table below (where the general nature of the offence is also indicated) is found not guilty of that offence, but

(b) the allegations in the information amount to or include an allegation of an offence under one or more of the provisions specified in the corresponding entry in the second column,

he may be convicted of an offence or of one or more of those offences.

Table

<i>Offence charged</i>	<i>Alternative</i>
section 4 (causing death by dangerous driving)	section 5 (dangerous driving) section 7 (careless, and inconsiderate, driving)
section 5 (dangerous driving)	section 7 (careless, and inconsiderate, driving)
section 8 (causing death by careless driving when under the influence of drink or drugs)	section 7 (careless, and inconsiderate, driving) section 9(1) (driving when under the influence of drugs) section 10(1)(a) (driving with excess alcohol in breath, blood or urine) section 12(6) (failing to provide specimen)
section 9(1) (driving when unfit to drive through drink or drugs)	section 9(2) (being in charge of a vehicle when unfit to drive through drink or drugs)
section 10(1)(a) (driving or attempting to drive with excess alcohol in breath, blood or urine)	section 10(1)(b) (being in charge of a vehicle with excess alcohol in breath, blood or urine)
section 34 (dangerous cycling)	section 35 (careless, and inconsiderate, cycling)

(2) Where the offence with which a person is charged is an offence under section 8, subsection (1) of this section shall not authorise his conviction of any offence of attempting to drive.

(3) Where a person is charged with having committed an offence under section 9(1) or section 10(1)(a) by driving a vehicle, he may be convicted of having committed an offence under the provision in question by attempting to drive.

(4) Where by virtue of this section a person is convicted before the Supreme Court of an offence triable only summarily, the court shall have the same powers and duties as a court of summary jurisdiction would have had on convicting him of that offence.⁷¹

(5) This section has effect without prejudice to section 6(3) of the Criminal Law Act 1967 (alternative verdicts on trial on indictment).

After conviction

Information as to date of birth and sex

146.—(1) If on convicting a person of an offence involving obligatory or discretionary disqualification or of such other offence as may be prescribed by regulations under section 80 of this Ordinance the court does not know his date of birth, the court must order him to give that date to the court in writing.

(2) If a court convicting a person of such an offence in a case where —

(a) notification has been given to the Courts Administrator in pursuance of section 12(4) of the Magistrates' Courts Act 1980 (written pleas of guilty), and

(b) the notification or intimation did not include a statement of the person's sex,

does not know the person's sex, the court must order the person to give that information to the court in writing.

(3) A person commits an offence who knowingly fails to comply with an order under subsection (1) or (2) of this section.

(4) Nothing in any provision of written law relating to the transfer of duties and powers to be Magistrate's Court where the Summary Court commits a person to the Magistrate's Court for sentence applies to any duty imposed on the Summary Court by subsection (1) or (2) of this section.

Interim disqualification

147.—(1) Where the Summary court commits an offender to the Magistrate's Court under such a provision of written law as is referred to in section 146(4) to be dealt with for an offence

⁷¹ This section will apply if, for example, a person is indicted with murder by use of a motor vehicle (triable on indictment) and charged in the alternative with causing death by dangerous driving (both offences being tried by the Supreme Court).

involving obligatory or discretionary disqualification, it may order him to be disqualified until he has been dealt with in relation to that offence.

(2) Where a court —

(a) defers passing sentence on an offender in respect of an offence involving obligatory or discretionary disqualification, or

(b) adjourns after convicting an offender of such an offence but before dealing with him for the offence,

it may order the offender to be disqualified until he has been dealt with in respect of the offence.

(3) Subject to subsection (5), an order under this section shall cease to have effect at the end of the period of six months beginning with the day on which it is made, if it has not ceased to have effect before that time.

(4) Where a court orders a person to be disqualified under this section ("the first order"), no court shall make a further order under this section in respect of the same offence or any offence in respect of which an order could have been made under this section at the time the first order was made.

(5) Where a court makes an order under this section in respect of any person it must —

(a) require him to produce to the court any licence held by him and its counterpart, and

(b) retain the licence and counterpart until it deals with him or cause the Courts Administrator to retain them on behalf of the court which is to deal with him until that court has dealt with him.

(6) Subject to subsection (7), the holder of a licence commits an offence if he has not caused the licence and its counterpart to be delivered to the court and has not complied with the requirements of section 137 in relation to them.

(7) A person does not commit an offence under subsection (6) if he —

(a) satisfies the court that he has applied for a new licence and has not received it, or

(b) surrenders to the court a current receipt for his licence and its counterpart issued under section 174 of this Ordinance and produces the licence and the counterpart to the court immediately on their return.

(8) Where a court makes an order under this section in respect of any person, sections 163(1) and 166(2) shall not apply in relation to the order, but —

(a) the court must send a notice of the order to the chief police officer, and

(b) if the court which deals with the offender determines not to order him to be disqualified under section 154 or 155, it must send notice of the determination to the chief police officer.

(9) Where on any occasion a court deals with an offender —

(a) for an offence in respect of which an order was made under this section, or

(b) for two or more offences in respect of any of which such an order was made,

any period of disqualification which is on that occasion imposed under section 154 or 155 of this Ordinance shall be treated as reduced by any period during which he was disqualified by reason only of an order made under this section in respect of any of those offences.

(10) A reference in this or any other Ordinance (including any Ordinance enacted after this Ordinance) to the length of a period of disqualification shall, unless the context otherwise requires, be construed as a reference to its length before any reduction under this section.

PART X SENTENCE

Introductory

Production of licence

148.—(1) Where a person who is the holder of a licence is convicted of an offence involving obligatory or discretionary disqualification, and a court proposes to make an order disqualifying him or an order under section 163, the court must, unless it has already received them, require the licence and its counterpart to be produced to it.

(2) If the holder of the licence has not caused it and its counterpart to be delivered, or posted it and its counterpart, in accordance with section 137 and does not produce it and its counterpart as required under this section or any other provision of written law under which he is required to produce it, then, unless he satisfied the court that he has applied for a new licence and has not received it —

(a) he commits an offence, and

(b) the licence shall be suspended from the time when its production was required until it and its counterpart are produced to the court and shall, while suspended, be of no effect.

(3) Subsection (2) does not apply to where the holder of the licence —

(a) has caused a current receipt for the licence and its counterpart issued under section 174 to be delivered to the Courts Administrator not later than the day before the date appointed for the hearing, or

(b) proves that he has posted such a receipt, at such time that in the ordinary course of post it would be placed in the court's post box at the post office not later than the preceding day in a letter duly addressed to the Courts Administrator, or

(c) surrenders such a receipt to the court at the hearing,

and produces the licence and its counterpart to the court immediately on their return.

Penalty points to be attributed to an offence

149.—(1) Where a person is convicted of an offence involving obligatory endorsement, then, subject to the following provisions of this section, the number of penalty points to be attributed to the offence is —

(a) the number shown in relation to the offence in the last column of Part I or Part II of Schedule 4 to this Ordinance, or

(b) where a range of numbers is shown, a number within that range.

(2) Where a person is convicted of an offence committed by aiding, abetting, counselling or procuring, or inciting to the commission of, an offence involving obligatory disqualification, then, subject to the following provisions of this section, the number of penalty points to be attributed to the offence is ten.

(3) Where both a range of numbers and a number followed by the words “(fixed penalty)” is shown in the last column of Part I of Schedule 4 in relation to an offence, that number is the number of penalty points to be attributed to the offence for the purposes of sections 175(5) and 194(4) and, where only a range of numbers is shown there, the lowest number in the range is the number of penalty points to be attributed to the offence for those purposes.

(4) Where a person is convicted (whether on the same occasion or not) of two or more offences committed on the same occasion and involving obligatory endorsement, the total number of penalty points to be attributed to them is the number or highest number that would be attributed on a conviction of one of them (so that if the convictions are on different occasions the number of penalty points to be attributed to the offences on the later occasion or occasions shall be restricted accordingly).

(5) In a case where (apart from this subsection) subsection (4) would apply to two or more offences, the court may if it thinks fit determine that that subsection shall not apply to the offences (or, where three or more offences are concerned, to any one or more of them).

(6) Where a court makes such a determination it shall state its reasons in open court and, if it is a court of summary jurisdiction, shall cause them to be entered in the register of its proceedings.

(7) The Governor may by Order —

(a) alter a number or range of numbers shown in relation to an offence in the last column of Part I or Part II of Schedule 5 to this Ordinance (by substituting one number or range for another, a number for a range, or a range for a number),

(b) where a range of numbers is shown in relation to an offence in the last column of Part I, add or delete a number together with the words “(fixed penalty)”, and

(c) alter the number of penalty points shown in subsection (2) above;

and an Order under this subsection may provide for different numbers or ranges of numbers to be shown in relation to the same offence committed in different circumstances.

(8) Where the Governor exercises his power under subsection (7) by substituting or adding a number which appears together with the words “(fixed penalty)”, that number shall not exceed the lowest number in the range shown in the same entry.

(9) No Order shall be made under subsection (7) above unless a draft of it has been laid before and approved by resolution of the Legislative Council.

Penalty points to be taken into account on conviction

150.—(1) Where a person is convicted of an offence involving obligatory endorsement, the penalty points to be taken into account on that occasion are (subject to subsection (2)) —

(a) any that are to be attributed to the offence or offences of which he is convicted, disregarding any offence in respect of which an order under section 153 of this Ordinance is made, and

(b) any that were on a previous occasion ordered to be endorsed on the counterpart of any licence held by him, unless the offender has since that occasion and before the conviction been disqualified under section 154 of this Ordinance.

(2) If any of the offences was committed more than three years before another, the penalty points in respect of that offence shall not be added to those in respect of the other.

(3) In relation to licences which come into force before the date on which counterpart licences were first issued under this Ordinance or if no such licences have been issued under this Ordinance, the reference in subsection (1) to the counterpart of a licence is to be construed as a reference to the licence itself.

Penalty points: modification where fixed penalty also in question

151.—(1) Sections 148 and 149 of this Ordinance shall have effect subject to this section in any case where —

(a) a person is convicted of an offence involving obligatory endorsement, and

(b) the court is satisfied that the counterpart of his licence has been or is liable to be endorsed under section 175 or 194 in respect of an offence (referred to in this section as the "connected offence") committed on the same occasion as the offence of which he is convicted.

(2) The number of penalty points to be attributed to the offence of which he is convicted is —

(a) the number of penalty points to be attributed to that offence under section 148 of this Ordinance apart from this section, less

(b) the number of penalty points required to be endorsed on the counterpart of his licence under section 175 or 194 in respect of the connected offence (except so far as they have already been deducted by virtue of this paragraph).

Court may take particulars endorsed on licence into consideration

152. Where a person is convicted of an offence involving obligatory or discretionary disqualification and his licence and its counterpart are produced to the court —

(a) any existing endorsement on the counterpart of his licence is prima facie evidence of the matters endorsed, and

(b) the court may, in determining what order to make in pursuance of the conviction, take those matters into consideration.

Fine and imprisonment

Fine and imprisonment

153.—(1) Where a person is convicted of an offence against a provision of this Ordinance specified in column 1 of Part I of Schedule 4 or regulations made under any such provision, the maximum punishment by way of fine or imprisonment which may be imposed on him is that shown in column 3 against the offence.

(2) Any reference in column 4 of that Part to a period of years or months is to be construed as a reference to a term of imprisonment of that duration.

(3) Where having regard to column 3 of Part I of Schedule 4 an offence is punishable by a term of imprisonment and a fine, a person convicted of an offence so punishable may be sentenced to a term of imprisonment not exceeding that shown in that column or a fine not exceeding the maximum of the level of fine so shown or both to such a term and such a fine.

Disqualification

Disqualification for certain offences

154.—(1) Where a person is convicted of an offence involving obligatory disqualification, the court must order him to be disqualified for such period not less than twelve months as the court thinks fit unless the court for special reasons thinks fit to order him to be disqualified for a shorter period or not to order him to be disqualified. A person commits an offence involving

obligatory disqualification if it is stated in the fourth column of Part I of Schedule 4 or, as the case may be, the third column of Part II of Schedule 4 that disqualification is obligatory on conviction of the offence described in columns 1 and 2 of Part I of that Schedule or, as the case may be column 1 of Part II of that Schedule.

(2) Where a person is convicted of an offence under section 12A of the Theft Act 1968 (aggravated vehicle-taking), the fact that he did not drive the vehicle in question at any particular time or at all shall not be regarded as a special reason for the purposes of subsection (1) above.

(3) Where a person is convicted of an offence involving discretionary disqualification, and either —

(a) the penalty points to be taken into account on that occasion number fewer than twelve, or

(b) the offence is not one involving obligatory endorsement,

the court may order him to be disqualified for such period as the court thinks fit. A person commits an offence involving discretionary disqualification if it is stated in the fourth column of Schedule 4 or, as the case may be, the third column of Part II of Schedule 4 that disqualification is discretionary on conviction of the offence described in columns 1 and 2 of Part I of that Schedule or as the case may be, column 1 of Part II of that Schedule.

(4) Where a person convicted of an offence under any of the following provisions of this Ordinance, that is —

(a) section 8 (causing death by careless driving when under the influence of drink or drugs),

(b) section 9(1) (driving or attempting to drive while unfit),

(c) section 10(1)(a) (driving or attempting to drive with excess alcohol), and

(d) section 12(6) (failing to provide a specimen) where that is an offence involving obligatory disqualification,

has within the ten years immediately preceding the commission of the offence been convicted of any such offence, subsection (1) above shall apply in relation to him as if the reference to twelve months were a reference to three years.

(5) Subject to subsection (4), subsection (1) shall apply as if the reference to twelve months were a reference to two years —

(a) in relation to a person convicted of —

(i) manslaughter,

(ii) an offence under section 4 (causing death by dangerous driving), or

- (iii) an offence under section 8 (causing death by careless driving while under the influence of drink or drugs), and
- (b) in relation to a person on whom more than one disqualification for a fixed period of 56 days or more has been imposed within the three years immediately preceding the commission of the offence.
- (6) For the purposes of subsection (5)(b) there shall be disregarded any disqualification imposed under section 147 of this Ordinance, or any provision of the Criminal Justice Ordinance and any disqualification imposed in respect of an offence of stealing a motor vehicle, an offence under section 12 or 25 of the Theft Act 1968 or an attempt to commit such an offence.
- (7) The preceding provisions of this section shall apply in relation to a conviction of an offence committed by aiding, abetting, counselling or procuring, or inciting to the commission of, an offence involving obligatory disqualification as if the offence were an offence involving discretionary disqualification.
- (8) This section is subject to section 167.

Disqualification for repeated offences

155.—(1) Where —

- (a) a person is convicted of an offence to which this subsection applies, and
- (b) the penalty points to be taken into account on the occasion number twelve or more,

the court must order him to be disqualified for not less than the minimum period unless the court is satisfied, having regard to all the circumstances, that there are grounds for mitigating the normal consequences of the conviction and thinks fit to order him to be disqualified for a shorter period or not to order him to be disqualified.

(2) Subsection (1) applies to —

- (a) an offence involving discretionary disqualification and obligatory endorsement, and
- (b) an offence involving obligatory disqualification in respect of which no order is made under section 154.

(3) The minimum period referred to in subsection (1) is —

- (a) six months if no previous disqualification imposed on the offender is to be taken into account, and
- (b) one year if one, and two years if more than one, such disqualification is to be taken into account;

and a previous disqualification imposed on an offender is to be taken into account if it was for a fixed period of 56 days or more and was imposed within the three years immediately preceding the commission of the latest offence in respect of which penalty points are taken into account under section 150.

(4) Where an offender is convicted on the same occasion of more than one offence to which subsection (1) applies —

(a) not more than one disqualification shall be imposed on him under subsection (1),

(b) in determining the period of the disqualification the court must take into account all the offences, and

(c) for the purposes of any appeal any disqualification imposed under subsection (1) shall be treated as an order made on the conviction of each of the offences.

(5) No account is to be taken under subsection (1) of any of the following circumstances —

(a) any circumstances that are alleged to make the offence or any of the offences not a serious one.

(b) hardship, other than exceptional hardship, or

(c) any circumstances which, within the three years immediately preceding the conviction, have been taken into account under that subsection in ordering the offender to be disqualified for a shorter period or not ordering him to be disqualified.

(6) References in this section to disqualification do not include a disqualification imposed under subsection 147 or any provision of written law permitting disqualification on conviction of an offence other than an offence under this Ordinance⁷², or of an offence of stealing a motor vehicle or of driving it away without consent or any attempt to commit such an offence.

(7) The preceding provisions of this section shall apply in relation to a conviction of an offence committed by aiding, abetting, counselling, procuring or inciting the commission of an offence involving obligatory disqualification as if the offence involving discretionary disqualification.

(8) This section is subject to section 167.

Disqualification until test is passed

156.—(1) Where this subsection applies to a person the court must order him to be disqualified until he passes the appropriate driving test.

(2) Subsection (1) above applies to a person who is disqualified under section 154 on conviction of —

⁷² It is intended to propose enactment of a provision corresponding to s.147 of the Powers of Criminal Courts (Sentencing) Act 2000

(a) manslaughter by the driver of a motor vehicle, or

(b) an offence under section 4 (causing death by dangerous driving) or section 5 (dangerous driving).

(3) Subsection (1) also applies —

(a) to a person who is disqualified under section 154 or 155 of this Ordinance in such circumstances or for such period as the Governor may by Order prescribe, or

(b) to such other persons convicted of such offences involving obligatory endorsement as may be so prescribed.

(4) Where a person to whom subsection (1) does not apply is convicted of an offence involving obligatory endorsement, the court may order him to be disqualified until he passes the appropriate driving test (whether or not he has previously passed any test).

(5) In this section —

“appropriate driving test” means —

(a) an extended driving test, where a person is convicted of an offence involving obligatory disqualification or is disqualified under section 155,

(b) a test of competence to drive, other than an extended driving test, in any other case,

“extended driving test” means a test of competence to drive prescribed for the purposes of this section, and

“test of competence to drive” means a test prescribed by virtue of section 66.

(6) In determining whether to make an order under subsection (4) the court shall have regard to the safety of road users.

(7) Where a person is disqualified until he passes the extended driving test —

(a) any earlier order under this section shall cease to have effect, and

(b) a court shall not make a further order under this section while he is so disqualified.

(8) Subject to subsection (9) a disqualification by virtue of an order under this section shall be deemed to have expired on production to the Chief police officer of evidence, in such form as may be prescribed by regulations under section 80(3) that the person disqualified has passed the test in question since the order was made.

(9) A disqualification shall be deemed to have expired only in relation to vehicles of such classes as may be prescribed in relation to the test passed by regulations under that section.

(10) Where there is issued to a person a licence on the counterpart of which are endorsed particulars of a disqualification under this section, there shall also be endorsed the particulars of any test of competence to drive that he has passed since the order of disqualification was made.

(11) For the purposes of an order under this section, a person shall be treated as having passed a test of competence to drive if he passes a corresponding test conducted —

(a) under the law of any constituent part of the United Kingdom, any other EU State, or EEA State or other designated country or territory;

(b) for the purposes of obtaining a British Forces driving licence;

and accordingly subsections (8) to (10) of this section shall apply in relation to such a test as they apply in relation to a test prescribed under section 80(3).

(12) For the purposes of subsection (11) “designated country” means a country designated by order under section 108(2) of the Road Traffic Act 1988 but a test conducted under the law of such a country or territory shall not be regarded as a corresponding test unless a person passing such a test would be entitled to an exchangeable licence as defined in section 108(1) of that Act.

(13) This section is subject to section 167 of this Ordinance.

Effect of order of disqualification

157.—(1) Where the holder of a licence is disqualified by an order of a court, the licence shall be treated as being revoked with effect from the beginning of the period of disqualification.

(2) Where —

(a) the disqualification is for a fixed period shorter than 56 days in respect of an offence involving obligatory endorsement, or

(b) the order is made under section 147,

subsection (1) shall not prevent the licence from again having effect at the end of the period of disqualification.

(3) Where the holder of the licence appeals against the order and the disqualification is suspended under section 159, the period of disqualification shall be treated for the purpose of subsection (1) of this section as beginning on the day on which the disqualification ceases to be suspended.

(4) Notwithstanding anything in Part IV of this Ordinance a person disqualified by an order of a court under section 156 (unless he is also disqualified otherwise than by virtue of such an order)

is entitled to obtain and to hold a provisional licence and to drive a motor vehicle in accordance with the conditions subject to which the provisional licence is granted.⁷³

Appeal against disqualification

158. A person disqualified by an order of a court of summary jurisdiction under section 154 or 155 may appeal to the Supreme Court in the same manner as against a conviction.

Suspension of disqualification pending appeal

159.—(1) Any court which makes an order disqualifying a person may, if it thinks fit, suspend the disqualification pending an appeal against the order.

(2) Where a court exercises its power under subsection (1), it must send a notice of the suspension to the chief police officer.

Power of Supreme Court and Court of Appeal to suspend disqualification

160.—(1) This section applies where a person has been convicted by or before a court of an offence involving obligatory or discretionary disqualification and has been ordered to be disqualified; and in the following provisions of this section —

(a) any reference to a person ordered to be disqualified is to be construed as a reference to a person so convicted and so ordered to be disqualified; and

(b) any reference to his sentence includes a reference to the order of disqualification and to any other order made on his conviction and, accordingly, any reference to an appeal against his sentence includes a reference to an appeal against any order forming part of his sentence.

(2) Where a person ordered to be disqualified —

(a) appeals to the Supreme Court, or

(b) appeals or applies for leave to appeal to the Court of Appeal,

against his conviction or his sentence, the Supreme Court or, as the case may require, the Court of Appeal may, if it thinks fit, suspend the disqualification.

(3) Where a person ordered to be disqualified has appealed or applied for leave to appeal to the Privy Council the Court of Appeal may, if it thinks fit, suspend the disqualification.

(4) Where a person ordered to be disqualified makes an application in respect of the decision of the court in question under section 111 of the Magistrates' Courts Act 1980 (statement of case by Summary Court) the Supreme Court may, if it thinks fit, suspend the disqualification.

(5) Where a person ordered to be disqualified —

⁷³ A person might be disqualified for obtaining a driving licence for a fixed period and thereafter until he passes a driving test. He could not lawfully obtain a provisional driving licence during the fixed period.

(a) applies to the Supreme Court for an order of certiorari to remove into the Supreme Court any proceedings of the Summary Court or of the Magistrate's Court, being proceedings in or in consequence of which he was convicted or his sentence was passed, or

(b) applies to the Supreme Court for leave to make such an application,

the Supreme Court may, if it thinks fit, suspend the disqualification.

(6) Any power of a court under the preceding provisions of this section to suspend the disqualification of any person is a power to do so on such terms as the court thinks fit.

(7) Where, by virtue of this section, a court suspends the disqualification of any person, it must send notice of the suspension to the chief police officer.

Removal of disqualification

161.—(1) Subject to the provisions of this section, a person who by an order of a court is disqualified may apply to the court by which the order was made to remove the disqualification.

(2) On any such application the court may, as it thinks proper having regard to —

(a) the character of the person disqualified and his conduct subsequent to the order,

(b) the nature of the offence, and

(c) any other circumstances of the case,

either by order remove the disqualification as from such date as may be specified in the order or refuse the application.

(3) No application shall be made under subsection (1) for the removal of a disqualification before the expiration of whichever is relevant of the following periods from the date of the order by which the disqualification was imposed, that is —

(a) two years, if the disqualification is for less than four years,

(b) one half of the period of disqualification, if it is less than ten years but not less than four years,

(c) five years in any other case;

and in determining the expiration of the period after which under this subsection a person may apply for the removal of a disqualification, any time after the conviction during which the disqualification was suspended or he was not disqualified shall be disregarded.

(4) Where an application under subsection (1) is refused, a further application under that subsection shall not be entertained if made within three months after the date of the refusal.

(5) If under this section a court orders a disqualification to be removed, the court —

(a) must cause particulars of the order to be endorsed on the licence or, where appropriate the counterpart of the licence, if any, previously held by the applicant, and

(b) may in any case order the applicant to pay the whole or any part of the costs of the application.

(6) Subsection (5)(a) applies only where the disqualification was imposed in respect of an offence involving obligatory endorsement; and in any other case the court must send notice of the order made under this section to the chief police officer.

(7) The preceding provisions of this section shall not apply where the disqualification was imposed by order under section 156.

Rule for determining end of period of disqualification

162. In determining the expiration of the period for which a person is disqualified by an order of a court made in consequence of a conviction, any time after the conviction during which the disqualification was suspended or he was not disqualified shall be disregarded.

Endorsements

Endorsement of licences

163.—(1) Where a person is convicted of an offence involving obligatory endorsement, the court must order there to be endorsed on the counterpart of any licence held by him particulars of the conviction and also —

(a) if the court orders him to be disqualified, particulars of the disqualification, or

(b) if the court does not order him to be disqualified —

(i) particulars of the offence, including the date when it was committed, and

(ii) the penalty points to be attributed to the offence.

(2) Where the court does not order the person convicted to be disqualified, it need not make an order under subsection (1) if for special reasons it thinks fit not to do so.

(3) This section is subject to section 167.

Effect of endorsement

164.—(1) An order that any particulars or penalty points are to be endorsed on the counterpart of any licence held by the person convicted shall, whether he is at the time the holder of a licence or not, operate as an order that the counterpart of any licence he may then hold or may subsequently obtain is to be so endorsed until he becomes entitled under subsection (4) below to have a licence issued to him with its counterpart free from the particulars or penalty points.

(2) On the issue of a new licence to a person, any particulars or penalty points ordered to be endorsed on the counterpart of any licence held by him shall be entered on the counterpart of the licence unless he has become entitled under subsection (4) to have a licence issued to him with its counterpart free from those particulars or penalty points.

(3) A person the counterpart of whose licence has been ordered to be endorsed is entitled to have issued to him with effect from the end of the period for which the endorsement remains effective a new licence with a counterpart free from the endorsement if he applies for a new licence in pursuance of section 74(1) of this Ordinance, surrenders any subsisting licence and its counterpart, pays the fee prescribed by regulations under Part IV and satisfies the other requirements of section 74(1).

(4) An endorsement ordered on a person's conviction of an offence remains effective (subject to subsections (5) and (6)) —

(a) if an order is made for the disqualification of the offender, until four years have elapsed since the conviction, and

(b) if no such order is made, until either —

(i) four years have elapsed since the commission of the offence, or

(ii) an order is made for the disqualification of the offender under section 155.

(5) Where the offence was one under section 4 or 5 (causing death by dangerous driving and dangerous driving), the endorsement remains in any case effective until four years have elapsed since the conviction.

(6) Where the offence was one —

(a) section 8, 9(1) or 10(1)(a) (driving offences connected with drink or drugs), or

(b) under section 12(6) (failing to provide specimen) involving obligatory disqualification,

the endorsement remains effective until eleven years have elapsed since the conviction.

General

Combination of disqualification and endorsement with probation orders and orders for discharge

165.—(1) Notwithstanding anything in any other written law of the Falkland Islands which requires the conviction of an offender discharged to be disregarded for the purposes of provisions of written law relating to disqualification, a court which on convicting a person of an offence involving obligatory or discretionary disqualification makes —

(a) a probation order or a community supervision order, or

(b) an order discharging him absolutely or conditionally,

may on that occasion also exercise any power conferred, and must also discharge any duty imposed, on the court by sections 154, 155, 156 or 163.

(2) A conviction —

(a) in respect of which a court has ordered a person to be disqualified; or

(b) of which particulars have been endorsed on the counterpart of any licence held by him,

is to be taken into account, notwithstanding anything in any other written law of the Falkland Islands which requires the conviction of an offender discharged to be disregarded for the purposes of subsequent proceedings), in determining his liability to punishment or disqualification for any offence involving obligatory or discretionary disqualification committed subsequently.

Supplementary provisions as to disqualifications and endorsements

166.—(1) In any case where a court exercises its power under section 154, 155 or 163 not to order any disqualification or endorsement or to order disqualification for a shorter period than would otherwise be required, it must state the grounds for doing so in open court and, if it is the Magistrate's Court or the Summary Court, must cause them to be entered in the register of its proceedings.

(2) Where a court orders the endorsement of the counterpart of any licence held by a person it may, and where a court orders the holder of a licence to be disqualified for a period of 56 days or more it must, send the licence and its counterpart, on their being produced to the court, to the chief police officer, and if the court orders the endorsement but does not send the licence and its counterpart to the chief police officer it must send him notice of the endorsement.

(3) Where on an appeal against an order for the endorsement of a licence or the disqualification of a person the appeal is allowed, the court by which the appeal is allowed must send notice of that fact to the chief police officer.

Exemption from disqualification and endorsement

167.—(1) Where a person is convicted of an offence under section 42 (using vehicle in dangerous condition etc) the court must not —

(a) order him to be disqualified, or

(b) order any particulars or penalty points to be endorsed on the counterpart of any licence held by him,

if he proves that he did not know, and had no reasonable cause to suspect, that the use of the vehicle involved a danger of injury to any person.

(2) Where a person is convicted of an offence under section 44 (breach of requirement as to brakes, steering-gear or tyres) the court must not —

(a) order him to be disqualified, or

(b) order any particulars or penalty points to be endorsed on the counterpart of any licence held by him,

if he proves that he did not know, and had no reasonable cause to suspect, that the facts of the case were such that the offence would be committed.

Offender escaping consequences of endorsable offence by deception

168.—(1) This section applies where in dealing with a person convicted of an offence involving obligatory endorsement a court was deceived regarding any circumstances that were or might have been taken into account in deciding whether or for how long to disqualify him.

(2) If —

(a) the deception constituted or was due to an offence committed by that person, and

(b) he is convicted of that offence,

the court by or before which he is convicted shall have the same powers and duties regarding an order for disqualification as had the court which dealt with him for the offence involving obligatory endorsement but must, in dealing with him, take into account any order made on his conviction of the offence involving obligatory endorsement.

PART XI FIXED PENALTIES

Introductory

Fixed penalty offences

169.—(1) Any offence under a provision of law specified in column 1 of Schedule 5 is a fixed penalty offence for the purposes of this Part, subject to subsection (2) of this section and to any limitation or exception or exception shown against the provision of law in column 2 (where the general nature of the offence is also indicated).

(2) An offence under a provision of law so specified is not a fixed penalty offence for those purposes if it is committed by causing or permitting a vehicle to be used by another person in contravention of any provision made or restriction or prohibition imposed by or under any enactment.

Fixed penalty notices

170.—(1) In that Part “fixed penalty notice” means a notice offering the opportunity of the discharge of any liability to conviction of the offence to which the notice relates by payment of a fixed penalty in accordance with this Part.

(2) A fixed penalty notice must give such particulars of the circumstances alleged to constitute the offence to which it relates as are necessary for giving reasonable information about the alleged offence.

(3) A fixed penalty notice must state —

(a) the period during which, by virtue of section 195, proceedings cannot be brought against any person for the offence to which the notice relates, being the period of twenty-one days following the date of the notice or such longer period (if any) as may be specified in the notice (referred to in this Part as the “suspended enforcement period”),

(b) the amount of the fixed penalty, and

(c) that the penalty may be paid to the Courts Administrator at the Courts Office, Town Hall, Stanley.

Amount of fixed penalty

171.—(1) Subject to subsection (3), the fixed penalty for an offence is —

(a) such amount as the Governor may by order prescribe, or

(b) one half of the maximum amount of the fine to which a person committing that offence would be liable on summary conviction,

whichever is the less.

(2) Any order made under subsection (1)(a) may make different provision for different cases or classes of case.

(3) Unless an order has been made under subsection (1)(a), the fixed penalty for an offence is that provided for by subsection (1)(b).

Giving notices to suspected offenders

Notices on the spot or at a police station

172.—(1) This section applies where on any occasion a police officer in uniform has reason to believe that a person he finds is committing or has on that occasion committed a fixed penalty offence.

(2) Subject to subsection (3) below, the police officer may give him a fixed penalty notice in respect of the offence.

(3) Where the offence appears to the police officer to involve obligatory endorsement, the police officer may only give him a fixed penalty notice under subsection (2) in respect of the offence if—

- (a) he produces his licence and its counterpart for inspection by the police officer,
- (b) the police officer is satisfied, on inspecting the licence and its counterpart that he would not be liable to be disqualified under section 155 if he were convicted of that offence, and
- (c) he surrenders his licence and its counterpart to the police officer to be retained and dealt with in accordance with this Part.

(4) Where —

- (a) the offence appears to the police officer to involve obligatory endorsement, and
- (b) the person concerned does not produce his licence and its counterpart for inspection by the police officer,

the police officer may give him a notice stating that if, within seven days after the notice is given, he produces the notice together with his licence and its counterpart in person to a police officer or authorised person at Stanley Police Station and the requirements of subsection (5)(a) and (b) are met he will then be given a fixed penalty notice in respect of the offence.

(5) If a person to whom a notice has been given under subsection (4) produces the notice together with his licence and its counterpart in person to a police officer or authorised person at the Stanley Police Station within seven days after the notice was so given to him and the following requirements are met, that is —

- (a) the police officer or authorised person is satisfied, on inspecting the licence and its counterpart, that he would not be liable to be disqualified under section 155 if he were convicted of the offence, and
- (b) he surrenders his licence and its counterpart to the police officer or authorised person to be retained and dealt with in accordance with this Part,

the police officer or authorised person must give him a fixed penalty notice in respect of the offence to which the notice under subsection (4) relates.

(6) A notice under subsection (4) above shall give such particulars of the circumstances alleged to constitute the offence to which it relates as are necessary for giving reasonable information about the alleged offence.

(7) A licence and a counterpart of a licence surrendered in accordance with this section must be sent to the Courts Administrator at the Courts Office, Town Hall, Stanley.

(8) In this Part “authorised person”, in relation to a fixed penalty notice given at Stanley Police Station, means a person authorised for the purposes of this section by or on behalf of the Chief police officer.

(9) In determining for the purposes of subsections (3)(b) and (5)(a) whether a person convicted of an offence would be liable to disqualification under section 155, it shall be assumed, in the case of an offence in relation to which a range of numbers is shown in the last column of Part I of Schedule 5 that the number of penalty points to be attributed to the offence would be the lowest in the range.

Effect of fixed penalty notice given under section 172

173.—(1) This section applies where a fixed penalty notice relating to an offence has been given to any person under section 172 and references in this section to the recipient are to the person to whom the notice was given.

(2) No proceedings shall be brought against the recipient for the offence to which the fixed penalty notice relates unless before the end of the suspended enforcement period he has given notice requesting a hearing in respect of the offence in the manner specified in the fixed penalty notice.

(3) Where —

(a) the recipient has not given notice requesting a hearing in respect of the offence to which the fixed penalty notice relates in the manner specified, and

(b) the fixed penalty has not been paid in accordance with this Part before the end of the suspended enforcement period,

a sum equal to the fixed penalty plus one-half of the amount of that penalty may be registered under section 188 for enforcement against the recipient as a fine.

Licence receipts

174.—(1) A police officer or authorised person to whom a person surrenders his licence and its counterpart on receiving a fixed penalty notice given to him under section 172 must issue a receipt for the licence and its counterpart under this section.

(2) The Courts Administrator may, on the application of a person who has surrendered his licence and its counterpart in those circumstances, issue a new receipt for them.

(3) A receipt issued under this section ceases to have effect —

(a) if issued by a police officer or authorised person, on the expiration of the period of one month beginning with the date of issue or such longer period as may be prescribed, and

(b) if issued by the Courts Administrator on such date as he may specify in the receipt,

or, if earlier, on the return of the licence and its counterpart to the licence holder.

Endorsement of licences without hearings

175.—(1) Subject to subsection (2), where a person (referred to in this section as “the licence holder”) has surrendered his licence and its counterpart to a police officer or authorised person on the occasion when he was given a fixed penalty notice under section 172, the counterpart of his licence be endorsed in accordance with this section without any order of a court.

(2) The counterpart of a person’s licence may not be endorsed under this section if at the end of the suspended enforcement period —

(a) he has given notice, in the manner specified in the fixed penalty notice, requesting a hearing in respect of the offence to which the fixed penalty notice relates, and

(b) the fixed penalty has not been paid in accordance with this Ordinance.

(3) On the payment of the fixed penalty before the end of the suspended enforcement period, the Courts Administrator must endorse the relevant particulars on the counterpart of the licence and return it together with the licence to the licence holder.

(4) Where any sum determined by reference to the fixed penalty is registered under section 188 for enforcement against the licence holder as a fine the Courts Administrator must endorse the relevant particulars on the counterpart of the licence and return it together with the licence to the licence holder.

(5) References in this section to the relevant particulars are to —

(a) particulars of the offence, including the date when it was committed, and

(b) the number of penalty points to be attributed to the offence.

(6) On endorsing the counterpart of a person’s licence under this section the Courts Administrator must send notice of the endorsement and particulars endorsed to the chief police officer.

Effect of endorsement without hearing

176.—(1) Where the counterpart of a person’s licence is endorsed under section 175 he shall be treated for the purposes of sections 141(4), 149, 150 and 164 of this Ordinance and of the Criminal Justice Ordinance as if —

(a) he had been convicted of the offence,

(b) the endorsement had been made in pursuance of an order made on his conviction by a court under section 163, and

(c) the particulars of the offence endorsed by virtue of section 175(5)(a) were particulars of his conviction of that offence.

(2) In relation to any endorsement of the counterpart of a person's licence under section 175 —

(a) the reference in section 175(5)(a) of this Ordinance to the order for endorsement, and

(b) the references in section 164(3) to any order made on a person's conviction,

are to be read as references to the endorsement itself.

Notification of court and date of trial

177.—(1) On an occasion when a person is given a fixed penalty notice under section 172 in respect of an offence, he may be given written notification specifying the court of summary jurisdiction by which and the date on which the offence will be tried if he gives notice requesting a hearing in respect of the offence as permitted by the fixed penalty notice.

(2) Subject to subsections (4) and (5) where —

(a) a person has been notified in accordance with this section of the court and date of trial of an offence in respect of he has been given a fixed penalty notice, and

(b) he has given notice requesting a hearing in respect of the offence permitted by the fixed penalty notice,

the provisions of the Magistrates' Courts Act 1980 shall apply as mentioned in subsection (3).

(3) Those provisions are to have effect for the purpose of any proceedings in respect of that offence as if —

(a) the allegation in the fixed penalty notice with respect to that offence were an information duly laid in accordance with section 1 of that Act, and

(b) the notification of the court and date of trial were a summons issued on that information by the Senior Magistrate or other justice of the peace requiring the person notified to appear before a court of summary jurisdiction to answer that information and duly served on him on the date on which the notification was given.

(4) If, in a case within subsection (2), notice is served by or on behalf of the chief police officer on the person who gave notice requesting a hearing stating that no proceedings are to be brought in respect of the offence concerned, that subsection does not apply and no such proceedings are to be brought against the person who gave notice requesting a hearing.

(5) Section 14 of that Act (proceedings invalid where accused did not know of them) is not applied by subsection (2) in a case where a person has been notified in accordance with this section of the court and date of trial of the offence.

Fixed penalty notice mistakenly given: exclusion of fixed penalty procedures

178.—(1) This section applies where, on inspection of a licence and its counterpart sent to him under section 172, it appears to the Courts Administrator that the person whose licence it is would be liable to be disqualified under section 155 if he were convicted of the offence in respect of which the fixed penalty notice was given.

(2) The Courts Administrator must not endorse the counterpart of the licence under section 175 but must instead send it together with the licence to the chief police officer.

(3) Nothing in this Part prevents proceedings being brought in respect of the offence in respect of which the fixed penalty notice was given where those proceedings are commenced before the end of the period of six months beginning with the date on which that notice was given.

(4) Where proceedings in respect of that offence are commenced before the end of that period, the case is from then on to be treated in all respects as if no fixed penalty notice had been given in respect of the offence.

(5) Accordingly, where proceedings in respect of that offence are so commenced, any action taken in pursuance of any provision of this Part by reference to that fixed penalty notice shall be void (including, but without prejudice to the generality of the preceding provision —

(a) the registration under section 188 of any sum, determined by reference to the fixed penalty for that offence, for enforcement against the person whose licence it is as a fine, and

(b) any proceedings for enforcing payment of any such sum within the meaning of sections 190 and 191 of this Ordinance (defined in section 191(5)).

(6) In determining for the purposes of subsection (1) of this section whether a person convicted of an offence would be liable to disqualification under section 155, it shall be assumed, in the case of an offence in relation to which a range of numbers is shown in the last column of Part I of Schedule 4 that the number of penalty points to be attributed to the offence would be the lowest in the range.

Notices affixed to vehicles

Fixing notices to vehicles

179.—(1) Where on any occasion a police officer has reason to believe in the case of a stationary vehicle that a fixed penalty offence is being or has on that occasion been committed in respect of it, he may fix a fixed penalty notice in respect of the offence to the vehicle unless the offence appears to him to involve obligatory endorsement.

(2) A person is guilty of an offence if he removes or interferes with any notice fixed to a vehicle under this section, unless he does so by or under the authority of the driver or person in charge of the vehicle or the person liable for the fixed penalty offence in question.

Service of notice to owner if penalty not paid

180.—(1) This section applies where a fixed penalty notice relating to an offence has been fixed to a vehicle under section 179.

(2) Subject to subsection (3) if at the end of the suspended enforcement period the fixed penalty has not been paid in accordance with this Part, a notice under this section may be served by or on behalf of the chief police officer on any person who appears to him (or to any person authorised to act on his behalf for the purposes of this section) to be the owner of the vehicle. Such a notice is referred to in this Part as a “notice to owner”.

(3) Subsection (2) does not apply where before the end of the suspended enforcement period —

(a) any person has given notice requesting a hearing in respect of the offence in the manner specified in the fixed penalty notice, and

(b) the notice so given contains a statement by that person to the effect that he was the driver of the vehicle at the time when the offence is alleged to have been committed.

That time is referred to in this Part as the “time of alleged offence”.

(4) A notice to owner —

(a) must give particulars of the alleged offence and of the fixed penalty concerned,

(b) must state the period allowed for response to the notice, and

(c) must indicate that, if the fixed penalty is not paid before the end of that period, the person on whom the notice is served is asked to provide before the end of that period to the Chief police officer by or on whose behalf the notice was served a statutory statement of ownership (as defined in Part I of Schedule 6).

(5) For the purposes of this Part, the period allowed for response to a notice to owner is the period of twenty-one days from the date on which the notice is served, or such longer period (if any) as may be specified in the notice.

(6) A notice to owner relating to any offence must indicate that the person on whom it is served may, before the end of the period allowed for response to the notice, either —

(a) give notice requesting a hearing in respect of the offence in the manner indicated by the notice, or

(b) if —

(i) he was not the driver of the vehicle at the time of the alleged offence, and

(ii) a person purporting to be the driver wishes to give notice requesting a hearing in respect of the offence,

provide, together with a statutory statement of ownership provided as requested in that notice, a statutory statement of facts (as defined by Part II of Schedule 6) having the effect referred to in paragraph 3(2) of that Schedule (that is, as a notice requesting a hearing in respect of the offence given by the driver).

(7) In any case where a person on whom a notice to owner relating to any offence has been served provides a statutory statement of facts in pursuance of subsection (6)(b) of this section —

(a) any notice requesting a hearing in respect of the offence that he purports to give on his own account shall be of no effect, and

(b) no sum may be registered for enforcement against him as a fine in respect of the offence unless, within the period of two months immediately following the period allowed for response to the notice to owner, no summons in respect of the offence in question is served on the person identified in the statement as the driver.

Enforcement or proceedings against owner

181.—(1) This section applies where —

(a) a fixed penalty notice relating to an offence has been fixed to a vehicle under section 179,

(b) a notice to owner relating to the offence has been served on any person under section 180(2) before the end of the period of six months beginning with the day on which the fixed penalty notice was fixed to the vehicle, and

(c) the fixed penalty has not been paid in accordance with this Part before the end of the period allowed for response to the notice to owner.

(2) Subject to subsection (4) and to section 180(7)(b), a sum equal to the fixed penalty plus one-half of the amount of that penalty may be registered under section 188 for enforcement against the person on whom the notice was served as a fine.

(3) Subject to subsection (4) and to section 182, proceedings may be brought in respect of that offence against the person on whom the notice to owner was served.

(4) If the person on whom the notice to owner was served —

(a) was not the owner of the vehicle at the time of the alleged offence, and

(b) provides a statutory statement of ownership to that effect in response to the notice before the end of the period allowed for response to the notice,

he shall not be liable in respect of the offence by virtue of this section nor shall any sum determined by reference to the fixed penalty for the offence be so registered by virtue of this section for enforcement against him as a fine.

(5) Subject to subsection (6) —

(a) for the purposes of the institution of proceedings by virtue of subsection (3) against any person on whom a notice to owner has been served, and

(b) in any proceedings brought by virtue of that subsection against any such person,

it shall be conclusively presumed (notwithstanding that that person may not be an individual) that he was the driver of the vehicle at the time of the alleged offence and, accordingly, that acts or omissions of the driver of the vehicle at that time were his acts or omissions.

(6) That presumption does not apply in any proceedings brought against any person by virtue of subsection (3) if, in those proceedings, it is proved that at the time of the alleged offence the vehicle was in the possession of some other person without the consent of the accused.

(7) Where —

(a) by virtue of subsection (3) proceedings may be brought in respect of an offence against a person on whom a notice to owner was served, and

(b) section 191(1) of this Ordinance does not apply,

section 51(6)(f)(vi) of the Administration of Justice Ordinance (Title 22.1) (proceedings to be commenced within six months of the date of the offence unless otherwise provided by preceding provision of section 51(6)) shall have effect as if for the reference to six months there were substituted a reference to one year.

Restriction on proceedings against owner and others

182.—(1) In any case where a notice to owner relating to an offence may be served under section 180 no proceedings shall be brought in respect of the offence against any person other than a person on whom such a notice has been served unless he is identified as the driver of the vehicle at the time of the alleged offence in a statutory statement of facts provided in pursuance of section 180(b)(b) by a person on whom such a notice has been served.

(2) Proceedings in respect of an offence to which a notice to owner relates shall not be brought against the person on whom the notice was served unless, before the end of the period allowed for response to the notice, he has given notice, in the manner indicated by the notice to owner, requesting a hearing in respect of the offence.

(3) Proceedings in respect of an offence to which a notice to owner relates may not be brought against any person identified as the driver of the vehicle in a statutory statement of facts provided

in response to the notice if the fixed penalty is paid in accordance with this Part before the end of the period allowed for response to the notice.

(4) Once any sum determined by reference to the fixed penalty for an offence has been registered by virtue of section 181 under section 188 for enforcement as a fine against a person on whom a notice to owner relating to that offence has been served, no proceedings shall be brought against any other person in respect of that offence.

Hired vehicles

183.—(1) This section applies where —

(a) a notice to owner has been served on a vehicle-hire firm,

(b) at the time of the alleged offence the vehicle in respect of which the notice was served was let to another person by the vehicle-hire firm under a hiring agreement to which this section applies, and

(c) within the period allowed for response to the notice the firm provides the chief police officer by or on whose behalf the notice was served with the documents mentioned in subsection (2).

(2) Those documents are a statement on an official form, signed by or on behalf of the firm, stating that at the time of the alleged offence the vehicle concerned was hired under a hiring agreement to which this section applies, together with —

(a) a copy of that hiring agreement, and

(b) a copy of a statement of liability signed by the hirer under that hiring agreement.

(3) In this section a “statement of liability” means a statement made by the hirer under a hiring agreement to which this section applies to the effect that the hirer acknowledges that he will be liable, as the owner of the vehicle, in respect of any fixed penalty offence which may be committed with respect to the vehicle during the currency of the hiring agreement and giving such information as may be prescribed.

(4) In any case where this section applies, sections 180, 181 and 182 shall have effect as if —

(a) any reference to the owner of the vehicle were a reference to the hirer under the hiring agreement, and

(b) any reference to a statutory statement of ownership were a reference to a statutory statement of hiring,

and accordingly references in this Part (with the exceptions mentioned below) to a notice to owner include references to a notice served under section 180 as it applies by virtue of this section.

This subsection does not apply to references to a notice to owner in this section or in section 198(2)(b) or Part I of Schedule 6.

(5) In any case where this section applies, a person authorised in that behalf by the chief police officer to whom the documents mentioned in subsection (2) are provided may, at any reasonable time within six months after service of the notice to owner (and on the production of his authority) require the firm to produce the originals of the hiring agreement and statement of liability in question.

(6) If a vehicle-hire firm fails to produce the original of a document when required to do so under subsection (5) this section shall thereupon cease to apply (and section 181 shall apply accordingly in any such case after that time as it applies in a case where the person on whom the notice to owner was served has failed to provide a statutory statement of ownership in response to the notice within the period allowed).

(7) This section applies to a hiring agreement under the terms of which the vehicle concerned is let to the hirer for a fixed period of less than six months (whether or not that period is capable of extension by agreement between the parties or otherwise); and any reference in this section to the currency of the hiring agreement includes a reference to any period during which, with the consent of the vehicle-hire firm, the hirer continues in possession of the vehicle as hirer, after the expiry of the fixed period specified in the agreement, but otherwise on the terms and conditions so specified.

(8) In this section —

“hiring agreement” refers only to an agreement which contains such particulars as may be prescribed and does not include an agreement which if it had been made in England, would have been a hire-purchase agreement within the meaning of the Consumer Credit Act 1974, and

“vehicle-hire firm” means any person engaged in hiring vehicles in the course of a business.

False statements in response to notices to owner

184. A person who, in response to a notice to owner, provides a statement which is false in a material particular and does so recklessly or knowing it to be false in that particular commits an offence.

“Owner”, “statutory statement” and “official form”

185.—(1) For the purposes of this Part the owner of a vehicle shall be taken to be the person by whom the vehicle is kept; and for the purposes of determining, in the course of any proceedings brought by virtue of section 181(3) who was the owner of a vehicle at any time, it shall be presumed that the owner was the person who was the registered keeper of the vehicle at that time.

(2) Notwithstanding the presumption in subsection (1) it is open to the defence in any proceedings to prove that the person who was the registered keeper of a vehicle at a particular

time was not the person by whom the vehicle was kept at that time and to the prosecution to prove that the vehicle was kept by some other person at that time.

(3) References in this Part to statutory statements of any description are references to the statutory statement of that description defined in Schedule 6; and that Schedule shall also have effect for the purpose of requiring certain information to be provided in official forms for the statutory statements so defined to assist persons in completing those forms and generally in determining what action to take in response to a notice to owner.

(4) In this Part “official form”, in relation to a statutory statement mentioned in Schedule 6 or a statement under section 183(2) means a document supplied by or on behalf of the chief police officer for use in making that statement.

The fixed penalty procedure

Payment of penalty

186.—(1) Payment of a fixed penalty must be made to the Courts Administrator.

(2) Payment of the penalty may be made in any manner in which payment of a fine may be made.

Registration certificates

187.—(1) This section and section 188 apply where by virtue of section 173(3) or 181(2) a sum determined by reference to a fixed penalty for any offence may be registered under section 188 for enforcement against any person as a fine. In this section and section 188 —

(a) that sum is referred to as a “sum payable in default”, and

(b) the person against whom that sum may be so registered is referred to as the “defaulter”.

(2) The chief police officer may in respect of any sum payable in default issue a certificate (referred to in this section and section 188 as a “registration certificate”) stating that the sum is registrable under section 188 for enforcement against the defaulter as a fine.

(3) Where the chief police officer issues a registration certificate under this section, he must send it to the Courts Administrator.

(4) A registration certificate issued under this section in respect of any sum must —

(a) give particulars of the offence to which the fixed penalty notice relates,

(b) indicate whether registration is authorised under section 55(3) or section 64(2), and

(c) state the name and last known address of the defaulter and the amount of the sum payable in default.

Registration of sums payable in default

188.—(1) Whenever the Courts Administrator receives a registration certificate issued under section 187 in respect of any sum payable in default he must, if it appears to him that the defaulter resides in the Falkland Islands, register that sum for enforcement as a fine by registering it in the register of the Magistrate's Court.

(2) On registering any sum under this section for enforcement as a fine, the Courts Administrator must give to the defaulter notice of registration —

(a) specifying the amount of that sum, and

(b) giving the information with respect to the offence and the authority for registration included in the registration certificate by virtue of section 187(5)(a) and (b).

(3) On the registration of any sum in the Magistrate's Court by virtue of this section any enactment referring (in whatever terms) to a fine imposed or other sum adjudged to be paid on the conviction of such a court shall have effect in the case in question as if the sum so registered were a fine imposed by that court on the conviction of the defaulter on the date of the registration.

(4) Accordingly, in the application by virtue of this section of the provisions of the Magistrates Courts Act 1980 relating to the satisfaction and enforcement of sums adjudged to be paid on the conviction of a magistrate's court, section 85 of that Act (power to remit a fine in whole or in part) is not excluded by subsection (2) of that section (references in that section to a fine not to include any other sum, adjudged to be paid on a conviction) from applying to a sum registered in a court of summary jurisdiction by virtue of this section.

(5) For the purposes of this section, where the defaulter is a body corporate, the place where that body resides is the registered or principal office of that body.

Notices on the spot or at a police station when registration and endorsement invalid

189.—(1) This section applies where —

(a) a person who has received notice of the registration, by virtue of section 187(3) of a sum under section 187 of this Ordinance for enforcement against him as a fine makes a statutory declaration to the effect mentioned in subsection (2), and

(b) that declaration is, within twenty-one days of the date on which the person making it received notice of the registration, served on the Courts Administrator.

(2) The statutory declaration must state —

(a) that the person making the declaration was not the person to whom the relevant fixed penalty notice was given, or

(b) that he gave notice requesting a hearing in respect of the alleged offence as permitted by the fixed penalty notice before the end of the suspended enforcement period.

(3) In any case within subsection (2)(a), the relevant fixed penalty notice, the registration and any proceedings taken before the declaration was served for enforcing payment of the sum registered shall be void.

(4) Where in any case within subsection (2)(a) the person to whom the relevant fixed penalty notice was given surrendered a licence and its counterpart held by the person making the declaration, any endorsement of that counterpart made under section 175 in respect of the offence in respect of which that notice was given shall be void.

(5) In any case within subsection (2)(b) —

(a) the registration, any proceedings taken before the declaration was served for enforcing payment of the sum registered, and any endorsement, in respect of the offence in respect of which the relevant fixed penalty notice was given, made under section ?? before the declaration was served, shall be void, and

(b) the case shall be treated after the declaration is served as if the person making the declaration had given notice requesting a hearing in respect of the alleged offence as stated in the declaration.

(6) The Courts Administrator must —

(a) cancel an endorsement of the counterpart of a licence under section 175 that is void by virtue of this section on production of the licence and its counterpart to him for that purpose, and

(b) send notice of the cancellation to the chief police officer.

(7) References in this section to the relevant fixed penalty notice are to the fixed penalty notice relating to the fixed penalty concerned.

Notices affixed to vehicles: when registration invalid

190.—(1) This section applies where —

(a) a person who has received notice of the registration, by virtue of section 181(2) of a sum under section 188 for enforcement against him as a fine makes a statutory declaration to the effect mentioned in subsection (2) of this section, and

(b) that declaration is, within twenty-one days of the date on which the person making it received notice of the registration, served on the Courts Administrator.

(2) The statutory declaration must state either —

(a) that the person making the declaration did not know of the fixed penalty concerned or of any fixed penalty notice or notice to owner relating to that penalty until he received notice of the registration, or

(b) that he was not the owner of the vehicle at the time of the alleged offence of which particulars are given in the relevant notice to owner and that he has a reasonable excuse for failing to comply with that notice, or

(c) that he gave notice requesting a hearing in respect of that offence as permitted by the relevant notice to owner before the end of the period allowed for response to that notice.

(3) In any case within subsection (2)(a) or (b) —

(a) the relevant notice to owner,

(b) the registration, and

(a) any proceedings taken before the declaration was served for enforcing payment of the sum registered,

shall be void but without prejudice, in a case within subsection (2)(a), to the service of a further notice to owner under section 180 on the person making the declaration.

This subsection applies whether or not the relevant notice to owner was duly served in accordance with that section on the person making the declaration.

(4) In any case within subsection (2)(c) —

(a) no proceedings shall be taken, after the statutory declaration is served until the end of the period of twenty-one days following the date of that declaration, for enforcing payment of the sum registered, and

(b) where before the end of that period a notice is served by or on behalf of the chief police officer on the person making the declaration asking him to provide a new statutory statement of ownership to the chief police officer before the end of the period of twenty-one days from the date on which the notice is served, no such proceedings shall be taken until the end of the period allowed for response to that notice.

(5) Where in any case within subsection (2)(c) —

(a) no notice is served by or on behalf of the chief police officer in accordance with subsection (4), or

(b) such a notice is so served and the person making the declaration provides a new statutory statement of ownership in accordance with the notice,

then —

(i) the registration and any proceedings taken before the declaration was served for enforcing payment of the sum registered shall be void, and

(ii) the case shall be treated after the time mentioned in subsection (6) as if the person making the declaration had given notice requesting a hearing in respect of the alleged offence as stated in the declaration.

(6) The time referred to in subsection (5) is —

(a) in a case within paragraph (a) of that subsection, the end of the period of twenty-one days following the date of the statutory declaration,

(b) in a case within paragraph (b) of that subsection, the time when the statement is provided.

(7) In any case where notice is served by or on behalf of the chief police officer in accordance with subsection (4), he must cause the Courts Administrator to be notified of that fact immediately on service of the notice.

(8) References in this section to the relevant notice to owner are to the notice to owner relating to the fixed penalty concerned.

Provisions supplementary to sections 189 and 190

191.—(1) In any case within sections 189 or 190 of this Ordinance, section 51(6) of the Administration of Justice Ordinance (Title 22.1) shall have effect as if for the reference to the time when the offence was committed or (as the case may be) the time when the contravention occurred there were substituted a reference to the date of the statutory declaration made for the purposes of section 189(1) or, as the case may be, section 190(1).

(2) Where, on the application of a person who has received notice of the registration of a sum under section 188 for enforcement against him as a fine, it appears to the relevant court (which for this purpose may be composed of a single justice) that it was not reasonable to expect him to serve, within twenty-one days of the date on which he received the notice, a statutory declaration to the effect mentioned in section 189(2) or, as the case may be, 190(2) the court may accept service of such a declaration by that person after that period has expired.

(3) A statutory declaration accepted under subsection (2) shall be taken to have been served as required by section 189(1) or, as the case may be, section 190(1).

(4) For the purposes of section 189(1) and 190(1) a statutory declaration shall be taken to be duly served on the Courts Administrator if it is delivered to him, left addressed to him at the Courts Office, or sent in a registered letter addressed to him at the Courts Office.

(5) For the purposes of sections 189, 190 and this section—

(a) a person shall be taken to receive notice of the registration of a sum under section 188 for enforcement against him as a fine when he receives notice either of the registration as such or of any proceedings for enforcing payment of the sum registered;

(b) references to proceedings for enforcing payment of the sum registered are references to any process issued or other proceedings taken for or in connection with enforcing payment of that sum.

(6) Nothing in the provisions of sections 189 or 190 or this section is to be construed as prejudicing any rights a person may have apart from those provisions by virtue of the invalidity of any action purportedly taken in pursuance of this Part which is not in fact authorised by this Part in the circumstances of the case; and accordingly, references in those provisions to the registration of any sum or to any other action taken under or by virtue of any provision of this Part are not to be construed as implying that the registration or action was validly made or taken in accordance with that provision.

Conditional offer of fixed penalty

Issue of conditional offer

192.—(1) Where —

(a) a police officer has reason to believe that a fixed penalty offence has been committed, and

(b) no fixed penalty notice in respect of the offence has been given under section 172 or fixed to a vehicle under section 179,

a notice under this section may be sent to the alleged offender by or on behalf of the Chief police officer.

(2) A notice under this section is referred to in this section and sections 193 and 194 as a “conditional offer”.

(3) Where a person issues a conditional offer, he must notify the Courts Administrator of its issue and terms.

(4) A conditional offer must —

(a) give such particulars of the circumstances alleged to constitute the offence to which it relates as are necessary for giving reasonable information about the alleged offence,

(b) state the amount of the fixed penalty for that offence, and

(c) state that proceedings against the alleged offender cannot be commenced in respect of that offence until the end of the period of twenty-eight days following the date on which the conditional offer was issued or such longer period as may be specified in the conditional offer.

(5) A conditional offer must indicate that if the following conditions are fulfilled, that is —

(a) within the period of twenty-eight days following the date on which the offer was issued, or such longer period as may be specified in the offer, the alleged offender —

(i) makes payment of the fixed penalty to the Courts Administrator, and

(ii) where the offence to which the offer relates is an offence involving obligatory endorsement, at the same time delivers his licence and its counterpart to the Courts Administrator, and

(b) where his licence and its counterpart are so delivered, the Courts Administrator is satisfied on inspecting them that, if the alleged offender were convicted of the offence, he would not be liable to be disqualified under section 155,

any liability to conviction of the offence shall be discharged.

(6) For the purposes of the condition set out in subsection (5)(b) it shall be assumed, in the case of an offence in relation to which a range of numbers is shown in the last column of Part I of Schedule 5, that the number of penalty points to be attributed to the offence would be the lowest in the range.

Effect of offer and payment of penalty

193.—(1) This section applies where a conditional offer has been sent to a person under section 192.

(2) No proceedings shall be brought against any person for the offence to which the conditional offer relates until the chief police officer receives notice in accordance with subsection (4) or (5).

(3) Where the alleged offender makes payment of the fixed penalty in accordance with the conditional offer, no proceedings shall be brought against him for the offence to which the offer relates.

(4) Where —

(a) the alleged offender tenders payment in accordance with the conditional offer and delivers his licence and its counterpart to the Courts Administrator, but

(b) it appears to the Courts Administrator, on inspecting the licence and counterpart, that the alleged offender would be liable to be disqualified under section 155 if he were convicted of the offence to which the conditional offer relates,

then subsection (3) shall not apply and the Courts Administrator must return the licence and its counterpart to the alleged offender together with the payment and give notice that he has done so to the chief police officer.

(5) Where, on the expiry of the period of twenty-eight days following the date on which the conditional offer was made or such longer period as may be specified in the offer, the conditions specified in the offer in accordance with section 192(5)(a) have not been fulfilled, the Courts Administrator must notify the chief police officer.

Endorsement where penalty paid

194.—(1) Where —

(a) in pursuance of a conditional offer a person (referred to in this section as the “licence holder”) makes payment of the fixed penalty to the Courts Administrator and delivers his licence and its counterpart to him, and

(b) the Courts Administrator is not required by section 193(4) to return the licence and its counterpart to him and did not before the payment was tendered, notify the Chief police officer under section 193(5),

the Courts Administrator must forthwith endorse the relevant particulars on the counterpart of the licence and return it to the licence holder together with the licence.

(2) Subject to subsection (3) where a cheque tendered in payment is subsequently dishonoured—

(a) any endorsement made by the Courts Administrator under subsection (1) remains effective, notwithstanding that the licence holder is liable to prosecution in respect of the alleged offence to which the endorsement relates, and

(b) the Courts Administrator must, upon the expiry of the period specified in the conditional offer or if the period has expired, forthwith notify the Chief police officer that no payment has been made.

(3) When proceedings are brought against a licence holder after a notice has been given in pursuance of subsection (2)(b), the court —

(a) must order the removal of the fixed penalty endorsement from the counterpart of the licence, and

(b) may, on finding the licence holder guilty, make any competent order of endorsement or disqualification and pass any competent sentence.

(4) The reference in subsection (1) to the relevant particulars is to —

(a) particulars of the offence, including the date when it was committed, and

(b) the number of penalty points to be attributed to the offence.

(5) The Courts Administrator must send notice to the chief police officer —

- (a) of any endorsement under subsection (1) and of the particulars endorsed, and
 - (b) of any order under subsection (3)(a).
- (6) Where the counterpart of a person's licence is endorsed under this section he shall be treated for the purposes of sections 141(4), 149, 150 and of the Criminal Justice Ordinance as if —
- (a) he had been convicted of the offence,
 - (b) the endorsement had been made in pursuance of an order made on his conviction by a court under section 163, and
 - (c) the particulars of the offence endorsed by virtue of subsection (4)(a) above were particulars of his conviction of that offence.
- (7) In relation to any endorsement of the counterpart of a person's licence under this section —
- (a) the reference in section 164(3) to the order for endorsement, and
 - (b) the references in section 141(6) to any order made on a person's conviction,
- are to be read as references to the endorsement itself.

Proceedings in fixed penalty cases

General restriction on proceedings

195.—(1) Proceedings shall not be brought against any person for the offence to which a fixed penalty notice relates until the end of the suspended enforcement period.

(2) Proceedings shall not be brought against any person for the offence to which a fixed penalty notice relates if the fixed penalty is paid in accordance with this Part before the end of the suspended enforcement period.

Statements by police officers

196.—(1) In any proceedings a certificate that a copy of a statement by a police officer with respect to the alleged offence (referred to in this section as a "police officer's witness statement") was included in or given with a fixed penalty notice or a notice under section 172(3) given to the accused on a date specified in the certificate shall, if the certificate purports to be signed by the police officer or authorised person who gave the accused the notice, be evidence of service of a copy of that statement by delivery to the accused on that date.

(2) In any proceedings a certificate that a copy of a police officer's witness statement was included in or served with a notice to owner served on the accused in the manner and on a date specified in the certificate shall, if the certificate purports to be signed by any police officer be evidence of service in the manner and on the date so specified both of a copy of that statement and of the notice to owner.

(3) Any address specified in any such certificate as is mentioned in subsection (2) as being the address at which service of the notice to owner was effected shall be taken for the purposes of any proceedings in which the certificate is tendered in evidence to be the accused's proper address, unless the contrary is proved.

(4) Where a copy of a police officer's witness statement is included in or served with a notice to owner served in any manner in which the notice is authorised to be served under this Part, the statement shall be treated as duly served for the purposes of section 9 of the Criminal Justice Act 1967 (proof by written statement) notwithstanding that the manner of service is not authorised by subsection (8) of that section.

(5) In relation to any proceedings in which service of a police officer's witness statement is proved by certificate under this section —

(a) that service shall be taken for the purposes of subsection (2)(c) of that section (copy of statement to be tendered in evidence to be served before hearing on other parties to the proceedings by or on behalf of the party proposing to tender it) to have been effected by or on behalf of the prosecutor, and

(b) subsection (2)(d) of that section (time for objection) shall have effect with the substitution, for the reference to seven days from the service of the copy of the statement, of a reference to seven days from the relevant date.

(6) In subsection (5)(b) of this section "relevant date" means —

(a) where the accused gives notice requesting a hearing in respect of the offence in accordance with any provision of this Part, the date on which he gives that notice, and

(b) where a notice in respect of the offence was given to the accused under section 172(4) but no fixed penalty notice is given in respect of it, the last day for production of the notice under section 172(5) at Stanley Police Station.

Certificates about payment

197. In any proceedings a certificate —

(a) that payment of a fixed penalty was or was not received, by a date specified in the certificate, by the Courts Administrator, or

(b) that a letter containing an amount sent by post in payment of a fixed penalty was marked as posted on a date so specified,

shall, if the certificate purports to be signed by the Courts Administrator, be evidence of the facts stated.

Documents signed by accused

198.—(1) Where —

- (a) any person is charged with a fixed penalty offence, and
- (b) the prosecutor produces to the court a document to which this subsection applies, purporting to be signed by the accused,

the document shall be presumed, unless the contrary is proved, to have been signed by the accused, and shall be evidence in the proceedings of any fact stated in it tending to show that the accused was the owner, the hirer or the driver of the vehicle concerned at a particular time.

(2) Subsection (1) applies to any document purporting to be —

- (a) a notice requesting a hearing in respect of the offence charged given in accordance with a fixed penalty notice relating to that offence; and
- (b) a statutory statement of any description defined in Schedule 6 or a copy of a statement of liability within the meaning of section 183 provided in response to a notice to an owner.

Powers of court where Courts Administrator deceived

199.—(1) This section applies where in endorsing the counterpart of any person's licence under section 175, the Courts Administrator is deceived as to whether endorsement under that section is excluded by section 178(2) by virtue of the fact that the licence holder would be liable to be disqualified under section 155 if he were convicted of the offence.

(2) If —

- (a) the deception constituted or was due to an offence committed by the licence holder, and
- (b) the licence holder is convicted of that offence,

the court by or before which he is convicted shall have the same powers and duties as it would have had if he had also been convicted by or before it of the offence of which particulars were endorsed under section 175 or, as the case may be, section 194.

Regulations for purposes of this Part

200. The Governor may by regulations make provision as to any matter incidental to the operation of this Part.

Service of documents

201.—(1) Subject to any requirement of this Part with respect to the manner in which a person may be provided with any such document, he may be provided with the following documents by post (but without prejudice to any other method of providing him with them), that is to say —

- (a) any of the statutory statements mentioned in Schedule 6, and

(b) any of the documents mentioned in section 183(2).

(2) A notice to owner may be served on any person —

(a) by delivering it to him or by leaving it at his proper address, or

(b) by sending it to him by post,

and where the person on whom such a notice is to be served is a body corporate it is duly served if it is served on the secretary or clerk of that body.

(4) For the purposes of this Part the proper address of any person in relation to the service on him of a notice to owner is —

(a) in the case of the secretary or clerk of a body corporate, that of the registered or principal office of that body, and

(b) in any other case, his last known address at the time of service.

PART XII

GENERAL PROVISIONS FOR TRAFFIC REGULATION AND TRAFFIC REGULATION IN PARTICULAR CASES

Traffic regulation orders

202. The Governor may make an Order under this section (referred to in this Ordinance as a “traffic regulation order”) in respect of a road if it appears to the Governor that it is expedient to make it —

(a) for avoiding danger to persons or other traffic using the road or any other road or for the purpose of avoiding the likelihood of any such danger arising;

(b) for preventing damage to the road or to any building on or near the road;

(c) for facilitating the passage on the road or on any other road of any class of traffic (including pedestrians);

(d) for preventing the use of the road by vehicular traffic of a kind which, or the use by vehicular traffic in a manner which, is unsuitable having regard to the existing character of the road or adjoining property;

(e) (without prejudice to the generality of paragraph (d) above) for preserving the character of the road in a case where it is specially suitable for use by persons on foot, or

(f) for preserving or improving the amenities of the area through which the road runs.

What a traffic regulation order may provide

203.—(1) A traffic regulation order may make any provision prohibiting, restricting or regulating the use of a road, or of any part of the width of a road, by vehicular traffic, or by vehicular traffic of any class specified in the order —

(a) either generally or subject to such exceptions as may be specified in the order or determined in a manner provided for by it; and

(b) subject to such exceptions as may be so specified or determined, either at all times or at times, on days or during periods so specified.

(2) The provision that may be made by a traffic regulation order includes any provision —

(a) requiring vehicular traffic, or vehicular traffic of any class specified in the order, to proceed in a specified direction or prohibiting its so proceeding;

(b) specifying the part of the carriageway to be used by such traffic proceeding in a specified direction;

(c) prohibiting or restricting the waiting of vehicles or the loading and unloading of vehicles;

(d) prohibiting the use of roads by through traffic; or

(e) prohibiting or restricting overtaking.

(3) The provision that may be made by a traffic regulation order also includes provision prohibiting, restricting or regulating the use of a road, or of any part of the width of a road, by, or by any specified class of, pedestrians —

(a) either generally or subject to exceptions specified in the order, and

(b) either at all times or at times, on days or during periods so specified.

(4) The Governor may include in a traffic regulation order any such provision —

(a) specifying through routes for heavy commercial vehicles, or

(b) prohibiting or restricting the use of heavy commercial vehicles (except in such cases, if any, as may be specified in the order) in such roads as may be so specified.

Restrictions on traffic regulation orders

204.—(1) A traffic regulation order shall not be made with respect to any road which would have the effect —

(a) of preventing at any time access for pedestrians, or

(b) of preventing for more than 8 hours in any period of 24 hours access for vehicles of any class,

to any premises situated on or adjacent to the road, or to any other premises accessible for pedestrians, or (as the case may be) for vehicles of that class, from, and only from, the road.

(2) Subsection (1) so far as it relates to vehicles, shall not have effect in so far as the authority making the order are satisfied, and it is stated in the order that they are satisfied, that —

(a) for avoiding danger to persons or other traffic using the road to which the order relates or any other road, or

(b) for preventing the likelihood of any such danger arising, or

(c) for preventing damage to the road or buildings on or near it, or

(d) for facilitating the passage of vehicular traffic on the road, or

(e) for preserving or improving the amenities of an area by prohibiting or restricting the use on a road or roads in that area of heavy commercial vehicles,

it is requisite that subsection (1) should not apply to the order.

(3) Provision for regulating the speed of vehicles on roads shall not be made by a traffic regulation order.

Provisions supplementary to sections 202 and 203

205.—(1) A traffic regulation order may make provision for identifying any part of any road to which, or any time at which or period during which, any provision contained in the order is for the time being to apply by means of a traffic sign of a type or character specified in the order (being a type prescribed or character authorised under section 216) and for the time being lawfully in place; and for the purposes of any such order so made any such traffic sign placed on and near a road shall be deemed to be lawfully in place unless the contrary is proved.

(2) A traffic regulation order which imposes any restriction on the use by vehicles of a road, or the waiting of vehicles in a road, may include provision with respect to the issue and display of certificates or other means of identification of vehicles which are excepted from the restriction, whether generally or in particular circumstances or at particular times.

(3) A traffic regulation order may also include provision with respect to the issue, display and operation of devices for indicating the time at which a vehicle arrived at, and the time at which it ought to leave, any place in a road in which waiting is restricted by the order, or one or other of those times, and for treating the indications given by any such device as evidence of such facts and for such purposes as may be prescribed by the order.

Contravention of traffic regulation order

206. A person who contravenes a road traffic regulation order or who uses a vehicle, or causes or permits a vehicle to be used in contravention of a road traffic regulation order commits an offence.

Temporary prohibition or restriction on roads

207.—(1) If the Director is satisfied that traffic on the road should be restricted or prohibited —

- (a) because works are being or are proposed to be executed on or near the road; or
- (b) because of the likelihood of danger to the public, or of serious damage to the road, which is not attributable to such works; or

the Director may by notice restrict or prohibit temporarily the use of that road, or of any part of it, by vehicles, or vehicles of any class, or by pedestrians, to such extent and subject to such conditions or exceptions as they may consider necessary.

(2) In subsection (1) “notice” means a notice published on at least three occasions by being broadcast over a public radio broadcasting station or on at least one occasion in a weekly newspaper published in the Falkland Islands.

(3) The Director may at any time by notice published on a radio broadcasting station restrict or prohibit temporarily the use of the road, or of any part of it, by vehicles, or vehicles of any class, or by pedestrians, where it appears to him that it is —

- (a) necessary or expedient for the reason mentioned in paragraph (a) or the purpose mentioned in paragraph (c) of subsection (1); or
- (b) necessary for the reason mentioned in paragraph (b) of that subsection,

that the restriction or prohibition should come into force without delay.

(4) When considering the publication of a notice under the foregoing provisions the Director shall have regard to the existence of alternative routes suitable for the traffic which will be affected by the notice.

(5) The provision that may be made by a notice under the foregoing provisions is —

- (a) any such provision as is mentioned in section 204(1), (2) or (3) or 205(1); or
- (b) any provision restricting the speed of vehicles;

but no such notice shall be published with respect to any road which would have the effect of preventing at any time access for pedestrians to any premises situated on or adjacent to the road, or to any other premises accessible for pedestrians from, and only from, the road.

(6) Where any such notice is published by the Director any such provision as is mentioned in subsection (5) of this section may be made by notice by the Director as respects any alternative road.

(7) Section 204(1) and (3) shall apply to the provisions that may be made under subsection (6) of this section as they apply to the provisions of a traffic regulation order.

(8) A notice published under this section may for either of the reasons mentioned in subsection (1) suspend any such provision as is mentioned in subsection (6) without imposing any such restriction or prohibition as is mentioned in subsection (1) or (3) of this section.

(9) In this section “alternative road”, in relation to a road as respects which a notice is issued under subsection (1) or (3), means a road which —

(a) provides an alternative route for traffic diverted from the first-mentioned road or from any other alternative road; or

(b) is capable of providing such an alternative route apart from any statutory provision authorised by subsection (8) to be suspended by a notice issued by virtue of subsection (6).

(10) A person commits an offence who contravenes, or who uses or permits the use of a vehicle in contravention of, a prohibition or restriction imposed under this section.

Duration of notices under section 207

208.—(1) Subject to subsections (2), (3) and (5) a notice under section 207 shall not continue in force for more than six months from the date on which it comes into force.

(2) The time-limit of six months in subsection (1) shall not apply to a notice made for the reason mentioned in section 207(1)(a) if the Director is satisfied and it is stated in the notice that he is satisfied that the execution of the works in question will take longer; but in any such case the Director shall revoke the notice as soon as the works are completed.

(3) Where a notice subject to the time-limit of six months in subsection (1) (in this subsection referred to as “the notice”) has not ceased to be in force and the Governor may from time to time direct that the notice shall continue in force for a further period not exceeding six months from the date on which it would otherwise cease to be in force.

Prohibition or restriction on roads in connection with certain events

209.—(1) In this section “event” means any sporting event, parade, social event, entertainment, wedding, funeral or other event in relation to which the chief police officer believes that traffic or parking on a road should be prohibited or restricted.

(2) If the chief police officer believes that traffic or parking on a road should be prohibited or restricted for the purpose of —

(a) facilitating the holding of the event;

(b) enabling members of the public to watch or attend the event, or

(c) reducing the disruption likely to be caused by the event,

he may by placing temporary traffic signs or barriers restrict or prohibit temporarily the use of that road or any part of it, by vehicles or vehicles of any class or by pedestrians, to such extent and subject to such conditions or exceptions as he may consider necessary or expedient.

(3) A restriction or prohibition under subsection (2) shall not without the prior consent of the Governor continue in force for a period of more than three days beginning with the day on which it comes into force.

(4) A person commits an offence who contravenes a prohibition or restriction under subsection (2).

Regulation of use of roads by public service vehicles

210.—(1) The Governor may make Orders —

(a) for determining the roads which may or may not be used by public service vehicles;

(b) for fixing stands for public service vehicles on such roads;

(c) as to the places at which public service vehicles may stop for a longer time than is necessary for taking up and setting down passengers; and

(d) as to the manner of using such stands and places.

(2) Any such order may be made —

(a) so as to apply only to public service vehicles of a specified class, or

(b) so as to have effect as respects a limited period only or as respects only limited periods in the year,

and may make different provision for different classes of public service vehicles.

(3) A person commits an offence who drives a vehicle, or causes or permits a vehicle to be driven, in contravention of an Order under this section.

Prohibition or restriction of use of vehicles on roads of certain classes

211.—(1) The Governor if he is satisfied that it is desirable to do so, may by Order prohibit or restrict, subject to such exceptions and conditions as to occasional use or access to premises or otherwise as may be specified in the Order, the driving of vehicles on all roads of any such class as may be specified in the Order.

(2) A prohibition or restriction under this section may be imposed either generally or in relation to any class of vehicle; and for the purposes of this section the Governor may classify roads in any manner he thinks fit, having regard to their character and situation or the nature of the traffic to which they are suited, and may determine having regard to their character and situation or the nature of the traffic to which they are suited, and may determine in what class a particular road shall be included.

(3) A person commits an offence who drives a vehicle, or causes or permits a vehicle to be driven, in contravention of an Order under this section.

PART XIII CROSSINGS, TRAFFIC SIGNS AND SPEED LIMITS

Pedestrian crossings

Pedestrian crossings

212. The Governor may establish on roads such crossings for pedestrians as he considers necessary.

Pedestrian crossing regulations

213.—(1) The Governor may make regulations with respect to the precedence of vehicles and pedestrians respectively, and generally with respect to the movement of traffic (including pedestrians), at and in the vicinity of crossings.

(2) Without prejudice to the generality of subsection (1) regulations under that subsection may be made —

(a) prohibiting pedestrian traffic on the carriageway within 100 yards of a crossing, and

(b) with respect to the indication of the limits of a crossing, or of any other matter whatsoever relating to the crossing, by marks or devices on or near the roadway or otherwise, and generally with respect to the erection of traffic signs in connection with a crossing.

(3) Different regulations may be made under this section in relation to different traffic conditions, and in particular (but without prejudice to the generality of the foregoing words) different regulations may be made in relation to crossings in the vicinity of, and at a distance from, a junction of roads, and in relation to traffic which is controlled by the police, and by traffic signals, and by different kinds of traffic signals, and traffic which is not controlled.

(4) Regulations may be made under this section applying only to a particular crossing or particular crossings specified in the regulations.

(5) A person commits an offence who contravenes any regulations made under this section.

(6) In this section “crossing” means a crossing for pedestrians established by the Governor under section 212 and indicated in accordance with the regulations having effect as respects that crossing; and, for the purposes of a prosecution for a contravention of the provisions of a regulation having effect as respects a crossing, the crossing shall be deemed to be so established and indicated unless the contrary is proved.

School crossings

Arrangements for school crossing patrols

214.—(1) Arrangements may be made by the Director of Education for the patrolling of places where children cross roads on their way to or from school, or from one part of a school to another, by any person who is a public officer.

(2) The powers under subsection (1) extend to any pedestrian crossing established under section 212 if the crossing is used by children for the purposes mentioned in subsection (1) of this section.

Stopping of vehicles at school crossings

215.—(1) When a vehicle is approaching a place in a road where a person is crossing or seeking to cross the road, a school crossing patrol wearing a uniform approved by the Governor shall have power, by exhibiting a prescribed sign, to require the person driving or propelling the vehicle to stop it.

(2) When a person has been required under subsection (1) to stop a vehicle —

(a) he shall cause the vehicle to stop before reaching the place where the person is crossing or seeking to cross and so as not to stop or impede his crossing, and

(b) the vehicle shall not be put in motion again so as to reach the place in question so long as the sign continues to be exhibited.

(3) A person commits an offence who fails to comply with paragraph (a) of subsection (2) or who causes a vehicle to be put in motion in contravention of paragraph (b) of that subsection, shall be guilty of an offence.

(4) In this section —

(a) “prescribed sign” means a sign of a size, colour and type prescribed by regulations made by the Governor or, if authorisation is given by the Governor for the use of signs of a description not so prescribed, a sign of that description;

(b) “school crossing patrol” means a person authorised to patrol in accordance with arrangements under section 214;

and regulations under paragraph (a) may provide for the attachment of reflectors to signs or for the illumination of signs.

(5) For the purposes of this section —

(a) where it is proved that a sign was exhibited by a school crossing patrol, it shall be presumed, unless the contrary is proved, to be of a size, colour and type prescribed, or of a description authorised, under subsection (4)(b) and, if it was exhibited in circumstances in which it was required by the regulations to be illuminated, to have been illuminated in the prescribed manner; and

(b) where it is proved that a school crossing patrol was wearing a uniform, the uniform shall be presumed, unless the contrary is proved, to be a uniform approved by the Governor.

Traffic signs

General provisions as to traffic signs

216.—(1) In this Ordinance “traffic sign” means any object or device (whether fixed or portable) for conveying, to traffic on roads or any specified class of traffic, warnings, information, requirements, restrictions or prohibitions of any description if specified by regulations made by the Governor or otherwise authorised by the Governor and any line or mark on a road for so conveying such warnings, information, requirements, restrictions or prohibitions.

(2) Traffic signs shall be of the size, colour and type prescribed by regulations except where the Governor authorises the erection or retention of a sign of another character; and for the purposes of this subsection illumination, whether by lighting or by the use of reflectors or reflecting material, or the absence of such illumination, shall be part of the type or character of a sign.

(3) Regulations under this section may be made so as to apply either generally or in such circumstances only as may be specified in the regulations.

(4) Except as provided by this Ordinance, no traffic sign shall be placed on or near a road.

(5) Regulations under this section or any authorisation under subsection (2) may provide that section 38 (drivers to comply with traffic directions) shall apply to signs of a type specified in that behalf by the regulations or, as the case may be, to the sign to which the authorisation relates.

(6) References in any written law (including this Ordinance) to the erection or placing of traffic signs shall include references to the display of traffic signs in any manner, whether or not involving fixing or placing.

(7) A police officer or a person acting under the instructions (whether general or specific) of the chief police officer, may place on a road, or on any structure on a road, traffic signs (of any size, colour and type prescribed or authorised under subsection (1)) indicating prohibitions, restrictions or requirements relating to vehicular traffic, as may be requisite for preventing obstruction on public occasions.

(8) In this subsection (7) “prescribed” means prescribed by regulations under subsection (1).

Powers and duties of Director as to placing of traffic signs

217.—(1) The Director may cause or permit traffic signs to be placed on or near a road, subject to and in conformity with such general directions as may be given by the Governor.

(2) The power to give general directions under subsection (1) includes power to require equipment used in connection with traffic signs to be of a type approved in accordance with the directions.

(3) The Governor may give directions to a the Director —

(a) for the placing of a traffic sign of any prescribed type or authorised character specified in the directions, or

(b) for replacing a sign so specified by, or converting it into, a sign of another prescribed type or authorised character so specified.

(4) The power to give general directions under subsection (1) shall be by Order or by regulations.

Emergencies and temporary obstructions

218.—(1) A police officer or a person acting under the instructions (whether general or specific) of the chief police officer, may place on a road, or on any structure on a road, traffic signs (of any size, colour and type prescribed or authorised under section 216(1) indicating prohibitions, restrictions or requirements relating to vehicular traffic, as may be necessary or expedient to prevent or mitigate congestion or obstruction of traffic, or danger to or from traffic, in consequence of extraordinary circumstances; and the power to place signs conferred by this subsection shall include power to maintain a sign for a period of 7 days or less from the time when it was placed, but no longer.

(2) Section 38 (drivers to comply with traffic directions) shall apply to signs placed in the exercise of the powers conferred by subsection (1).

(3) Regulations under section 216(1) prescribing any type of object or device for warning traffic of a temporary obstruction may include provisions for authorising (subject to such conditions as may be specified in the regulations) persons not otherwise authorised to do so to place an object or device of that type on or near roads, or on or near any description of road so specified, in such circumstances and for such periods as may be so specified.

Speed limits

General speed limits for restricted roads

219.—(1) It shall not be lawful for a person to drive a motor vehicle on a restricted road at a speed exceeding 25 miles per hour.

(2) For the purposes of this section a restricted road is a road —

(a) within the boundaries of Stanley to which no different speed limit applies by Order under section 220 or having effect as if made under section 220;

(b) outside Stanley to which no different speed limit applies by Order under section 220 or having effect as if made under section 220.

Speed limits on roads other than restricted roads

220.—(1) An Order made by the Governor under this subsection as respects any road may prohibit —

(a) the driving of motor vehicles on that road at a speed exceeding that specified in the Order,

(b) the driving of motor vehicles on that road at a speed exceeding that specified in the Order during periods specified in the Order, or

(c) the driving of motor vehicles on that road at a speed exceeding the speed for the time being indicated by traffic signs in accordance with the Order.

(2) An Order made by virtue of subsection (1)(c) may —

(a) make provision restricting the speeds that may be indicated by traffic signs or the periods during which the indications may be given, and

(b) provide for the indications to be given only in such circumstances as may be determined by or under the Order.

(3) While an order made by virtue of subsection (1)(a) is in force as respects a road, that road shall not be a restricted road for the purposes of section 219.

Speed limits for particular classes of vehicles

221.—(1) It shall not be lawful for a person to drive a motor vehicle of any class on a road at a speed greater than the speed specified in Schedule 7 as the maximum speed in relation to a vehicle of that class.

(2) Subject to subsection (4) the Governor may by Order vary, subject to such conditions as may be specified in the Order, the provisions of that Schedule.

(3) An Order under this section may make different provision as respects the same class of vehicles in different circumstances.

(4) The Governor shall not have power under this section to vary the speed limit imposed by section 219.

(5) The Governor shall not have power under this section to impose a speed limit, as respects driving on roads which are not restricted roads for the purposes of section 219 on a vehicle which —

- (a) is constructed solely for the carriage of passengers and their effects;
- (b) is not adapted to carry more than 8 passengers exclusive of the driver;
- (c) is neither a heavy motor car nor an invalid carriage;
- (d) is not drawing a trailer; and
- (e) is fitted with pneumatic tyres on all its wheels.

Exemption of fire service, ambulance or police purposes

222. No statutory provision imposing a speed limit on motor vehicles shall apply to any vehicle on an occasion when it is being used for fire brigade, ambulance or police purposes, if the observance of that provision would be likely to hinder the use of the vehicle for the purpose for which it is being used on that occasion.

Traffic signs for indicating speed restrictions

223.—(1) For the purpose of securing that adequate guidance is given to drivers of motor vehicles as to whether any, and if so what, limit of speed is to be observed on any road, it shall be the duty of the Director to erect and maintain traffic signs in such positions as may be requisite for that purpose.

(2) In any proceedings for a contravention of section 219, unless it is proved that an Order under section 220 or having effect as if made under that section applies to that road, it shall be presumed that section 219 applies to that road.

Speeding offences generally

224.—(1) A person commits an offence who drives a motor vehicle on a road at a speed exceeding a limit imposed by or under any provision of written law.

(2) A person prosecuted for such an offence shall not be liable to be convicted solely on the evidence of one witness to the effect that, in the opinion of the witness, the person prosecuted was driving the vehicle at a speed exceeding a specified limit.

(3) If a person who employs other persons to drive motor vehicles on roads publishes or issues any time-table or schedule, or gives any directions, under which any journey, or any stage of part of any journey, is to be completed within some specified time, and it is not practicable in the circumstances of the case for that journey (or that stage or part of it) to be completed in the specified time without the commission of such an offence as is mentioned in subsection (1), the publication or issue of the time-table or schedule, or the giving of the directions may be produced as prima facie evidence that the employer procured or (as the case may be) incited the persons employed by him to drive the vehicles to commit such an offence.

Removal of vehicles

Removal of vehicles illegally, obstructively or dangerously parked, abandoned or broken down

225.—(1) The Governor may by regulations make provision for the removal of vehicles which have been permitted to remain at rest —

(a) on a road in contravention of any prohibition or restriction contained in any written law,
or

(b) on a road in such a position or in such condition or in such circumstances as to cause obstruction to other persons using the road or as to be likely to cause danger to such persons,
or

(c) on a road, or on any land in the open air, in such a position or in such condition or in such circumstances as to appear, to an authority empowered by the regulations to remove such vehicles, to have been abandoned without lawful authority,

or which have broken down on a road.

(2) Regulations under this section may provide, in the case of a vehicle which may be removed from a road, for the moving of the vehicle from one position on a road to another position on that or another road.

(3) Where it appears to an authority which (apart from this subsection) is empowered to remove a vehicle in pursuance of regulations under this section that the vehicle is on land which is occupied by any person, the authority shall give him notice in the prescribed manner that he proposes to remove the vehicle in pursuance of the regulations, and shall not be entitled to remove it if that person objects to the proposal in the prescribed manner and within the prescribed period.

(4) Where in pursuance of regulations under this section an authority proposes to remove a vehicle which appears to the authority to be abandoned and in his opinion is in such a condition that it ought to be destroyed, then (except where he is empowered by the regulations to remove the vehicle from a road in a case falling within paragraph (a) or (b) of subsection (1)) he shall, not less than the prescribed period before removing it, cause to be affixed to the vehicle a notice stating that he proposes to remove it for destruction when that period expires.

(5) While a vehicle is in the custody of an authority in pursuance of regulations made under or having effect as if made under this section, other than a vehicle which in the opinion of that authority is in such a condition that it ought to be destroyed, it is the duty of that authority to take such steps as are reasonably necessary for the safe custody of the vehicle.

(6) In this section —

(a) “authority” means the chief police officer or the Director or any police officer or other public officer authorised by either of them to exercise his functions under regulations made under, or having effect as if made under, this section; and

(b) “vehicle” means any vehicle, whether or not it is in a fit state for use on roads, and includes any chassis or body, with or without wheels, appearing to have formed part of such a vehicle, and any load carried by, and anything attached to, such a vehicle.

Ultimate disposal of vehicles abandoned and removeable under section 225

226.—(1) Subject to subsection (2) and (3) an authority may, in such manner as they think fit, dispose of a vehicle which appears to them to be abandoned and which has been, or could at any time be, removed in pursuance of regulations under section 225.

(2) The time at which an authority may dispose of a vehicle under subsection (1) is as follows, that is to say —

(a) in the case of a vehicle which in his opinion is in such a condition that it ought to be destroyed and on which no vehicle licence was displayed at the time of its removal, any time after its removal;

(b) in the case of a vehicle which in their opinion is in such condition that it ought to be destroyed and on which a current vehicle licence was so displayed, any time after the vehicle licence expires;

(c) in any other case, any time after such steps as may be prescribed have been taken by the authority (or partly by one authority and partly by another) to find a person appearing to the authority taking such steps to be the owner of the vehicle and either —

(i) he has failed to find such a person; or

(ii) that person has failed to comply with a notice served on him in the prescribed manner by an authority requiring him to remove the vehicle from his custody within the prescribed period.

but, in a case, where it appears to the authority proposing to dispose of the vehicle that a vehicle licence is in force in respect of the vehicle, not a time earlier than the expiry of the vehicle licence.

(3) If, before a vehicle is disposed of by an authority in pursuance of subsection (1) and (2) the vehicle is claimed by a person who satisfies the authority that he is its owner and pays such sums in respect of its removal and storage as may be prescribed by regulations or, in default of such regulations having been made, such sum not exceeding £50 in respect of the removal of the vehicle and such sum not exceeding £2 a day in respect of its storage, the authority shall permit him to remove the vehicle from his custody within 14 days or such greater period as the authority may allow.

(4) If, before the end of the period of one year beginning with the date on which a vehicle is sold by an authority in pursuance of this section, any person satisfies that authority that at the time of the sale he was the owner of the vehicle, that authority shall pay him any sum by which the proceeds of sale exceed the aggregate of such sums in respect of the removal, storage and disposal of the vehicle as are payable under subsection (3).

(5) If in the case of any vehicle it appears to the authority in question that more than one person is or was its owner at the relevant time, such one of them as the authority think fit shall be treated as its owner for the purposes of subsection (3) and (4).

(6) In this section —

“authority” has the same meaning as it has under section 225(6);

“owner” in relation to a vehicle which is the subject of a hiring agreement or hire-purchase agreement, includes the person entitled to possession of the vehicle under the agreement;

“vehicle licence”, in relation to a vehicle means a vehicle licence issued under section 238.

Provision as to enforcement

Information as to identity of driver

227.—(1) This section applies in respect of any offence under any provision of this Ordinance this Ordinance relating to the use of vehicles on roads.

(2) Where the driver of a vehicle is alleged to have committed an offence to which this section applies —

(a) the person keeping the vehicle shall give such information as to the identity of the driver as he may be required to give by or on behalf of the chief police officer, and

(b) any other person shall, if required by or on behalf of the chief police officer, give any information which it is in his power to give and which may lead to the identification of the driver.

(3) In subsection (2), references to the driver of a vehicle include references to a person riding a bicycle or tricycle (not being a motor vehicle).

(4) A person who fails to comply with the requirements of subsection (2) commits an offence unless he shows to the satisfaction of the court that he did not know, and could not with reasonable diligence have ascertained, who was the driver of the vehicle or, as the case may be, the rider of the bicycle or tricycle.

PART XIV
REGISTRATION AND TAXATION OF VEHICLES

Registration

Registration of motor vehicles

228.—(1) Every motor vehicle in the Falkland Islands shall within twenty-eight days of its first being used in the Falkland Islands be registered except that —

(a) any vehicle owned by the Crown in right of Her Majesty's Government in the United Kingdom need not be registered; and

(b) any motor vehicle usually kept in a part, specified by the Regulations, of the Falkland Islands outside East Falkland need not be registered.

(2) For the purposes of subsection (1), a motor vehicle is not used merely by reason of its being driven from the point of its arrival in the Falkland Islands to a place where it will be kept until sold or otherwise disposed of or by reason of its being driven for the purpose of demonstration to a person interested in the acquisition of that vehicle.

(3) The obligation to register a motor vehicle is upon the person who, otherwise than under a contract for hire of the vehicle for a period of less than fourteen days, is for the time being in law entitled against all others to the possession and use of that vehicle.

(4) Any person who —

(a) being obliged under subsection (3) to register a motor vehicle, fails to do so; or

(b) drives a motor vehicle required to be registered,

commits an offence unless he proves that he was not aware that the motor vehicle was not registered.

Registration regulations

229.—(1) The Governor may by regulations —

(a) make provision with respect to the registration of vehicles;

(b) require the chief police officer to make with respect to registered vehicles the returns prescribed by the regulations;

(c) provide for making any particulars contained in the register available for use by the persons prescribed by the regulations on payment, in cases so prescribed of a fee of such amount as is prescribed,

(d) require a person by through or to whom any vehicle is sold or disposed of to furnish the particulars prescribed by the regulations in the manner so prescribed;

(e) require a person by or through whom any vehicle is sold or disposed of to furnish the person to whom it is sold or disposed of with such document relating to the vehicle's registration as may be prescribed by regulations, and to do so at such time as may be so prescribed;

(f) provide for the issue of registration documents in respect of the registration of a vehicle,

(g) provide for the transfer, surrender and production of registration documents,

(h) provide for the inspection of registration documents by the persons prescribed by the regulations;

(i) provide for the issue of new registration documents in place of registration documents which are or may be lost, stolen, surrendered, destroyed or damaged or which contain any particulars which have become illegible or inaccurate;

(j) provide for a fee of such amount as is prescribed to be paid on the issue of new registration documents in any of the circumstances mentioned in paragraph (i).

(2) Regulations under subsection (1)(f) may, in particular —

(a) provide that registration documents need not be issued in respect of a vehicle until the vehicle has been inspected on behalf of the chief police officer and that registration of that vehicle may be refused if, for a reason to be specified in a notice served upon the applicant, the vehicle could not in its existing state be lawfully used on a road in the Falkland Islands or appears to have been stolen;

(b) provide for appeals to the Magistrate's Court against such a refusal of registration.

(3) The Governor may by regulations require a person —

(a) who surrenders a vehicle licence under section 241(2),

(b) who does not renew a vehicle licence for a vehicle registered under this Ordinance in his name,

(c) who does not renew a vehicle licence for a vehicle kept by him, or

(d) who keeps an unlicensed vehicle at any place in the Falkland Islands,

to furnish such particulars and make such declarations as may be prescribed by the regulations, and to do so at such times and in such manner as may be so prescribed.

(4) For the purposes of subsection (3)(b) a person shall be regarded as not renewing a vehicle licence for a vehicle registered in his name if —

(a) a vehicle for which a vehicle licence is in force is registered in his name, and

(b) he does not, at such time as may be prescribed by the regulations or within such period as may be so prescribed, take out a vehicle licence to have effect from the expiry of the vehicle licence mentioned in paragraph (a).

(5) For the purposes of subsection (3)(c) a person shall be regarded as not renewing a vehicle licence for a vehicle kept by him if —

(a) he keeps a vehicle for which a vehicle licence is in force, and

(b) he does not, at such time as may be prescribed by the regulations or within such period as may be so prescribed, take out a vehicle licence to have effect from the expiry of the vehicle licence mentioned in paragraph (a).

(6) For the purposes of subsection (3)(d) a vehicle is unlicensed if no vehicle licence is in force for the vehicle.

(7) Regulations under subsection (3) may make such transitional provision as appears to the Governor to be appropriate.

(8) Regulations made by the Governor may —

(a) extend any of the provisions as to registration (and provisions incidental to any of those provisions) to, and

(b) provide for the identification of,

any vehicles belonging to the Crown or any trailers.

Registration marks

Registration marks

230.—(1) Where the chief police officer registers a vehicle under section 228(1) he shall assign to the vehicle a mark (a “registration mark”) indicating the registered number of the vehicle.

(2) The chief police officer may, in such circumstances as he may determine —

(a) assign a registration mark to a vehicle to which another registration mark has previously been assigned,

(b) assign to a vehicle (whether on its first registration or later) a registration mark previously assigned to another vehicle,

(c) (whether or not in connection with an assignment within paragraph (a) or (b)) withdraw any registration mark for the time being assigned to a vehicle, and

(d) re-assign to a vehicle a registration mark previously assigned to it but subsequently withdrawn.

(3) The Governor may by regulations provide that the registration mark for the time being assigned to a vehicle shall be fixed, in the manner prescribed by the regulations, on the vehicle, on any other vehicle drawn by the vehicle or on both.

(4) The Governor may by regulations prescribe —

(a) the size, shape and character of registration marks to be fixed on any vehicle, and

(b) the manner in which registration marks are to be displayed and rendered easily distinguishable (whether by day or by night).

(5) The Governor may by regulations provide for —

(a) the allocation for a fee prescribed by the regulations to an applicant of a particular registration mark to that person;

(b) the sale by tender or auction of the rights to particular registration marks;

(c) the transfer of the rights to registration marks allocated under (a) or (b).

Assignment of registration marks by motor dealers

231.—(1) The Governor may by regulations make such provision as he considers appropriate with respect to the allocation of registration marks for vehicles to motor dealers who —

(a) apply for such allocations, and

(b) appear to the chief police officer suitable to receive them,

and with respect to the assigning of the marks to vehicles by motor dealers.

(2) Regulations under this section may, in particular, include provision —

(a) as to mode of application for the allocation of registration marks,

(b) as to the transfer of registration marks allocated to a motor dealer in cases where the motor dealer dies or becomes incapacitated or bankrupt and in such other cases as may be prescribed by the regulations, and

(c) as to cancellation of allocations of registration marks.

(3) The provision which may be made by regulations under this section also includes provision for —

(a) restricting the circumstances in which a motor dealer may assign a registration mark to a vehicle,

(b) securing that registration marks allocated to a motor dealer are assigned by him in such sequence as the chief police officer considers appropriate and that no registration mark is assigned to a vehicle to which a registration mark has already been assigned, and

(c) requiring a motor dealer to furnish to the chief police officer and the person to whom the motor dealer disposes of the vehicle within the period prescribed by the regulations such particulars in respect of each vehicle to which the motor dealer assigns a registration mark as are so prescribed.

(4) Where the chief police officer cancels an allocation of registration marks made to a motor dealer —

(a) the cancellation does not take effect before the end of the period prescribed by regulations made by the Governor, and

(b) where during that period the motor dealer requests the Governor to review the chief police officer's decision, the cancellation does not take effect before the Governor gives notice in writing of the result of the review to the motor dealer.

Retention of registration mark pending transfer

232.—(1) The Governor may by regulations provide for a person in whose name a vehicle is registered under this Part to be granted a right to have the registration mark for the time being assigned to the vehicle assigned to some other vehicle which is registered under this Part —

(a) in that person's name, or

(b) in the name of some other person nominated by him in accordance with the regulations.

(2) Regulations under this section may, in particular, make provision —

(a) for the manner in which an application for the grant of such a right (a "right of retention") is to be made to the chief police officer,

(b) for the payment of a fee prescribed by the regulations on the making of such an application and for the whole or part of the fee to be retained whether or not the application is granted,

(c) for requiring the vehicle to which the registration mark is for the time being assigned to be made available for inspection at a place designated by or under the regulations,

- (d) for authorising the chief police officer to refuse such an application on such grounds as he thinks fit,
 - (e) with respect to the manner in which rights of retention are to be exercisable,
 - (f) for rights of retention to be non-transferable (but without prejudice to the vesting of any such right in a person by operation of law),
 - (g) with respect to the conditions which must be satisfied before a registration mark may be assigned to a vehicle pursuant to a right of retention,
 - (h) for authorising the chief police officer to revoke a right of retention —
 - (i) if it appears to him that there are special reasons for doing so, or
 - (ii) in any other circumstances prescribed by the regulations,
 - (i) for allowing a person to be nominated in place of a person when an application for the grant of a right of retention is made or to be nominated at a later time,
 - (j) for allowing a different person to be nominated in place of a person already nominated,
 - (k) for the manner in which a nomination is to be made and for the payment of a fee prescribed by the regulations where a nomination is made in circumstances so prescribed, and
 - (l) for the payment, in connection with the assignment of a registration mark pursuant to a right of retention, of such charge as is for the time being prescribed.
- (3) Regulations under this section may exempt extensions or assignments of any class or description prescribed by the regulations from any fee or charge payable by virtue of subsection (2)(f) or (l).

Registration plates

Registration plates

233.—(1) The Governor may by regulations —

- (a) prescribed specifications for registration plates (whether relating to their size, shape, material of manufacture or otherwise),
- (b) provide for registration plates to contain or display such information other than registration marks or (as the case may be) special registration marks as may specified or described in the regulations.

(2) Regulations under subsection (1)(b) may, in particular, prescribe the form and manner in which any such information is to be contained or displayed.

(3) In this section “registration plates” means —

(a) plates or other devices for displaying registration marks and for fixing them on vehicles or trailers in accordance with registrations under section 230(3), or

(b) plates or other devices for displaying special registration marks and for fixing them on vehicles or trailers in accordance with regulations under section 229(7),

and includes plates or other devices which are also for containing or displaying information other than registration marks or (as the case may be) special registration marks (whether or not such information is to be contained or displayed by virtue of regulations under this section).

(4) In this section “special registration mark” means a mark indicating the registered number of a vehicle or trailer and assigned to the vehicle or trailer by virtue of regulations under section 229(7).

Vehicle licences

Vehicle licences

234.—(1) A vehicle tax shall be charged in respect of every mechanically propelled vehicle that—

(a) is registered under this Part; or

(b) is not so registered but is used, or kept, on a road.

(2) In this part “vehicle” means —

(a) a mechanically propelled vehicle, or

(b) any thing (whether or not it is a vehicle) that has been, but has ceased to be a mechanically propelled vehicle,

but does not include any vehicle, whether or not mechanically propelled, which is controlled by a pedestrian.

(3) Vehicle tax shall also be charged in respect of every trailer used or kept on a road.

(4) Vehicle tax charged in respect of a vehicle by subsection (1) or (2) shall be paid on a licence to be taken out by the person keeping the vehicle.

(5) A licence taken out for a vehicle is in this Ordinance referred to as a “vehicle licence”.

Annual rates of vehicle tax

235.—(1) Vehicle tax in respect of any description is chargeable by reference to the annual rate currently applicable to it in accordance with the provisions of the Finance Ordinance currently in force or, if none, regulations under subsection (2).

(2) The Governor may make regulations prescribing the annual rate of vehicle tax and such regulations may prescribe differing annual rates for differing descriptions of vehicles.

Duration of licences

236.—(1) A vehicle licence may be taken out for any vehicle for any period of twelve months running from the beginning of the month in which the licence first has effect.

(2) Where the annual rate of vehicle tax in respect of vehicles of any description exceeds £50, a vehicle licence may be taken out for a vehicle of that description for a period of three, four or six months running from the beginning of the month in which the licence first has effect.

(3) The Governor may by Order amend subsection (2) by substituting a higher or lower sum for that for the time being appearing therein.

Amount of vehicle tax

237.—(1) Where a vehicle licence for a vehicle of any description is taken out for any period of twelve months, vehicle tax shall be paid on the licence at the annual rate of tax applicable to vehicles of that description.

(2) Where a vehicle licence for a vehicle of any description is taken out —

(a) for a period of six months, vehicle tax shall be paid on the licence at a rate equal to fifty-five per cent of that annual rate;

(b) for a period of four months, vehicle tax shall be paid on the licence at a rate equal to thirty-seven per cent of that annual rate;

(c) for a period of three months, vehicle tax shall be paid on the licence at a rate equal to twenty-eight per cent of that annual rate.

(3) In determining a rate of duty under subsection (2) any fraction of five pence —

(a) if it exceeds two and a half pence, shall be treated as five pence, and

(b) otherwise, shall be disregarded.

Vehicle licences

Issue of vehicle licences

238.—(1) Every person applying for a vehicle licence shall —

(a) make any such declaration, and

(b) furnish any such particulars and any such documentary or other evidence,

as may be specified by the chief police officer.

(2) The declarations, particulars and evidence which may be so specified include, in relation to a person applying for a licence a declaration as to, particulars of and evidence in relation to any of the matters specified in subsection (3) as to which the chief police officer may require.

(3) The matters referred to in subsection (2) are —

(a) the insurance in place in respect of the use of the vehicles;

(b) the mechanical condition of the vehicle,

(c) the place where the vehicle has been or is normally kept, and

(d) the use to which the vehicle has been or is likely to be put.

(4) A vehicle licence is issued for the vehicle specified in the application for the licence (and for no other).

(5) The chief police officer is not required to issue a vehicle licence for which an application is made unless he is satisfied —

(a) that the licence applied for is the appropriate licence for the vehicle specified in the application, and

(b) in the case of an application for a licence for a vehicle purporting to be the first application for a licence for the vehicle, that a licence has not previously been issued for the vehicle.

(6) Regulations made by the Governor may provide for —

(a) the return of any vehicle licence which is damaged or contains any particulars which have become illegible or inaccurate,

(b) the issue of a new vehicle licence in the place of a licence which is or may be lost, stolen, destroyed or damaged or which contains any particulars which have become illegible or inaccurate, and

(c) the fee to be paid on the issue of a new in any of those circumstances.

Supplement payable on late renewal of vehicle licence

239.—(1) Regulations may make provision for a supplement of a prescribed amount to be payable in prescribed cases where —

- (a) a vehicle licence taken out for a vehicle expires, and
- (b) no vehicle licence is issued for the vehicle —
 - (i) before the end of such period beginning with the expiry of the expired licence as may be prescribed, and
 - (ii) for a period beginning with that expiry.

(2) A supplement under this section —

- (a) shall be payable by such person, or jointly and severally by such persons, as may be prescribed;
- (b) shall become payable at such time as may be prescribed;
- (c) may be of an amount that varies according to the length of the period between —
 - (i) the expiry of the licence by reason of whose non-renewal the supplement becomes payable, and
 - (ii) the time at which the supplement is paid or that licence is renewed.

(3) A supplement under this section that has become payable —

- (a) is in addition to any vehicle tax charged in respect of the vehicle concerned;
- (b) does not cease to be payable by reason of a vehicle licence being taken out for the vehicle after the supplement has become payable;
- (c) may, without prejudice to any provision of this Ordinance, be recovered as a debt due to the Crown.

(4) In this section —

- (a) references to the expiry of a vehicle licence include a reference to —
 - (i) its surrender, and
 - (ii) its being treated as no longer in force for the purposes of subsection (2) of section .. by subsection (4) of that section;

(b) “prescribed” means prescribed by, or determined in accordance with, regulations;

(c) “regulations” means regulations made by the Governor.

Late renewal supplements: further provisions

240.—(1) The Governor may by regulations make provision for notifying the person in whose name a vehicle is registered under this Ordinance about —

(a) any supplement under section 239 that may or has become payable on non-renewal of a vehicle licence for the vehicle;

(b) when failure to renew a vehicle licence may result in the person being guilty of an offence under section 243(1).

(2) The Governor may by regulations make provision —

(a) for assessing an amount of supplement due under section 239 from any person and for notifying that amount to that person or any person acting in a representative capacity in relation to that person;

(b) for an amount assessed and notified under such regulations to be deemed to be an amount of vehicle tax due from the person assessed and recoverable accordingly;

(c) for review of decisions under such regulations and for appeals with respect to such decisions or decisions on such reviews.

Transfer and surrender of vehicle licences

241.—(1) Any vehicle licence may be transferred in the manner described by regulations made by the Governor.

(2) The holder of a vehicle licence may at any time surrender the licence to the Governor.

(3) Where a licence is surrendered to the chief police officer under subsection (2), the holder is entitled to receive from the chief police officer (by way of rebate of the tax paid on the licence) an amount equal to one-twelfth of the annual rate of tax chargeable on the licence in respect of each complete month of the period of the currency of the licence which is unexpired at the date of the surrender.

Payment for licences by cheque

242.—(1) The chief police officer may, if he thinks fit, issue a vehicle licence on receipt of a cheque for the amount of the tax payable on it.

(2) In a case where —

(a) a vehicle licence is issued to a person on receipt of a cheque which is subsequently dishonoured, and

(b) the chief police officer sends a notice by post to the person informing him that the licence is void as from the time when it was granted,

the licence shall be void as from the time when it was granted.

(3) In a case where —

(a) a vehicle licence is issued to a person on receipt of a cheque which is subsequently dishonoured,

(b) the chief police officer sends a notice by post to the person requiring him to secure that the tax payable on the licence is paid within such reasonable period as is specified in the notice,

(c) the requirement in the notice is not complied with, and

(d) the chief police officer sends a further notice by post to the person informing him that the licence is void as from the time when it was granted,

the licence shall be void as from the time when it was granted.

Offences

(a) Offence of keeping or using unlicensed vehicle

Penalty for using or keeping unlicensed vehicle

243.—(1) If a person uses, or keeps, on a road a vehicle (not being an exempt vehicle) which is unlicensed he commits an offence.

(2) For the purposes of subsection (1) a vehicle is unlicensed if no vehicle licence is in force for or in respect of the vehicle.

(3) Subject to subsection (4) a person convicted of an offence under subsection (1) is liable on summary conviction to a fine of —

(a) level 3 on the standard scale, or

(b) five times the amount of the vehicle tax chargeable in respect of that vehicle,

whichever is the greater.

(4) In the case of a person who —

(a) has provided the chief police officer with a declaration or statement (in pursuance of regulations under section 229) that the vehicle will not during a period specified in the declaration or statement be used or kept on a road, and

(b) commits an offence under subsection (1) within a period prescribed by regulations,
subsection (3) applies as if the reference in paragraph (a) to level 3 were a reference to level 4.

(5) Where a vehicle for which a vehicle licence is in force is transferred by the holder of the licence to another person, the licence is to be treated for the purposes of subsection (2) as no longer in force unless it is delivered to the other person with the vehicle.

(6) The amount of the vehicle tax chargeable in respect of a vehicle is to be taken for the purposes of subsection (3)(b) to be an amount equal to the annual rate of duty applicable to the vehicle at the date on which the offence was committed.

(7) Where in the case of a vehicle kept (but not used) on a public road that annual rate differs from the annual rate by reference to which the vehicle was at that date chargeable under regulations under section 235(2) or the provisions of the Finance Ordinance for the time being in force, the amount of the vehicle tax chargeable in respect of the vehicle is to be taken for those purposes to be an amount equal to the latter rate.

(8) In the case of a conviction for a continuing offence, the offence is to be taken for the purposes of subsections (6) and (7) to have been committed on the date or latest date to which the conviction relates.

Additional penalty for keeper of unlicensed vehicle

244.—(1) Where the person convicted of an offence under section 243 is the person by whom the vehicle in respect of which the offence was committed was kept at the time at which it was committed, the court shall (in addition to any penalty which it may impose under that section) order him to pay the amount specified in subsection (2).

(2) The amount referred to in subsection (1) is an amount equal to one-twelfth of the annual rate of vehicle tax appropriate to the vehicle for each month, or part of a month, in the relevant period (within the meaning of section 31).

(3) In relation to any month or part of a month in the relevant period, the reference in subsection (2) to the annual rate of vehicle tax appropriate to the vehicle is a reference to the annual rate applicable to it at the beginning of that month or part.

(4) A vehicle is to be taken for the purposes of this section to have belonged throughout the relevant period to the description of vehicle to which it belonged for the purposes of vehicle tax at —

(a) the date on which the offence was committed, or

(b) if the prosecution so elect, the date when a vehicle licence for it was last issued,

except so far as it is proved to have fallen within some other description for the whole of any month or part of a month in that period.

(5) In the case of a conviction for a continuing offence, the offence is to be taken for the purposes of this section to have been committed on the date or latest date to which the conviction relates.

Relevant period for purposes of section 244

245.—(1) For the purposes of section 244 the relevant period is the period —

(a) ending with the date on which the offence was committed, and

(b) beginning as provided by subsections (2) to (4).

(2) Subject to subsection (4), if the person convicted has before the date of the offence notified the chief police officer of his acquisition of the vehicle in accordance with regulations made by the Governor, the relevant period begins with —

(a) the date on which the notification was received by the chief police officer, or

(b) the expiry of the vehicle licence last in force for the vehicle,

whichever is the later.

(3) Subject to subsection (4), in any other case the relevant period begins with —

(a) the expiry of the vehicle licence last in force for the vehicle before the date on which the offence was committed, or

(b) if there has not at any time before that date been a vehicle licence in force for the vehicle, the date on which the vehicle was first kept by the person convicted.

(4) Where —

(a) the person convicted has been ordered to pay an amount under section 244 on the occasion of a previous conviction for an offence in respect of the same vehicle, and

(b) that offence was committed after the date specified in subsection (2) or (3) as the date with which the relevant period begins,

the relevant period instead begins with the month immediately following that in which the earlier offence was committed.

(5) Where the person convicted proves —

(a) that throughout any month or part of a month in the relevant period the vehicle was not kept by him, or

(b) that he has paid the tax due in respect of the vehicle for any such month or part of a month,

any amount which the person is ordered to pay under section 244 is to be calculated as if that month or part of a month were not in the relevant period.

(6) Where a person has previously been ordered under section 253 to pay an amount for a month or part of a month in the case of a vehicle, any amount which he is ordered to pay under section 244 in the case of a vehicle is to be calculated as if no part of that month were in the relevant period.

(7) In this section references to the expiry of a vehicle licence include a reference to —

(a) its surrender, and

(b) its being treated as no longer in force for the purposes of subsection (2) of section 243 by subsection (5) of that section.

(8) . In the case of a conviction for a continuing offence, the offence is to be taken for the purposes of this section to have been committed on the date or latest date to which the conviction relates.

(b) Offence of being registered keeper of unlicensed vehicle

Offence by registered keeper where vehicle unlicensed

246.—(1) If a vehicle registered under this Part is unlicensed the person in whose name the vehicle is registered commits an offence.

(2) For the purposes of this section a vehicle is unlicensed if no vehicle licence is in force for or in respect of the vehicle.

(3) Subsection (1) does not apply to a vehicle if it is an exempt vehicle.

(4) Where a vehicle for which a vehicle licence is in force is transferred by the holder of the licence to another person, the licence is to be treated for the purposes of subsection (2) as no longer in force unless it is delivered to the other person with the vehicle.

Exceptions to section 246

247.—(1) A person (“the registered keeper”) in whose name an unlicensed vehicle is registered at any particular time (“the relevant time”) does not commit an offence under section 246 at that time if any of the following conditions are satisfied.

(2) The first condition is that the registered keeper —

(a) is not at the relevant time the person keeping the vehicle, and

(b) if previously he was the person keeping the vehicle, he has by the relevant time complied with any requirements under section 229(1)(d) —

(i) that are prescribed for the purposes of this condition, and

(ii) that he is required to have complied with by the relevant or any earlier time.

(3) The second condition is that —

(a) the registered keeper is at the relevant time the person keeping the vehicle,

(b) at the relevant time the vehicle is neither kept nor used on a road, and

(c) the registered keeper has by the relevant time complied with any requirements under section 229(3) —

(i) that are prescribed for the purposes of this condition, and

(ii) that he is required to have complied with by the relevant or any earlier time.

(4) The third condition is that —

(a) the vehicle has been stolen before the relevant time,

(b) the vehicle has not been recovered by the relevant time, and

(c) any requirements under subsection (6) that, in connection with the theft, are required to have been complied with by the relevant or any earlier time have been complied with by the relevant time.

(5) The fourth condition is that the relevant time falls within a period (“the grace days”) —

(a) beginning with the expiry of the last vehicle licence to be in force for the vehicle, and

(b) of a prescribed length,

and a vehicle licence for the vehicle is taken out within the grace days for a period beginning with the grace days.

(6) The Governor may by regulations made provision for the purposes of subsection (4)(c) as to the persons to whom, the times at which and the manner in which the theft of a vehicle is to be notified.

(7) The Governor may by regulations made provision amending this section for the purpose of providing for further exceptions to section 246(1) (or varying or revoking any such further exceptions).

(8) A person accused of an offence under section 246(1) is not entitled to the benefit of an exception conferred by or under this section unless evidence is adduced that is sufficient to raise an issue with respect to that exception, but where evidence is so adduced it is for the prosecution to prove beyond reasonable doubt that the exception does not apply.

(9) In this section references to the expiry of a vehicle licence include a reference to —

(a) its surrender, and

(b) its being treated as no longer in force for the purposes of subsection (2) of section 246 by subsection (4) of that section.

Penalties for offences under section 246

248.—(1) A person guilty of an offence under section 246(1) is liable on conviction to —

(a) a fine of —

(i) level 3 on the standard scale, or

(ii) five times the amount of vehicle tax chargeable in respect of the vehicle concerned,

whichever is the greater; and

(b) if subsection (3) applies to him, a sum by way of fine (in addition to any under paragraph (a)) of an amount that complies with subsection (2).

(2) An amount complies with this subsection if it —

(a) is not less than the greater of —

(i) the maximum of the penalty to which the person is liable under subsection (1)(a), and

(ii) the amount of the supplement (if any) that became payable by him by reason of non-renewal of the vehicle licence for the vehicle that last expired before the commission of the offence; and

(b) is not more than the greatest of —

(i) the maximum of the penalty to which the person is liable under subsection (1)(a),

(ii) the amount mentioned in paragraph (a)(ii), and

(iii) ten times the amount of vehicle tax chargeable in respect of the vehicle.

(3) This subsection applies to the person if —

(a) he was, at the time proceedings for the offence were commenced, the person in whose name the vehicle concerned was registered under this Part, and

(b) that vehicle was unlicensed throughout the period beginning with the commission of the offence and ending with the commencement of those proceedings.

(4) The amount of vehicle tax chargeable in respect of a vehicle is to be taken for the purposes of subsections (1) and (2) to be an amount equal to the annual rate of tax applicable to the vehicle at the date on which the offence was committed.

(c) Offences under sections 243 and 246: Supplementary

Supplementary to sections 243 to 248

249.—(1) Where in the case of an offence under section 243 or 246 there is made against a person an order discharging him absolutely or conditionally he is to be treated for the purposes of sections 243 to 248 as having been convicted.

(2) Section 244 has effect subject to the provisions (apply with the necessary modifications) of any enactment relating to the imposition of fines by courts of summary jurisdiction, other than any conferring a discretion as to their amount.

(3) Where a sum is payable by virtue of an order under section 244, the sum is to be treated as a fine and the order as a conviction for the purposes of Part III of the Magistrates' Courts Act 1980 and of any other enactment (including and having effect as if contained in that Part) relating to the recovery or application of sums ordered to be paid by courts of summary jurisdiction.

(d) Other offences relating to licences

Not exhibiting licence

250.—(1) A person commits an offence if —

(a) he uses, or keeps, a vehicle on a road if a vehicle licence is required in respect of that vehicle,

(b) there is not fixed to and exhibited on the vehicle in the manner prescribed by regulations made by the Governor a licence for, or in respect of, the vehicle which is for the time being in force.

(2) Subsection (1) —

(a) has effect subject to the provisions of regulations made by the Governor, and

(b) is without prejudice to sections 243 and 246.

(3) The Governor may make regulations prohibiting a person from exhibiting on a vehicle which is kept or used on a road anything —

(a) which is intended to be, or

(b) which could reasonably be,

mistaken for a licence which is for, or in respect of, the vehicle and which is for the time being in force.

Failure to return licence

251. A person commits an offence who knowingly fails to comply with section 241(3) and is liable on conviction of that offence to a fine not exceeding level 3 on the standard scale.

Dishonoured cheques

252.—(1) In a case where —

(a) a notice sent as mentioned in section 251(2)(b) or a further notice sent as mentioned in section 251(3)(d) contains a relevant requirement, and

(b) the person fails to comply with the requirement contained in the notice,

he is liable on conviction to a penalty of an amount found under subsection (2).

(2) The amount is whichever is the greater of —

(a) level 3 on the standard scale;

(b) an amount equal to five times the annual rate of duty that was payable on the grant of the licence or would have been so payable if it had been taken out for a period of twelve months.

(3) For the purposes of subsection (1)(a), a relevant requirement is —

(a) a requirement to deliver up the licence within such reasonable period as is specified in the notice; or

(b) a requirement to deliver up the licence within such reasonable period as is so specified and, on doing so, to pay the amount specified in subsection (4).

(4) The amount referred to in subsection (3)(b) is an amount equal to one-twelfth of the appropriate annual rate of vehicle tax for each month, or part of a month, in the relevant period.

(5) The reference in subsection (4) to the appropriate annual rate of vehicle tax is a reference to the annual rate which at the beginning of the relevant period was applicable to a vehicle of the description specified in the application.

(6) For the purposes of subsection (4) the relevant period is the period —

(a) beginning with the first day of the period for which the licence was applied for or, if later, the day on which the licence first was to have effect, and

(b) ending with whichever is the earliest of the times specified in subsection (7).

(7) In a case where the requirement is a requirement to deliver up a vehicle licence, those times are —

(a) the end of the month during which the licence was required to be delivered up,

(b) the end of the month during which the licence was actually delivered up,

(c) the date on which the licence was due to expire, and

(d) the end of the month preceding that in which there first had effect a new vehicle licence for the vehicle in question.

Dishonoured cheques: additional liability

253.—(1) Where a person has been convicted of an offence under section 252 in relation to a vehicle licence, the court shall (in addition to any penalty which it may impose under that section) order him to pay the amount specified in subsection (2).

(2) The amount referred to in subsection (1) is an amount equal to one-twelfth of the appropriate annual rate of the vehicle tax for each month, or part of a month, in the relevant period.

(3) The reference in subsection (2) to the appropriate annual rate of vehicle tax is a reference to the annual rate which at the beginning of the relevant period was applicable to a vehicle of the description specified in the application.

(4) For the purposes of this section the relevant period is the period —

(a) beginning with the first day of the period for which the licence was applied for or, if later, the day on which the licence first was to have effect, and

(b) ending with whichever is the earliest of the times specified in subsection (5).

(5) Those times are —

(a) the end of the month in which the order is made,

(b) the date on which the licence was due to expire,

(c) the end of the month during which the licence was delivered up, and

(d) the end of the month preceding that in which there first had effect a new licence for the vehicle in question.

(6) Where a person has previously been ordered under section 244 to pay any amount for a month or part of a month in the case of a vehicle, any amount which he is ordered to pay under this section in the case of a vehicle licence for the vehicle is to be calculated as if no part of that month were in the relevant period.

(7) Where —

(a) a person has been convicted of an offence under section 252 in relation to a vehicle licence, and

(b) a requirement to pay an amount with respect to that licence has been imposed on that person by virtue of section 252(3)(b),

the order to pay an amount under this section shall have effect instead of that requirement and the amount to be paid under the order shall be reduced by any amount actually paid in pursuance of the requirement.

(e) Offences relating to registration marks

Not fixing registration marks

254.—(1) If a registration mark is not fixed on a vehicle as required by virtue of section 228, the relevant person commits an offence and is liable on conviction to a fine not exceeding level 3 on the standard scale.

(2) In subsection (1) “the relevant person” means the person driving the vehicle or, where it is not being driven, the person keeping it.

Obscured registration mark

255.—(1) If a registration mark fixed on a vehicle as required by virtue of section 230 is in any way —

(a) obscured, or

(b) rendered, or allowed to become, not easily distinguishable,

the relevant person commits an offence and is liable on conviction to a fine not exceeding level 3 on the standard scale.

(2) In subsection (1) “the relevant person” means the person driving the vehicle or, where it is not being driven, the person keeping it.

(3) It is a defence for a person charged with an offence under this section to prove that he took all steps which it was reasonably practicable to take to prevent the mark being obscured or rendered not easily distinguishable.

(f) Other offences

Forgery and fraud

256.—(1) A person commits an offence if he forges, fraudulently alters, fraudulently uses, fraudulently lends or fraudulently allows to be used by another person anything to which subsection (2) applies.

(2) This subsection applies to —

- (a) a vehicle licence,
- (b) a registration mark, and
- (c) a registration document.

(3) A person convicted of an offence under this section is liable to imprisonment for a term not exceeding two years or to a fine not exceeding level 5 on the standard scale.

False or misleading declarations and information

257.—(1) A person commits an offence who in connection with —

- (a) an application for a vehicle licence, or
- (b) an application for an allocation of registration marks,

makes a declaration which to his knowledge is either false or in any material respect misleading.

(2) A person commits an offence who makes a declaration or statement which —

- (a) is required to be made in respect of a vehicle by regulations under section 229, and
- (b) to his knowledge is either false or in any material respect misleading.

(3) A person commits an offence who —

- (a) is required by virtue of this Part to furnish particulars relating to, or to the keeper of, a vehicle, and
- (b) furnishes particulars which to his knowledge are either false or in any material respect misleading.

(4) A person convicted of an offence under this section is liable to imprisonment for a term not exceeding two years or to a fine not exceeding level 5 on the standard scale.

Duty to give information

258.—(1) Where it is alleged that a vehicle has been used on a road in contravention of section 243 —

(a) the person keeping the vehicle shall give such information as he may be required to give in accordance with subsection (7) as to the identity of the driver of the vehicle or any person who used the vehicle, and

(b) any other person shall give such information as it is in his power to give and which may lead to the identification of the driver of the vehicle or any person who used the vehicle if he is required to do so in accordance with subsection (7).

(2) Where it is alleged that a vehicle has been kept on a road in contravention of section 243 —

(a) the person keeping the vehicle shall give such information as he may be required to give in accordance with subsection (7) as to the identity of the person who kept the vehicle on the road, and

(b) any other person shall give such information as it is in his power to give and which may lead to the identification of the person who kept the vehicle on the road if he is required to do so in accordance with subsection (7).

(3) Where it is alleged that a vehicle has at any time been used on a road in contravention of section 243, the person who is alleged to have so used the vehicle shall give such information as it is in his power to give as to the identity of the person who was keeping the vehicle at that time if he is required to do so in accordance with subsection (7).

(4) A person commits an offence who fails to comply with subsection (1), (2) or (3).

(5) A person convicted of an offence under subsection (4) is liable to a fine not exceeding level 3 on the standard scale.

(6) If a person is charged with an offence under subsection (4) consisting of failing to comply with subsection (1)(a) or (2)(a), it is a defence for him to show to the satisfaction of the court that he did not know, and could not with reasonable diligence have ascertained, the identity of the person or persons concerned.

(7) A person is required to give information in accordance with this subsection if he is required to give the information by or on behalf of the chief police officer or any public officer in the Department of Finance acting with the authority of the Financial Secretary.

Duty to give information: offences under regulations

259.—(1) Subsection (2) applies where it appears to the chief police officer —

(a) that a person is a person by, through or to whom a vehicle has been sold or disposed of and that he has failed to comply with regulations made by virtue of section 229(1)(d) requiring him to furnish particulars prescribed by the regulations;

(b) that a person is a person by or through whom a vehicle has been sold or disposed of and that he has failed to comply with regulations made by virtue of section 229(1)(e) requiring him to furnish a document prescribed by the regulations; or

(c) that a person is a person who is surrendering a vehicle licence, or who is not renewing a vehicle licence for a vehicle kept by him or who is keeping an unlicensed vehicle and that he has failed to comply with regulations made by virtue of section 229(3) requiring him to furnish particulars or make a declaration prescribed by the regulations.

(2) The chief police officer may serve a notice on the person in question requiring him to give the chief police officer such information as it is in his power to give —

(a) as to the identity of any person who is keeping a specified vehicle or who has kept it at a specified time or during a specified period;

(b) as to the identity of any person by, through or to whom a specified vehicle has been sold or disposed of at a specified time or during a specified period; or

(c) which may lead to the identification of a person falling within paragraph (a) or (b).

(3) A person commits an offence who fails to comply with a notice under subsection (2) and is liable on summary conviction of that offence to a fine not exceeding level 3 on the standard scale.

(4) In this section “specified” means specified in a notice under subsection (2).

Time limit for recovery of underpayments and overpayments

260. No civil proceedings shall be brought —

(a) by or on behalf of the Crown for the recovery of any underpayment of vehicle tax; or

(b) by any person for the recovery of any overpayment of vehicle tax,

after the end of the period of twelve months beginning with the end of the period in respect of which the licence was taken out.

Evidence

Admissions

261.—(1) This section applies where in any proceedings for an offence under section 243 —

(a) it is appropriately proved that there has been served on the accused by post a requirement under section 258(1) or (2) to give information as to the identity of —

(i) the driver of, or a person who used, a particular vehicle, or

(ii) the person who kept a particular vehicle on a road,

on the particular occasion on which the offence is alleged to have been committed, and

(b) a statement in writing is produced to the court purporting to be signed by the accused that he was —

(i) the driver of, or a person who used, that vehicle, or

(ii) the person who kept that vehicle on a road,

on that occasion.

(2) Where this section applies, the court may accept the statement as evidence that the accused was —

(a) the driver of, or a person who used, that vehicle, or

(b) the person who kept that vehicle on a road,

on that occasion.

(3) Where this section applies, the court may accept the statement as evidence that the accused was —

(a) the driver of, or a person who used, that vehicle, or

(b) the person who kept that vehicle on a road.

(4) In subsection (1) “appropriately proved” means proved to the satisfaction of the court —

(a) on oath (including by affidavit) by affirmation (or by statutory declaration), or

(b) by rules made under section 144 of the Magistrates’ Courts Act 1980.

Admissions: offences under regulations

262.—(1) Subsection (2) applies in relation to any proceedings against a person for an offence on the grounds that —

(a) a vehicle has been sold or disposed of by, through or to him and he has failed to furnish particulars prescribed by regulations made by virtue of section 229(1)(d);

(b) a vehicle has been sold or disposed of by or through him and he has failed to furnish a document prescribed by regulations made by virtue of section 220(1)(e); or

(c) he has surrendered, or not renewed, a vehicle licence or is keeping an unlicensed vehicle and has failed to furnish any particulars or make a declaration prescribed by regulations made by virtue of section 229(3).

(2) If —

(a) it is appropriately proved that there has been served on the accused by post a requirement under section 259 to give information as to the identity of the person keeping the vehicle at a particular time, and

(b) a statement in writing is produced to the court purporting to be signed by the accused that he was keeping the vehicle at that time,

the court may accept the statement as evidence that the accused was keeping the vehicle at that time.

(3) In subsection (2) “appropriately owned” has the same meaning as in section 261.

Records

263.—(1) A statement to which this section applies is admissible in any proceedings as evidence of any fact stated in it with respect to matters prescribed by regulations made by the Governor to the same extent as oral evidence of that fact is admissible in the proceedings.

(2) This section applies to a statement contained in any document purporting to be —

(a) a part of the records maintained by the chief police officer in connection with any functions exercisable by him under or by virtue of this Part;

(b) a copy of a document forming part of those records; or

(c) a note of any information contained in those records,

and to be authenticated by the chief police officer or any other police officer of the rank of sergeant or above.

(3) In this section —

“document” means anything in which information of any description is recorded;

“copy”, in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly.

Burden of proof

264. Where in any proceedings for an offence under section 243, 246 or 257 any question arises as to the character of a vehicle or the purpose for which it has been used, the burden of proof lies on the accused.

Guilty plea by absent accused

265.—(1) This section applies where, under section 12(5) of the Magistrates' Courts Act 1980 a person is convicted in his absence of an offence under section 243 or 252 and it is appropriately proved that a relevant notice was served on the accused with the summons.

(2) In subsection (1) "appropriately proved" means proved to the satisfaction of the court —

(a) on oath, or

(b) in the manner prescribed by rules of court.

(3) In this section "relevant notice", in relation to an accused, means a notice stating that, in the event of his being convicted of the offence, it will be alleged that an order requiring him to pay an amount specified in the notice falls to be made by the court —

(a) in a case relating to an offence under section 243 or under section 244, or

(b) in a case relating to an offence under section 252 or under section 253.

(4) Where this section applies, the court shall proceed under section 244, or section 253, as if the amount specified in the relevant notice were the amount calculated in accordance with that section.

(5) The court shall not so proceed if it is stated in the notification purporting to be given by or on behalf of the accused under section 12(4) of the Magistrates' Courts Act 1980 that the amount specified in the relevant notice is inappropriate.

Supplementary

Regulations

266.—(1) The Governor may make regulations generally for the purpose of carrying into effect the provisions of this Part.

(2) Regulations under this Part —

(a) may make different provision for different cases or circumstances, and

(b) may contain such incidental, consequential and supplemental provisions as the Governor considers expedient for the purposes of the regulations.

(3) Regulations under this Part (other than regulations under section 232) —

- (a) may make different provision for different parts of the Falkland Islands, and
 - (b) may provide for exemptions from any provision of the regulations.
- (4) Nothing in any other provision of this Part limits subsections (1) to (3).
- (5) Regulations under section 229, 230(4) and (5), 231(1) to (3) may provide that any document for which provision is made by the regulations —
- (a) is to be in such form, and
 - (b) is to contain such particulars,
- as may be specified by a person prescribed by the regulations.

Regulations: offences

267.—(1) A person who contravenes or fails to comply with any regulations under this Part (other than any regulations under section 231 or 232) commits an offence.

(2) A person convicted of an offence under subsection (1) is liable on conviction to a fine not exceeding level 3 on the standard scale.

(3) Regulations under section 231 may provide that a person who fails to comply with any specified provision of those regulations commits an offence and is liable on conviction of that offence to a fine not exceeding level 1 on the standard scale.

PART XV MISCELLANEOUS AND GENERAL

Invalid carriages and disabled persons

Use of invalid carriages on roads and other highways

268.—(1) In the case of a vehicle which is an invalid carriage complying with the requirements of regulations under subsection (2) and which is being used in accordance with the conditions prescribed by those regulations —

- (a) no statutory provision (whether or not contained in this Ordinance) prohibiting or restricting the use of footways shall apply to the use of that vehicle on a footway;
- (b) if the vehicle is mechanically propelled it shall be treated for the purposes of this Ordinance as not being a motor vehicle and sections 4 to 9, 123 and 128 of this Ordinance shall not apply to it.

(2) The Governor may make regulations for the purposes of this section.

Badges for display on motor vehicles used by disabled persons

269.—(1) The Governor may make regulations under this subsection authorising the Chief Medical Officer to issue disabled persons badges for display in a vehicle during such time as driven by a person who is disabled or in which one or more persons who are disabled are carried as a passenger.

(2) In this section “disabled” means —

(a) a person who is in receipt of an allowance paid to him by the Falkland Islands Government because he is a person whose mobility is restricted;

(b) a person who is a blind person;

(c) a person who has a permanent and substantial disability which causes inability to walk or very substantial difficulty in walking; or

(d) drives motor vehicles regularly, has a severe disability in both upper limbs and is unable to turn by hand the steering wheel of a motor vehicle even if that wheel is fitted with a turning knob.

(3) For the purposes of subsection (2) a person is a blind person if he is so blind as to be unable to perform any work for which eyesight is essential.

(4) A person who drives a motor vehicle on a road at a time when a badge of a form prescribed under this section is displayed on it commits an offence unless the badge is issued under this section and displayed in accordance with regulations made under it.

(5) A person convicted of an offence under this section is liable to a fine not exceeding level 3 on the standard scale.

Repeal and consequential provisions

Repeal of the Road Traffic Ordinance (Title 63.1) and application of sections 12 and 12A of Theft Act 1968

270.—(1) The Road Traffic Ordinance (Title 63.1) is repealed and this Ordinance is substituted for it.

(2) Sections 12 and 12A of the Theft Act 1968 shall apply in the Falkland Islands in the form appearing in Schedule 8.

Continuity and construction of references to old and new law

271.—(1) The substitution of this Ordinance for the repealed Ordinance does not affect the continuity of the law.

(2) Anything done or having effect as if done under or for the purposes of the repealed Ordinance has effect, if it could have been done under or for the purposes of the corresponding

provisions of the repealed Ordinance, as if done under or for the purposes of the corresponding provision.

(3) Any reference, whether expressed or implied, in any enactment, instrument or document to a provision of the repealed Ordinance is to be read, in relation to the times, circumstances or purposes in relation to which the corresponding provision of the repealed Ordinance had effect and so far as the nature of the reference permits, as including a reference to that corresponding provision.

(4) Any reference, whether express or implied, in any enactment, instrument or document to a provision of the repealed Ordinance is to be read, in relation to the times, circumstances or purposes in relation to which the corresponding provision of the repealed Ordinance has effect and so far as the nature of the reference permits, as including a reference to that corresponding provision.

(5) The repeal by this Ordinance of the repealed Ordinance does not affect the operation of the repealed Ordinance in relation to offences committed before such repeal took effect or appeals against or suspension of disqualification by virtue of convictions for offences so committed or against orders made in consequence of such convictions.

Transitional provisions and savings

272.—(1) Schedule 8 of this Ordinance (which makes certain transitional provisions and contains savings in connection with the repeals made by this Ordinance) shall have effect.

(2) Nothing in that Schedule affects the general operation of section 26 of the Interpretation and General Clauses Ordinance (Title 67.2) (general savings implied on repeal).

Penalty for breach of regulations

273. If a person acts in contravention of or fails to comply with any regulations made by the Governor under any provision of this Ordinance and the contravention or failure is not made an offence under any other provision of this Ordinance, he commits an offence under this section and is liable on conviction of any such offence to a fine not exceeding the maximum of level 3 on the standard scale.

Application to the Crown

274. Sections 135, 136, 137, 142 to 150 and 154 to 168, 202 to 208, 210 to 213, 215, 216, 218-221, 224 and 227 apply to vehicles and persons in the public service of the Crown.

SCHEDULE 1

sections 22, 24 and 25

SUPPLEMENTARY PROVISIONS IN CONNECTION WITH PROCEEDINGS FOR OFFENCES UNDER SECTIONS 22, 24 AND 25

1.—(1) A person against whom proceedings are brought for an offence under section 22, 24 or 25(4) of this Ordinance is, upon information duly laid by him and on giving the prosecution not less than three clear days' notice of his intention, entitled to have person to whose act or default he alleges that the contravention of this section was due brought before the court in the proceedings.

(2) If, after the contravention has been proved, the original accused proves that the contravention was due to the act or default of that other person —

(a) that other person may be convicted of the offence, and

(b) if the original accused further proves that he has used all due diligence to secure that section 22, 24 or, as the case may be, 25(4) was complied with, he shall be acquitted with the offence.

(3) Where an accused seeks to avail himself of the provisions of sub-paragraphs (1) and (2) above —

(a) the prosecution, as well as the person whom the accused charges with the offence, has the right to cross-examine him, if he gives evidence, and any witness called by him in support of his pleas, and to call rebutting evidence, and

(b) the court may make such order as it thinks fit for the payment of costs by any party to the proceedings to any other party to the proceedings.

2.—(1) Where —

(a) it appears that an offence under section 22, 24 or 25(4) of this Ordinance has been committed in respect of which proceedings might be taken against some person (referred to in this paragraph as "the original offender"), and

(b) a person proposing to take proceedings in respect of the offence is reasonably satisfied —

(i) that the offence of which complaint is made was due to an act or default of some other person, being an act or default which took place in the Falkland Islands, and

(ii) that the original offender could establish a defence under paragraph 1 of this Schedule,

the proceedings may be taken against that other person without proceedings first being taken against the original offender.

(2) In any such proceedings the accused may be charged with, and on proof that the contravention was due to his act or default be convicted of, the offence with which the original offender might have been charged.

3.—(1) Subject to the provisions of this paragraph, in any proceedings for an offence under section 22 of this Ordinance it shall be a defence for the accused to prove —

(a) if the offence is under subsection (3)(a) of that section —

(i) that he purchased the equipment in question as being of a type which could be lawfully sold or offered for sale as conducive to the safety in the event of accident of prescribed classes of children in prescribed classes of motor vehicles and with a written warranty to that effect;

(ii) that he had no reason to believe at the time of the commission of the alleged offence that it was not of such a type; and

(iii) that it was then in the same state as when he purchased it;

(b) if the offences under subsection (3)(b) of that section, he provided information in relation to the equipment and it is alleged that it did not include appropriate information or included or consisted of inappropriate information —

(i) that the information provided by him was information which had been provided to him with a written warranty to the effect that it was the information required to be provided by him under section 22 of this Ordinance; and

(ii) that he had no reason to believe at the time of the commission of the alleged offence that the information provided by him was not the information required to be provided under that section; or

(c) if the offence is under subsection (3)(b) of that section, he provided information in relation to the equipment and it is alleged that it was not provided in the manner required under that section —

(i) that the information provided by him had been provided to him either with a written warranty to the effect that it was provided to him in the manner in which it was required to be provided by him under the section or with instructions as to the manner in which the information should be provided by him and with a written warranty to the effect that provision in that manner would comply with regulations under that section;

(ii) that he had no reason to believe at the time of the commission of the alleged offence that he was not providing the information in the manner required under that section; and

(iii) that the information was then in the same state as when it was provided to him or, as the case may be, that it was provided by him in accordance with the instructions given to him.

(2) Subject to the provisions of this paragraph, in any proceedings for an offence under section 24 or 25(4) of this Ordinance it shall be a defence for the accused to prove —

(a) that he purchased the helmet or appliance in question as being of a type which —

(i) in the case of section 24, could be lawfully sold or offered for sale under that section, and

(ii) in the case of section 25(4), could be lawfully sold or offered for sale under section 25 as authorised for use in the manner in question, and with a written warranty to that effect, and

(b) that it was then in the same state as when he purchased it.

(3) A warranty is only a defence in any such proceedings if —

(a) the accused —

(i) has, not later than three clear days before the date of the hearing, sent to the prosecutor a copy of the warranty with a notice stating that he intends to rely on it and specifying the name and address of the person from whom he received it, and

(ii) has also sent a like notice of his intention to that person, and

(b) in the case of a warranty given by a person outside the Falkland Islands, the accused proves that he has taken reasonable steps to ascertain, and did in fact believe in, the accuracy of the statement contained in the warranty.

(4) Where the accused is an employee of the person who purchased the equipment, helmet or appliance in question under a warranty, or to whom the information in question was provided under a warranty, he is entitled to rely the provisions of this paragraph in the same way as his employer would have been entitled to do if he had been the accused.

(5) The person to whom the warranty is alleged to have been given is entitled to appear at the hearing and to give evidence and the court may, if it thinks fit, adjourn the hearing to enable him to do so.

4.—(1) An accused who in any proceedings for an offence under sections 22, 24 or 25(4) of this Ordinance wilfully applies to equipment, information, a helmet or, as the case may be, an appliance of warranty not given in relation to it commits an offence.

(2) A person who, in respect of equipment, a helmet or an appliance sold by him, or information provided by him, being equipment, a helmet, an appliance or information in respect of which a warranty might be pleaded under paragraph 5 of this Schedule, gives to the purchaser a false warranty in writing, commits an offence unless he proves that when he gave the warranty he had reason to believe that the statements or description contained in it were accurate.

5. In this Schedule, “equipment” means equipment to which section 22 of this Ordinance applies and “appliance” means an appliance to which section 25 of this Ordinance applies.

SCHEDULE 2

section 56

DEFERRED TESTS OF CONDITION OF VEHICLES

1. Where the driver is the owner of the vehicle, he may at the time of electing that the test shall be deferred —

(a) specify a period of seven days within which the deferred test is to take place, being a period falling within the next thirty days, disregarding any day on which the vehicle is outside the Falkland Islands, and

(b) require that the deferred test shall take place on premises then specified by him where the test can conveniently be carried out.

2. When the driver is not the owner of the vehicle he shall inform the examiner of the name and address of the owner of the vehicle and the owner shall be afforded an opportunity of specifying such a period.

3.—(1) Where under the preceding provisions of this Schedule a period has been specified within which the deferred test is to be carried out, the time for carrying it out shall be such time within that period as may be notified, being a time not earlier than two days after the giving of the notification.

(2) Where no such period has been specified, the time for the carrying out of the deferred test shall be such time as may be notified, being a time not earlier than seven days after the giving of the notification.

(3) Where premises have been specified under the preceding provisions of this Schedule for the carrying out of the deferred test, and the test can conveniently be carried out on those premises, it must be carried out there.

(4) Notwithstanding the preceding provisions of this paragraph, the time and place for the carrying out of the deferred test may be varied by agreement between an authorised examiner and the owner of the vehicle.

4. In this paragraph —

“notified” means notified in the writing to the owner of the vehicle on behalf of the Governor or the Chief police officer, as the case may be; and

“notification” shall be construed accordingly,

and any notification under this paragraph may be given by post.

5. The owner of the vehicle must produce it, or secure its production, at the time and place fixed for the carrying out of the deferred test.

6.—(1) References in this Schedule to the owner of a vehicle are references to the owner of the vehicles at the time at which the election is made under section 56(6) of this Ordinance that the test shall be deferred.

(2) For the purposes of this Schedule, if at the time at which the election is made the vehicle is in the possession of a person under a hire-purchase agreement or hiring agreement, that person shall be deemed to be the owner of the vehicle to the exclusion of any other person.

SCHEDULE 3

section 135 etc

OFFENCES TO WHICH SECTIONS 135, 139 AND 140(1) APPLY

1.—(1) Where section 135, 139 or 140(1) of this Ordinance is shown in column 3 of this Schedule against a provision of this Ordinance specified in column 1, the section in question applies to an offence under that provision.

(2) The general nature of the offence is indicated in column 2.

2. Section 139 also applies to —

(a) any offence which is punishable under section 200 of this Ordinance;

(b) any offence under section 227; and

(c) any offence against any other written law relating to the use of vehicles on roads.

3. Section 140(1) also applies to —

(a) any offence which is punishable under section 200 of this Ordinance; and

(b) any offence against any other enactment relating to the use of vehicles on roads.

(1) Provision creating offence	(2) General nature of offence	(3) Applicable provisions
section 4	Causing death by dangerous driving	section 139
section 5	Dangerous driving	sections 135, 139 and 140(1)
section 7	Careless, and inconsiderate, driving	sections 135, 139 and 140(1)
section 8	Causing death by careless driving when under influence of drink or drugs	section 139
section 9	Driving or being in charge of a motor vehicle when unfit to drive through drink or drugs	sections 139 and 140(1)
section 10	Driving or being in charge of a motor vehicle, with excess alcohol in breath, blood or urine	sections 139 and 140(1)
section 11	Failing to provide a specimen of breath for a breath test	sections 139 and 140(1)
section 12	Failing to provide specimen for analysis or laboratory test	sections 139 and 140(1)
section 17	Motor racing and speed trials	sections 139 and 140(1)
section 20	Driving or riding in a motor vehicle in contravention of regulations requiring the wearing of seat belts	sections 139 and 140(1)
section 21	Driving motor vehicle with child not wearing seat belt	sections 139 and 140(1)
section 79(1)(b)	Driving while disqualified	sections 139 and 140(1)
section 85(1)	Failing to comply with conditions of LGV etc licence	sections 139 and 140(1)
section 85(2)	Causing or permitting a person under 21 to drive LGV or PCV in contravention of conditions of that person's licence	section 139
section 108	Using motor vehicle, or causing or permitting it to be used, while uninsured against third party risks	sections 139 and 140(1)
section 123	Failing to stop vehicle when required by police officer	sections 139 and 140(1)
section 124(5)	Failing to produce driving licence and counterpart	sections 139 and 140(1)
section 125(3)	Failing to give police officer certain names and addresses or to produce certificate of insurance or certain test and other like certificates	sections 139 and 140(1)
section 125(6)	Supervisor of learner driver failing to give police officer certain names and addresses	section 139
section 126	Refusing to give, or giving false, name and address in case of reckless, careless or inconsiderate driving or cycling	sections 139 and 140(1)
section 128	Failure by driver to stop, report accident or give information or documents	sections 139 and 140(1)
section 129	Failure by owner of motor vehicle to give police information for verifying compliance with requirement of compulsory insurance or security	sections 139 and 140(1)

SCHEDULE 4

PROSECUTION AND PUNISHMENT OF OFFENCES

Part I: Offences under this Ordinance

(1) Provision creating offence	(2) General nature of offence	(3) Punishment	(4) Disqualification	(5) Endorsement	(6) Penalty points
section 4	Causing death by dangerous driving	10 years	Obligatory	Obligatory	3-11
section 5	Dangerous driving	2 years and Level 7 on standard scale	Obligatory	Obligatory	3-11
section 7	Careless, and inconsiderate, driving	Level 4 on standard scale	Discretionary	Obligatory	3-9
section 8	Causing death by careless driving when under influence of drink or drugs	10 years and Level 6 on standard scale	Obligatory	Obligatory	3-11
section 9(1)	Driving or attempting to drive when unfit to drive through drink or drugs	6 months and Level 5 on standard scale	Obligatory	Obligatory	3-11
section 9(2)	Being in charge of a mechanically propelled vehicle when unfit to drive through drink or drugs	3 months and Level 4 on standard scale	Discretionary	Obligatory	10
section 17	Motor racing and speed trials on highways	Level 4 on standard scale	Obligatory	Obligatory	3-11
section 18	Other unauthorised or irregular competitions or trial on highways	Level 3 on standard scale			
section 20	Driving or riding in a motor vehicle in contravention of regulations requiring wearing of seat belts	Level 2 on standard scale			
section 21(2)	Driving motor vehicle with child in front not wearing seat belt	Level 3 on standard scale			
section 21(4)	Driving motor vehicle with child in rear not wearing seat belt	Level 3 on standard scale			
section 22(3) or (4)	Selling etc in certain circumstances equipment as conducive to the safety of children in motor vehicles	Level 3 on standard scale			
section 23	Driving or riding motor cycles in contravention of regulations requiring wearing of protective headgear	Level 2 on standard scale			
section 24	Selling, etc, helmet not of the prescribed type as helmet for affording protection for motor cyclists	Level 3 on standard scale			
section 25(3)	Contravention of regulations with respect to use of head-worn appliances on motor cycles	Level 2 on standard scale			
section 25(4)	Selling, etc, appliance not of prescribed type as approved for use on motor cycles	Level 3 on standard scale			
section 26	Prohibition of parking of heavy commercial vehicles on verges, etc	Level 3 on standard scale			

(1) Provision creating offence	(2) General nature of offence	(3) Punishment	(4) Disqualification	(5) Endorsement	(6) Penalty points
section 28	Leaving vehicles in dangerous positions	Level 3 on standard scale	Discretionary if committed in respect of a motor vehicle	Obligatory if committed in respect of a motor vehicle	3
section 29	Causing danger to road-users	7 years and Level 6 on standard scale			
section 30	Carrying passenger on motor-cycle contrary to section 30	Level 3 on standard scale	Discretionary	Obligatory	3
section 31	Carrying passenger on bicycle contrary to section 31	Level 1 on standard scale			
section 32	Tampering with motor vehicle	Level 3 on standard scale			
section 33	Holding or getting on to vehicle, etc, in order to be towed or carried	Level 1 on standard scale			
section 34	Dangerous cycling	Level 4 on standard scale			
section 35	Careless and inconsiderate cycling	Level 3 on standard scale			
section 36	Cycling when unfit through drink or drugs	Level 3 on standard scale			
section 37	Contravening prohibition on persons under 14 driving electrically assisted pedal cycles	Level 2 on standard scale			
section 38	Failing to comply with traffic directions by police officer	Level 3 on standard scale	Discretionary, if committed in respect of a motor vehicle by failure to comply with a direction of a police officer	Obligatory if committed as described in column 4	3
section 39	Failing to comply with traffic signs	Level 3 on standard scale	Discretionary, if committed in respect of a motor vehicle by failure to comply with an indication given by a sign specified for the purposes of this paragraph in regulations under section 39(5)	Obligatory if committed as described in column 4	3

(1) Provision creating offence	(2) General nature of offence	(3) Punishment	(4) Disqualification	(5) Endorsement	(6) Penalty points
section 40	Pedestrian failing to stop when directed by police officer regulating traffic	Level 3 on standard scale			
section 42	Using vehicle in dangerous condition etc	(a) Level 5 on standard scale if committed in respect of a goods vehicle or a vehicle adapted to carry more than eight passengers (b) Level 4 on standard scale in any other case	Discretionary	Obligatory	3
section 44	Breach of requirement as to brakes, steering-gear or tyres	(a) Level 5 on standard scale if committed in respect of a goods vehicle or a vehicle adapted to carry more than eight passengers (b) Level 4 on standard scale in any other case	Discretionary	Obligatory	3
section 45	Breach of requirement as to weight: goods and passenger vehicles	Level 5 on standard scale			
section 46	Breach of other construction and use requirements	(a) Level 4 on standard scale if committed in respect of a goods vehicle or a vehicle adapted to carry more than eight passengers (b) Level 3 on standard scale in any other case			
section 52	Using, etc, vehicle without required test certificate being in force	(a) Level 4 on standard scale in case of a vehicle adapted to carry more than eight passengers (b) Level 3 on standard scale in any other case			
section 52(1)	Uses vehicle on road without obligatory test certificate	Level 2 on standard scale		Discretionary	3
section 56(8)	Obstructing authorised vehicle examiner who wishes to test vehicle on road	Level 3 on standard scale			
section 57(3)	Obstructing authorised examiner of public passenger or goods vehicle	Level 4 on standard scale			
section 57(5)	Refuses or neglecting to comply with requirement to proceed with public passenger vehicle, goods vehicle or taxi for inspection of vehicle	Level 4 on standard scale		Obligatory	3
section 60	Driving, etc, ... vehicle in contravention of prohibition on driving it as being unfit for service	Level 5 on standard scale		Discretionary	3

(1) Provision creating offence	(2) General nature of offence	(3) Punishment	(4) Disqualification	(5) Endorsement	(6) Penalty points
section 62	Selling, etc, unroadworthy vehicle or trailer or altering vehicle or trailer so as to make it unroadworthy	Level 5 on standard scale			
section 63(1)	Fitting or supplying unsuitable vehicle part	Level 5 on standard scale			
section 63(3)	Supplying defective or unsuitable vehicle parts	Level 4 on standard scale			
section 63(8)	Obstructing examiner testing vehicles to ascertain whether defective or unsuitable part has been fitted, etc	Level 3 on standard scale			
section 64	Selling, etc, pedal cycle in contravention of regulations as to brakes, bells, etc	Level 3 on standard scale			
section 65(1)	Driving otherwise than in accordance with a licence	Level 3 on standard scale	Discretionary in a case where the offender's driving would not have been in accordance with any licence that could have been granted to him	Obligatory in the case mentioned in column 5	3-6
section 65(2)	Causing or permitting a person to drive otherwise than in accordance with a licence	Level 3 on standard scale			
section 68(13)	Driving after making false declaration as to physical fitness	Level 4 on standard scale	Discretionary	Obligatory	3-6
section 69(3)	Failure to deliver revoked licence and counterpart to chief police officer	Level 3 on standard scale			
section 70(3)	Failure to notify chief police officer of onset of, or prospective disability and that subsection as applied by section 68	Level 3 on standard scale			
section 70(4)	Driving after such a failure	Level 3 on standard scale	Discretionary	Obligatory	3-6
section 71(1)	Driving after refusal of licence under section 68(3) or revocation under section 69(1)	6 months and level 5 on standard scale or both	Discretionary	Obligatory	3-6
section 73	Driving with uncorrected defective eyesight, or refusing to submit to test of eyesight	Level 3 on standard scale	Discretionary	Obligatory	3
section 76(6)	Driving licence holder failing [to surrender licence and counterpart]	Level 3 on standard scale			
section 79(1)(a)	Obtaining driving licence while disqualified	Level 3 on standard scale			
section 79(1)(b)	Driving while disqualified	12 months and level 5 on standard scale or both	Discretionary	Obligatory	6

(1) Provision creating offence	(2) General nature of offence	(3) Punishment	(4) Disqualification	(5) Endorsement	(6) Penalty points
section 85	Failing to comply with conditions of LGV or PCV licence or causing or permitting person under 21 to drive LGV or PCV in contravention of such conditions	Level 3 on standard scale			
section 89(3)	Failure to surrender revoked or suspended LGV or PCV licence and counterpart	Level 3 on standard scale			
section 91(5)	Contravention of provision of regulation which is declared by regulations to be an offence about LGV or PCV drivers licence	Level 3 on standard scale			
section 93(3)	Plying for hire in vehicle without taxi sign	Level 3 on standard scale			
section 94(1)	Plying for hire in unlicensed taxi	Level 5 on standard scale			
section 94(2)	Being driver of unlicensed taxi	Level 4 on standard scale			
section 95(2)	Being unlicensed driver of taxi or owner of such a taxi	Level 4 on standard scale			
section 99(5)	Failing without reasonable excuse — (a) to present private hire vehicle or public service vehicle for inspection, (b) to report an accident to private hire vehicle or public service vehicle to chief police officer, (c) to notify change of ownership	Level 3 on standard scale			
section 101(2)	Using private hire vehicle or public service vehicle with unlicensed driver	Level 4 on standard scale			
section 104(1)	Using taxi for private hire at rate of fares or charges greater than that fixed by regulations	Level 3 on standard scale			
section 104(3)	Taxi driver or private hire driver unreasonably prolonging journey	Level 3 on standard scale			
section 108(2)	Using motor vehicle while uninsured	Level 5 on standard scale	Discretionary	Obligatory	6-8
section 110(2)	Failing to surrender certificate of insurance or make statutory declaration of loss or destruction	Level 3 on standard scale			
section 116(2)	Failing to give information or wilfully making false statement as to insurance when claim made	Level 3 on standard scale			
section 123(3)	Failing to stop mechanically propelled vehicle or a cycle when required when required by a police officer				
section 124	Failing to produce driving licence	Level 3 on standard scale			
section 125(3)	Failure to produce certificate of insurance or test certificate or state name and address	Level 3 on standard scale			
section 126	Driver of mechanically propelled vehicle or rider of cycle refusing to give, or giving false, name and address	Level 3 on standard scale			

(1) Provision creating offence	(2) General nature of offence	(3) Punishment	(4) Disqualification	(5) Endorsement	(6) Penalty points
section 127	Pedestrian failing to give police officer name and address after failing to stop when required to do so by police officer controlling traffic	Level 1 on standard scale			
section 128(4)	Failing to stop after accident and give particulars and report accident	6 months and level 5 on standard scale	Discretionary	Obligatory	5-10
section 128(7)	Failure by driver, in case of accident involving injury to another, to produce evidence of insurance or to report accident	Level 3 on standard scale			
section 129	Failure of owner to give information as to insurance	Level 4 on standard scale			
section 130	Failure of person keeping vehicle and others to give information as to driver of vehicle in case of certain offences				
section 131	Forgery etc of licences, test certificates, certificates of other documents or things	Two years and level 7 on standard scale			
section 132	Making certain false statements etc and withholding certain material information	Level 4 on standard scale			
section 146(3)	Failure to comply with court order to give information as to date of birth or sex	Level 3 on standard scale			
section 147(6)	Failure to deliver licence and counterpart to court where interim disqualification order made	Level 3 on standard scale			
section 148(2)	Failure to deliver licence and counterpart when court requires on notifying proposal to disqualify	Level 3 on standard scale			
section 179(2)	Removing fixed penalty notice affixed to vehicle	Level 2 on standard scale			
section 184	False statement in response to notice to owner	Level 5 on standard scale			
section 207(10)	Contravention of temporary prohibition or restriction	Level 3 on standard scale			
section 209(4)	Contravention of prohibition or restriction relating to relevant event	Level 3 on standard scale			
section 210(3)	Contravention of Order as to use of roads by public service vehicles	Level 3 on standard scale			
section 211(3)	Contravention of prohibition or restriction for roads of certain classes	Level 3 on standard scale			
section 213(5)	Contravention of pedestrian crossing regulations	Level 3 on standard scale	Discretionary if committed in respect of a motor vehicle	Obligatory if committed in respect of a motor vehicle	3

(1) Provision creating offence	(2) General nature of offence	(3) Punishment	(4) Disqualification	(5) Endorsement	(6) Penalty points
section 215(3)	Not stopping at school crossing	Level 3 on standard scale	Discretionary if committed in respect of a motor vehicle	Obligatory if committed in respect of a motor vehicle	3
section 224(1)	Exceeding speed limit	Level 3 on standard scale	Discretionary	Obligatory	3-6, but 3 if fixed penalty

Part II: Other offences

(1) Offence	(2) Disqualification	(3) Endorsement	(4) Penalty Points
Manslaughter by the driver of a motor vehicle	Obligatory	Obligatory	3-11
An offence against section 12A of the Theft Act 1968 (aggravated vehicle-taking)	Obligatory	Obligatory	3-11
Stealing or attempting to steal a motor vehicle	Discretionary		
An offence or attempt to commit an offence in respect of a motor vehicle under section 12 of the Theft Act 1968 (taking conveyance without consent of owner etc, or knowing it has been so taken, driving or allowing oneself to be carried in it.	Discretionary		
An offence under section 25 of the Theft Act 1968 (going equipped for stealing etc) committed with reference to the theft or taking of motor vehicles	Discretionary		

SCHEDULE 5

section 169

FIXED PENALTY OFFENCES

Part I: Offences under other written laws

(1) Provision creating offence	(2) General nature of offence
section 72 of the Highways Act 1835	(a) driving on the footway (b) cycling on the footway
section 137 of the Highways Act 1980	Obstructing a highway, but only where the offence is committed in respect of a vehicle

Part II: Offences under this Ordinance

(1) Provision creating offence	(2) General nature of offence
section 20	Breach of regulations requiring wearing of seat belts
section 21(2)	Breach of restriction on carrying children in front of vehicles.
section 21(3) and (4)	Breach of restriction on carrying children in the rear of vehicles.
section 23	Breach of regulations relating to protective headgear for motor cycle drivers and passengers.
section 26	Parking a heavy commercial vehicle on verge or footway.
section 28	Leaving vehicle in dangerous position.
section 30	Unlawful carrying of passengers on motor cycles.
section 31	Carrying more than one person on a pedal cycle.
section 38	Failure to comply with traffic directions.
section 39	Failure to comply with traffic signs.
section 42	Using vehicle in dangerous condition etc.
section 44	Breach of requirement as to brakes, steering-gear or tyres.
section 45	Breach of requirement as to weight: goods and passenger vehicles.
section 46	Breach of other construction and use requirements.
section 65(1)	Driving vehicle otherwise than in accordance with requisite licence.
section 123	Failure to stop vehicle on being so required by police officer in uniform.
section 205	Using vehicle in contravention of traffic regulation order.
section 207	Using a vehicle in contravention of temporary prohibition or restriction of traffic in case of execution of works etc.

section 209	Contravening prohibition or restriction on road imposed in relation to event.
section 210	Contravening order relating to use of roads by public service vehicles.
section 211	Contravening order prohibiting or restricting use of vehicles on roads or certain classes.
section 213	Breach of pedestrian crossing regulations except an offence in respect of a moving vehicle.
section 215	Contravening requirement by school crossing patrol to stop a vehicle or not to put it again in motion.
section 224	Speeding offences under the provisions of this Ordinance.
section 250	Using or keeping a vehicle on a road without vehicle licence being displayed in accordance with regulations.
section	Driving or keeping vehicle with registration mark obscured.
section 254	Failure to fix prescribed registration mark in accordance with relevant regulations.

SCHEDULE 6

section 185

STATUTORY STATEMENTS

Part I: Statutory statement of ownership or hiring

1.—(1) For the purposes of Part XI of this Ordinance, a statutory statement of ownership is a statement on an official form signed by the person providing it and stating whether he was the owner of the vehicle at the time of the alleged offence and, if he was not the owner of the vehicle at that time, whether —

(a) he was never the owner, or

(b) he ceased to be the owner before, or became the owner after, that time,

and in a case within paragraph (b), stating, if the information is in his possession, the name and address of the person to whom, and the date on which, he disposed of the vehicle or (as the case may be) the name and address of the person from whom, and the date on which, he acquired it.

(2) An official form for a statutory statement of ownership shall —

(a) indicate that the person providing the statement in response to a notice to owner relating to an offence may give notice requesting a hearing in respect of the offence in the manner specified in the form, and

(b) direct the attention of any person proposing to complete the form to the information provided in accordance with paragraph 3(3) in any official form for a statutory statement of facts.

2.—(1) For the purposes of Part XI of this Ordinance, a statutory statement of hiring is a statement on an official form, signed by the person providing it, being a person by whom a statement of liability was signed, and stating —

(a) whether at the time of the alleged offence the vehicle was let to him under the hiring agreement to which the statement of liability refers, and

(b) if it was not, the date on which he returned the vehicle to the possession of the vehicle-hire firm concerned.

(2) An official form for a statutory statement of hiring shall —

(a) indicate that the person providing the statement in pursuance of a notice relating to an offence served under section 180 by virtue of section 183 may give notice requesting a hearing in respect of the offence in the manner specified in the form, and

(b) direct the attention of any person proposing to complete the form to the information provided in accordance with paragraph 3(3) in any official form for a statutory statement of facts.

(3) In sub-paragraph (1) “statement of liability”, “hiring agreement” and “vehicle-hire firm” have the same meanings as in section 183.

Part II: Statutory statement of facts

3.—(1) For the purposes of Part XI of this Ordinance, a statutory statement of facts is a statement on an official form, signed by the person providing it, which —

(a) states that the person providing it was not the driver of the vehicle at the time of the alleged offence, and

(b) states the name and address at the time when the statement is provided of the person who was the driver of the vehicle at the time of the alleged offence.

(2) A statutory statement of facts has effect as a notice given by the driver requesting a hearing in respect of the offence it is signed by the person identified in the statement as the driver of the vehicle at the time of the alleged offence.

(3) An official form for a statutory statement of facts shall indicate —

(a) that if a person identified in the statement as the driver of the vehicle at the time of the alleged offence signs the statement he will be regarded as having given notice requesting a hearing in respect of the offence,

(b) that the person on whom the notice to owner relating to the offence is served may not give notice requesting a hearing in respect of the offence on his own account if he provides a statutory statement of facts signed by a person so identified, and

(c) that if the fixed penalty is not paid before the end of the period stated in the notice to owner as the period for response to the notice, a sum determined by reference to that fixed penalty may be registered without any court hearing for enforcement as a fine against the person on whom the notice to owner is served, unless he has given notice requesting a hearing in respect of the offence,

but that, in a case within paragraph (c), the sum in question may not be so registered if the person on whom the notice to owner is served provides a statutory statement of facts as mentioned in paragraph (b) until two months have elapsed from the end of the period so stated without service of a summons in respect of the offence on the person identified in that statement as the driver of the vehicle.

SCHEDULE 7

section 221

SPEED LIMITS FOR VEHICLES OF CERTAIN CLASSES

Part I: Vehicles having pneumatic tyres on all wheels

	<i>Maximum speed while car is being driven on road</i>
1. An invalid carriage.	20 mph
2. A motor car passenger vehicle, motor caravan, car-derived van or dual purpose vehicle drawing more than one trailer.	20 mph
3. A motor tractor (other than an industrial tractor).	20 mph
4. A works truck or an industrial tractor.	18 mph

Part II: Vehicles other than track-laying vehicles
Not fitted with pneumatic tyres on all wheels

*Maximum speed
while car is being
driven on road*

1. A motor vehicle, or in the case of a motor vehicle drawing one or more trailers, the combination, where —

20 mph

(a) every wheel is fitted with a resilient tyre; or

(b) at least one wheel is fitted with a resilient tyre and every wheel which is not fitted with a resilient tyre is fitted with a pneumatic tyre.

2. A motor vehicle, or in the case of a motor vehicle drawing one or more trailers, the combination, where any wheel is not fitted with either a pneumatic tyre or a resilient tyre.

5 mph

Application

3. This Part does not apply a motor vehicle which is a —

(a) track-laying vehicle; or

(b) a motor vehicle which is not a track-laying vehicle but which is drawing one or more trailers which is a track-laying vehicle.

Part III: Track-laying vehicles

1	2	3
<i>Item No</i>	<i>Class of vehicle</i>	<i>Maximum speed while vehicle is being driven on a road</i>
1.	A motor vehicle being a track-laying vehicle which is fitted with —	20 mph
	(a) springs between its frame and its weight-carrying rollers, and	
	(b) resilient material between the rims of its weight-carrying rollers and the surface of the road,	
	and which is not drawing a trailer.	

2.	A vehicle specified in item 1 drawing one or more trailers each of which is either —	20 mph
	(a) a track-laying vehicle fitted with springs and resilient material as mentioned in that item, or	
	(b) not a track-laying vehicle and each wheel of which is fitted with either a pneumatic tyre or a resilient tyre.	
3.	A vehicle specified in item 1 drawing one or more trailers any one of which is not either —	5 mph
	(a) a track-laying vehicle not fitted with springs and resilient material as mentioned in that item, or	
	(b) not a track-laying vehicle and at least one wheel of which is not fitted with either a pneumatic tyre or a resilient tyre.	
4.	A motor vehicle being a track-laying vehicle which is not fitted with springs and resilient material as mentioned in item 1 whether drawing a trailer or not.	5 mph
5.	A motor vehicle not being a track-laying vehicle, which is drawing one or more trailers any one or more of which is a track-laying vehicle —	20 mph
	(a) if every wheel of the motor vehicle and of any non-track-laying trailer is fitted with a pneumatic tyre or with a resilient tyre, and every trailer which is a track-laying vehicle is fitted with springs and resilient material as mentioned in item 1;	
	(b) in any other case.	5 mph.

Application

This Part applies to —

- (a) a motor vehicle which is a track-laying vehicle, and
- (b) a motor vehicle of any description which is drawing one or more trailers any one or more of which is a track-laying vehicle.

Part IV: Interpretation

1. In this Schedule —

“car-derived van” means a goods vehicle which is constructed or adapted as a derivative of a passenger vehicle and which has a maximum laden weight not exceeding 2 tonnes;

“agricultural motor vehicle” means a motor vehicle which is constructed or adapted for use off roads for the purpose of agriculture, horticulture or forestry and which is primarily used for one or more of those purposes;

“dual-purpose vehicle” means a vehicle constructed or adapted for the carriage both of passengers and of goods or burden of any description, being a vehicle of which the unladen weight does not exceed 2040kg, and which either —

(a) is so constructed or adapted that the driving power of the engine is, or by the appropriate use of the controls of the vehicle can be, transmitted to all the wheels of the vehicle; or

(b) satisfies the following conditions as to construction, namely —

(i) the vehicle must be permanently fitted with a rigid roof, with or without a sliding panel;

(ii) the area of the vehicle to the rear of the driver’s seat must —

(aa) be permanently fitted with at least one row of transverse seats (fixed or folding) for two or more passengers and those seats must be properly sprung or cushioned and provided with upholstered back-rests, attached either to the seats or to a side or floor of the vehicle; and

(bb) be lit on each side and at the rear by a window or windows of glass or other transparent material having an area or aggregate area of not less than 770 square centimetres at the rear; and

(iii) the distance between the rearmost part of the steering wheel and the back-rests of the row of transverse seats satisfying the requirements specified in subparagraph (b)(ii)(aa) (or, if there is more than one such row of seats, the distance between the rearmost part of the steering wheel and the back-rests of the rearmost such row) must, when the seats are ready for use be not less than one-third of the distance between the rearmost part of the steering wheel and the rearmost part of the floor of the vehicle;

“industrial tractor” means a tractor, not being an agricultural motor vehicle, which —

(a) has an unladen weight not exceeding 7370kg, and

(b) is designed and used primarily for work off roads, or for work on roads in connection only with road construction or maintenance (including any such tractor when fitted with an implement or implements designed primarily for use in connection with such work, whether or not any such implement is of itself designed to carry a load);

“motor caravan” means a motor vehicle which is constructed or adapted for the carriage of passengers and their effects and which contains, as permanently installed equipment, the facilities which are reasonably necessary for enabling the vehicle to provide mobile living accommodation for its users;

“pneumatic tyre” means a tyre which —

(a) is provided with, or together with the wheel upon which it is mounted forms, a continuous closed chamber inflated to a pressure substantially exceeding atmospheric pressure when the tyre is in the condition in which it is normally used, but is not subjected to any load;

(b) is capable of being inflated and deflated without removal from the wheel or vehicle; and

(c) is such that, when it is deflated and is subjected to a normal load, the sides of the tyre collapse;

“resilient tyre” means a tyre, not being a pneumatic tyre, which is soft or elastic;

“straddle carrier” means a motor vehicle constructed to straddle and lift its load for the purpose of transportation;

“track-laying” in relation to a vehicle, means a vehicle so designed and constructed that the weight thereof is transmitted to the road surface either by means of continuous tracks or by a combination of wheels and continuous tracks in such circumstances that the weight transmitted to the road surface by the tracks is not less than half the weight of the vehicle;

“wheel” means a wheel the tyre or rim of which when the vehicle is in motion on a road is in contact with the ground provided that two wheels are to be regarded as one wheel if the distance between the centres of the areas of contact between such wheels and with the road surface is less than 460 millimetres; and

“works truck” means a motor vehicle (other than a straddle carrier) designed for use in private premises and used on a road only in delivering goods from or to such premises to or from a vehicle on a road in the immediate neighbourhood, or in passing from one part of any such premises to another or to other private premises in the immediate neighbourhood or in connection with road works while at or in the immediate neighbourhood of the site of such works.

2. A vehicle falling in two or more classes specified in Part I, II or III of this Schedule shall be treated as falling within the class for which the lower or lowest speed limit is specified.

SCHEDULE 8

section 270(2)

FORM IN WHICH SECTIONS 12 AND 12A THEFT ACT 1968 HAVE EFFECT IN THE FALKLAND ISLANDS

Taking motor vehicle or other conveyance without lawful authority

12.—(1) Subject to subsections (5) and (6) below, a person commits an offence if, without having the consent of the owner or other lawful authority, he takes any conveyance for his own or another's use or, knowing that any conveyance has been taken without such authority, drives it or allows himself to be carried in or on it.

(2) A person convicted of an offence under subsection (1) is liable on conviction to a fine not exceeding level 5 on the standard scale, to imprisonment for a term not exceeding six months or both.

(3) (omitted).

(4) -If on the trial of a person for theft the Summary Court or the Magistrate's Court is not satisfied that the accused committed theft but it is proved that the accused committed an offence under subsection (1) the court may convict that person of an offence under subsection (1).

(4A) (omitted).

(4B) (omitted).

(4C) (omitted).

(5) Subsection (1) shall not apply in relation to pedal cycles but, subject to subsection (6) below, a person who, without having the consent of the owner or other lawful authority, takes a pedal cycle for his own or another's use, or rides a pedal cycle knowing it to have been taken without such authority commits an offence and is liable on conviction of that offence to a fine not exceeding level 3 on the standard scale.

(6) A person does not commit an offence under this section by anything done in the belief that he has lawful authority to do it or that he would have the owner's consent if the owner knew of his doing it and the circumstances of it.

(7) For the purposes of this section —

(a) "conveyance" means any conveyance constructed or adapted for the carriage of a person or persons whether by land, water or air, except that it does not include such a conveyance constructed or adapted for use only under the control of a person not carried in or on it, and "drive" shall be construed accordingly; and

(b) "owner", in relation to a conveyance which is the subject of a hiring agreement or hire-purchase agreement, means the person in possession of the conveyance under that agreement.

Aggravated vehicle taking

12A.—(1) Subject to subsection (3) below, a person commits the offence of aggravated taking of a vehicle if —

(a) he commits an offence under section 12(1) above (in this section referred to as a "basic offence") in relation to a mechanically propelled vehicle; and

(b) it is proved that, at any time after the vehicle was unlawfully taken (whether by him or another) and before it was recovered, the vehicle was driven, or injury or damage was caused, in one or more of the circumstances set out in paragraphs (a) to (d) of subsection (2) below.

(2) The circumstances referred to in subsection (1)(b) above are —

(a) that the vehicle was driven dangerously on a road, highway or other public place;

(b) that, owing to the driving of the vehicle, an accident occurred by which injury was caused to any person;

(c) that, owing to the driving of the vehicle, an accident occurred by which injury was caused to any person;

(d) that damage was caused to the vehicle.

(3) A person is not guilty of an offence under this section if he proves that, as regards any such proven driving, injury or damage as is referred to in subsection (1)(b) above, either —

(a) the driving, accident or damage referred to in subsection (2) above occurred before he committed the basic offence; or

(b) he was neither in nor on nor in the immediate vicinity of the vehicle when that driving, accident or damage occurred.

(4) A person convicted of an offence under this section is liable to imprisonment for a term not exceeding two years or, if it is proved that, in circumstances falling within subsection (2)(b) above, the accident caused the death of the person concerned, five years.

(5) If a person who is charged with an offence under this section is found not guilty of that offence but it is proved that he committed a basic offence, he may be convicted of the basic offence.

(6) (omitted)

(7) For the purposes of this section a vehicle is driven dangerously if —

(a) it is driven in a way which falls far below what would be expected of a competent and careful driver; and

(b) it would be obvious to a competent and careful driver that driving the vehicle in that way would be dangerous.

(8) For the purposes of this section a vehicle is recovered when it is restored to its owner or to other lawful possession or custody; and in this subsection “owner” has the same meaning as in section 12 above.

SCHEDULE 9

section 272

TRANSITIONAL PROVISIONS AND SAVINGS

1. The repeal by this Ordinance of a saving made on the previous repeal of an enactment does not affect the operation of the saving in so far as it is not specifically reproduced in this Ordinance but remains capable of having effect.

2. This Ordinance does not affect the operation of the repealed Ordinance in relation to offences committed before the commencement of this Ordinance or to appeals against or suspension of disqualification by virtue of conviction for offences so committed or against orders made in consequence of such convictions.



THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

Vol. 17

30th March 2006

No. 5

The following are published in this Supplement -

Supplementary Appropriation (2005-2006) Ordinance 2006 (No. 1 of 2006);

Civil Contingencies (Emergency Powers) Ordinance 2006 (No. 2 of 2006);

Employment of Children (Amendment) Ordinance 2006 (No. 3 of 2006);

Employment of Women, Young Persons and Children (Amendment) Ordinance 2006 (No. 4 of 2006);

Employers' Liability (Defective Equipment) Ordinance 2006 (No. 5 of 2006);

Taxes (Amendment) Ordinance 2006 (No. 6 of 2006);

Criminal Justice (Amendment)(Miscarriages of Justice) Ordinance 2006 (No. 7 of 2006);

Planning (Amendment) Ordinance 2006 (No. 8 of 2006); and

Coins Order 2006 (S.R. & O. No. 3 of 2006).

ELIZABETH II



FALKLAND ISLANDS

HOWARD JOHN STREDDER PEARCE C.V.O.,
Governor.

Supplementary Appropriation (2005-2006) Ordinance 2006

(No: 1 of 2006)

ARRANGEMENT OF PROVISIONS

Section

1. Short title
2. Appropriation of further sum

Schedule

ELIZABETH II



FALKLAND ISLANDS

HOWARD JOHN STREDDER PEARCE C.V.O.,
Governor.

SUPPLEMENTARY APPROPRIATION (2005-2006) ORDINANCE 2006

(No: 1 of 2006)

(assented to: 15 March 2006)
(commencement: upon publication)
(published: 30 March 2006)

AN ORDINANCE

To appropriate and authorise the withdrawal from the Consolidated Fund of the additional sum of £629,650 for the service of the financial year ending 30 June 2006.

ENACTED by the Legislature of the Falkland Islands as follows —

Short Title

1. This Ordinance may be cited as the Supplementary Appropriation (2005-2006) Ordinance 2006.

Appropriation of further sum

2. The Financial Secretary may for the purposes specified in the Schedule cause to be withdrawn from the Consolidated Fund and applied to the service of the year commencing on 1 July 2005 and ending on 30 June 2006 ("the financial year") the further sum of £629,650 in addition to sums already appropriated by Ordinance.

Replenishment of Contingencies Fund

3. The Financial Secretary shall out of the sum appropriated by section 2 replenish the Contingencies Fund to the extent that sums specified in the Schedule, prior to the

commencement of this Ordinance, have been withdrawn from the Contingencies Fund by the authority of Contingencies Warrants Numbers 3 – 5 of 2005-2006 (the authority of which lapses on the commencement of this Ordinance).

SCHEDULE

<u>Number</u>	<u>Head of Service</u>	<u>Amount</u> £
OPERATING BUDGET		
0200	Health and Social Services	350,000
0250	Education and Training	38,620
0453	Court Services	17,500
0551	Police & Prisons	48,530
TOTAL OPERATING BUDGET		<hr/> 454,650
FUND TRANSFERS/TRANSFER PAYMENTS		
0999	Transfer Payments	175,000
TOTAL SUPPLEMENTARY EXPENDITURE		<hr/> 629,650 <hr/>

Passed by the Legislature of the Falkland Islands this 24th day of February 2006.

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.

ELIZABETH II



FALKLAND ISLANDS

HOWARD JOHN STREDDER PEARCE C.V.O.,
Governor.

Civil Contingencies (Emergency Powers) Ordinance 2006

(No: 2 of 2006)

ARRANGEMENT OF PROVISIONS

Section

1. Short title
2. Interpretation
3. Meaning of “emergency”
4. Power to make emergency regulations
5. Conditions for making emergency regulations
6. Scope of emergency regulations
7. Limitations of emergency regulations
8. Duration

ELIZABETH II



FALKLAND ISLANDS

HOWARD JOHN STREDDER PEARCE C.V.O.,
Governor.

CIVIL CONTINGENCIES (EMERGENCY POWERS) ORDINANCE 2006

(No: 2 of 2006)

(assented to: 15 March 2006)

(commencement: upon publication)

(published: 30 March 2006)

AN ORDINANCE

To provide powers to make regulations in the event of an emergency, the scope of those regulations and limitations on their provisions, their duration and the scrutiny of them by the Legislative Council.

ENACTED by the Legislature of the Falkland Islands as follows —

Short title

1. This Ordinance may be cited as the Civil Contingencies (Emergency Powers) Ordinance 2005.

Interpretation

2. In this Ordinance —

“continental shelf” has the meaning ascribed to that phrase for the purposes of international law in the first recital to Proclamation No.1 of 1991;

“controlled waters” has the meaning given by section 2(1) of the Offshore Minerals Ordinance 1994;

“emergency” has the meaning given by section 3;

“function” means any power or duty whether conferred by virtue of an enactment or otherwise;

“public functions” means —

- (a) functions conferred or imposed by or by virtue of an enactment,
- (b) functions of departments of government, and
- (c) functions of persons holding office under the Crown;

“serious delay” has the meaning given by section 4(3);

“terrorism” has the meaning given by section 1 of the Terrorism Act 2000;

“war” includes armed conflict.

Meaning of “emergency”

3.—(1) In this Part “emergency” means —

- (a) an event or situation which threatens serious damage to human welfare in the Falkland Islands;
- (b) an event or situation which threatens serious damage to the environment of the Falkland Islands or an area, district or locality of the Falkland Islands; or
- (c) war or terrorism, which threatens serious damage to the security of the Falkland Islands.

(2) For the purposes of subsection (1)(a) an event or situation threatens damage to human welfare only if it involves, causes or may cause —

- (a) loss of human life;
- (b) human illness or injury;
- (c) homelessness;
- (d) damage to property;
- (e) disruption of a supply of money, food, water, energy or fuel;
- (f) disruption of a system of communication;
- (g) disruption of facilities for transport; or

(h) disruption of services relating to health.

(3) For the purposes of subsection (1)(b) an event or situation threatens damage to the environment only if it involves, causes or may cause —

(a) contamination of land, water or air with biological, chemical or radio-active matter; or

(b) disruption or destruction of plant life or animal life.

(4) The Governor may by order amend subsection (2) so as to provide that in so far as an event or situation involves or causes disruption of a specified supply, system, facility or service —

(a) it is to be treated as threatening damage to human welfare; or

(b) it is no longer to be treated as threatening damage to human welfare.

(5) An order under subsection (4) —

(a) may make consequential amendment of this Ordinance; and

(b) may not be made unless a draft has been laid before, and approved by resolution of, the Legislative Council.

Power to make emergency regulations

4.—(1) The Governor, after consulting the Executive Council, may make emergency regulations if satisfied that the conditions in section 5 are satisfied.

(2) The Governor may make emergency regulations without first having consulted the Executive Council if satisfied —

(a) that the conditions in section 5 are satisfied; and

(b) that it would not be possible, without serious delay, to consult the Executive Council.

(3) In this section and in section 5 “serious delay” means a delay that might —

(a) cause serious damage; or

(b) seriously obstruct the prevention, control or mitigation of serious damage.

(4) Regulations under this section must be prefaced by a statement by the Governor —

(a) specifying the nature of the emergency in respect of which the regulations are made, and

(b) declaring that the Governor —

- (a) any application or representations made to the Governor by or on behalf of the person to whom it relates;
 - (b) any other representations made to the Governor in relation to it;
 - (c) any other matters which appear to the Governor to be relevant.
- (3) In considering whether to make a reference under section 2 or 3 the Governor may at any time refer any point on which he desires the assistance of the Court of Appeal to that Court for the Court's opinion on it; and on a reference under this subsection the Court of Appeal shall consider the point referred and furnish the Governor with the Court's opinion on the point.
- (4) Where the Governor makes a reference under section 2 or 3 the Governor shall —
- (a) give to the court to which the reference is made a statement of the Governor's reasons for making the reference; and
 - (b) send a copy of the statement to every person who appears to the Governor to be likely to be a party to any proceedings on the appeal arising from the reference.
- (5) Where a reference under section 2 or 3 is treated as an appeal against any conviction, verdict, finding or sentence, the appeal may be on any ground relating to the conviction, verdict finding or sentence (whether or not the ground is related to any reason given by the Governor for making the reference).
- (6) In every case in which —
- (a) an application has been made to the Governor by or on behalf of any person for the reference under section 2 or 3 of any conviction, verdict, finding or sentence; but
 - (b) the Governor decides not to make a reference of the conviction, verdict, finding or sentence,

the Governor shall give a statement of the reasons for his decision to the person who made the application.

Compensation for miscarriages of justice

6.—(1) Subject to subsection (2), when a person has been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice, the Governor shall pay compensation for the miscarriage of justice to the person who suffered punishment as the result of such conviction or, if he is dead, to his personal representatives, unless the disclosure of the unknown fact was wholly or partly attributable to the person convicted.

(2) No payment of compensation under this section shall be made unless an application for such compensation has been made to the Governor.

(3) The question as to whether there is a right to such compensation shall be determined by the Governor.

(4) If the Governor determines that there is a right to compensation, the amount of the compensation shall be determined by an assessor appointed by the Governor.

(5) In assessing so much of any compensation payable under this section to or in respect of a person as is attributable to suffering, harm to reputation or similar damage, the assessor shall have regard in particular to —

(a) the seriousness of the offence of which the person was convicted and the severity of the punishment resulting from the conviction;

(b) the conduct of the investigation and prosecution of the offence; and

(c) any other conviction of the person and any punishment resulting from them.

(6) In this section “reversed” shall be construed as referring to a conviction having been quashed—

(a) on an appeal out of time;

(b) on a reference under the previous provisions of this Ordinance.

(7) For the purposes of this section a person suffers punishment as a result of a conviction when sentence is passed on him for the offence of which he was convicted.

(8) A person shall not be appointed by the Governor under subsection (4) to be an assessor unless he holds one or more of the qualifications specified in section 79(2) of the Constitution.

Passed by the Legislature of the Falkland Islands this 24th day of February 2006.

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.

- (c) provide for or enable the destruction of property, animal life or plant life and may postpone the payment of compensation therefore for the duration of the emergency;
- (d) prohibit, or enable the prohibition of, movement to or from a specified place;
- (e) require, or enable the requirement of, movement to or from a specified place;
- (f) prohibit, or enable the prohibition of, assemblies of specified kinds, at specified places or at specified times;
- (g) prohibit, or enable the prohibition of, travel at specified times;
- (h) prohibit, or enable the prohibition of, other specified activities;
- (i) create an offence of—
 - (i) failing to comply with a provision of the regulations,
 - (ii) failing to comply with a direction or orders given or made under the regulations,
 - (iii) obstructing a person in the performance of a function under or by virtue of the regulations;
- (j) disapply or modify an enactment or provision made under or by virtue of any enactment;
- (k) require a person or body to act in performance of a function (whether the function is conferred by regulations or otherwise and whether or not the regulations also make provision for remuneration or compensation);
- (l) make provision (which may include powers in relation to property) for facilitating any deployment of Her Majesty's armed forces or the Falkland Islands Defence Force;
- (m) confer jurisdiction on a court or tribunal (which may include a tribunal established by the regulations);
- (n) make provision which has effect in relation to, or to anything done in —
 - (i) an area of the territorial sea,
 - (ii) an area within the fishing waters, or
 - (iii) an area of the continental shelf;
- (o) make provision which applies generally or only in specified circumstances or for a specified purpose; and

(p) make different provision for different circumstances or purposes.

(5) The Governor when making emergency regulations must have regard to the importance of ensuring, so far as is reasonably possible having regard to the nature and extent of the emergency, that the Executive Council, Legislative Council and the courts are able to conduct proceedings in connection with —

(a) the regulations; or

(b) action taken under the regulations.

Limitations of emergency regulations

7.—(1) Emergency regulations may make provision only if and so far as the Governor is satisfied —

(a) that the provision is appropriate for the purpose of preventing, controlling or mitigating an aspect or effect of the emergency in respect of which the regulations are made; and

(b) that the effect of the provision is in due proportion to that aspect or effect of the emergency.

(2) Emergency regulations must specify the areas, districts or localities of the Falkland Islands in relation to which the regulations have effect.

(3) Emergency regulations may not —

(a) require a person, or enable a person to be required, to provide military service, or

(b) prohibit or enable the prohibition of participation in, or any activity in connection with, a strike or other industrial action.

(4) Emergency regulations may not —

(a) create an offence other than one of the kind described in section 6(3)(i);

(b) create an offence triable only on indictment;

(c) create an offence which is punishable —

(i) with imprisonment for a period exceeding three months, or

(ii) with a fine exceeding the maximum of level 5 on the standard scale,

(d) alter procedure in relation to criminal proceedings; or

(e) amend this Ordinance.

Duration**8.—(1) Emergency regulations shall lapse —**

- (a) at the end of the period of thirty days beginning with the date on which they are made; or
- (b) at such earlier time as may be specified in the regulations.

(2) Subsection (1) —

- (a) shall not prevent the making of new regulations; and
- (b) shall not affect anything done by virtue of the regulations before they lapse.

Scrutiny by the Legislative Council**9.—(1) Where emergency regulations are made —**

- (a) they shall be laid before the Legislative Council as soon as is reasonably practicable; and
- (b) the regulations shall lapse at the end of the period of seven days beginning with the date of laying unless during that period the Legislative Council passes a resolution approving them.

(2) If the Legislative Council passes a resolution that emergency regulations shall cease to have effect, the regulations shall cease to have effect —

- (a) at such time, after the passing of the resolution, as may be specified in it; or
- (b) if no time is specified in the resolution, at the beginning of the day after that on which the resolution is passed.

(3) If the Legislative Council passes a resolution that emergency regulations shall have effect with a specified amendment, the regulations shall have effect as amended —

- (a) at such time, after the passing of the resolution, as may be specified in it; or
- (b) if no time is specified in the resolution, at the beginning of the day after that on which the resolution is passed.

(4) Nothing in this section —

- (a) shall prevent the making of new regulations; or
- (b) shall affect anything done by virtue of the regulations before they lapse, cease to have effect or are amended under this section.

Passed by the Legislature of the Falkland Islands this 24th day of February 2006.

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.

ELIZABETH II



FALKLAND ISLANDS

HOWARD JOHN STREDDER PEARCE C.V.O.,
Governor.

Employment of Children (Amendment) Ordinance 2006

(No: 3 of 2006)

ARRANGEMENT OF PROVISIONS

Section

1. Short title
2. Interpretation
3. Amendment of principal Ordinance

Schedule

ELIZABETH II



FALKLAND ISLANDS

HOWARD JOHN STREDDER PEARCE C.V.O.,
Governor.

EMPLOYMENT OF CHILDREN (AMENDMENT) ORDINANCE 2006

(No: 3 of 2006)

(assented to: 15 March 2006)
(commencement: upon publication)
(published: 30 March 2006)

AN ORDINANCE

To amend the Employment of Children Ordinance (Title 32.1)

ENACTED by the Legislature of the Falkland Islands as follows —

Short title

1. This Ordinance may be cited as the Employment of Children (Amendment) Ordinance 2006.

Interpretation

2. In this Ordinance “the principal Ordinance” means the Employment of Children Ordinance (Title 32.1).

Amendment of principal Ordinance

3. The principal Ordinance is amended in the manner specified in the Schedule hereto.

SCHEDULE
Amendment of principal Ordinance.

1. Section 3(1) of the principal Ordinance is replaced by the following —

“Restrictions on employment of children

3.—(1) Subject to the provisions of this section, no child shall be employed —

- (a) so long as he is under the age of 14 years;
- (b) before the close of school hours on any day which he is required to work;
- (c) to do any work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children, or without prejudice to the generality of the foregoing, to lift, carry or move anything so heavy as to be likely to cause injury to him;
- (d) before seven a.m. or after seven p.m. on any day;
- (e) for more than two hours on any day on which he is required to attend school; and
- (f) for more than two hours on any Sunday.

2. The following subsections are inserted in section 3 immediately after subsection (1) —

“(1A) A chorister taking part in a religious service or in choir practice for a religious purpose shall, whether he receives any reward or not, be deemed for the purposes of subsection (1) not to be employed.

(1B) Nothing in subsection (1) applies to employment as a baby-sitter of a child of 14 years or over.”

3. Section 4 of the principal Ordinance is amended by replacing “£20” with “level 3 on the standard scale”.

Passed by the Legislature of the Falkland Islands this 24th day of February 2006.

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.

ELIZABETH II



FALKLAND ISLANDS

HOWARD JOHN STREDDER PEARCE C.V.O.,
Governor.

Employment of Women, Young Persons and Children (Amendment) Ordinance 2006

(No: 4 of 2006)

ARRANGEMENT OF PROVISIONS

Section

1. Short title
2. The principal Ordinance
3. Amendment of the principal Ordinance

ELIZABETH II



FALKLAND ISLANDS

HOWARD JOHN STREDDER PEARCE C.V.O.,
Governor.

**EMPLOYMENT OF WOMEN, YOUNG PERSONS AND CHILDREN (AMENDMENT)
ORDINANCE 2006**

(No: 4 of 2006)

(assented to: 15 March 2006)
(commencement: upon publication)
(published: 30 March 2006)

AN ORDINANCE

To amend the Employment of Women, Young Persons and Children Ordinance (Title 32.2).

ENACTED by the Legislature of the Falkland Islands as follows —

Short title

1. This Ordinance may be cited as the Employment of Women, Young Persons and Children (Amendment) Ordinance 2006.

The principal Ordinance

2. In this Ordinance “the principal Ordinance” means the Employment of Women, Young Persons and Children Ordinance (Title 32.2).

Amendment of the principal Ordinance

3. The principal Ordinance is amended in the manner specified in the Schedule.

SCHEDULE
Amendment of the principal Ordinance

1. Section 2 of the principal Ordinance is amended by omitting the definition of ship.
2. Section 3 of the principal Ordinance is amended —
 - (a) by omitting —
 - (i) the words “or in any ship” in subsection (1); and
 - (ii) the proviso to that subsection;
 - (b) by replacing subsection (3) with the following subsection —

“(3) Where any child is employed in any industrial undertaking, a register of children who are so employed, and of the dates of their birth, shall be kept and shall at all times be open to inspection.”;
 - (c) by inserting the following subsection after subsection (4) —

“(4A) No child shall be employed in any work —

 - (a) which exposes the child to physical, psychological or sexual abuse;
 - (b) underground, under water, at dangerous heights or in confined spaces;
 - (c) with dangerous machinery, equipment or tools, without adequate training and, where necessary, adequate supervision.”;
 - (d) by repealing subsections (5) and (6);
 - (e) by replacing paragraph (a) of subsection (7) with the following —

“(a) sections 21 (1) and (2) and 28(1) and (3) of the Children and Young Persons Act 1933 in their application to the Falkland Islands shall have effect in relation to the employment of a child in an industrial undertaking in contravention of this Ordinance as they have effect in relation to the employment of a child in contravention of Part II of that Act.”;
 - (f) by repealing paragraphs (b) and (d) of subsection (7); and
 - (g) by replacing “£20” in each of paragraphs (c) and (e) of subsection (7) with “not exceeding the maximum of level 3 on the standard scale”.
3. Section 4(2) of the principal Ordinance is amended by deleting the words “or ship”.

4. Section 5(2) is amended by replacing "£5" with "the maximum of level 2 on the standard scale".

5. The Schedule to the principal Ordinance is repealed.

Passed by the Legislature of the Falkland Islands this 24th day of February 2006.

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.

ELIZABETH II



FALKLAND ISLANDS

HOWARD JOHN STREDDER PEARCE C.V.O.,
Governor.

Employers' Liability (Defective Equipment) Ordinance 2006

(No: 5 of 2006)

ARRANGEMENT OF PROVISIONS

Section

1. Short title and commencement
2. Extension of employers' liability for defective equipment

ELIZABETH II



FALKLAND ISLANDS

HOWARD JOHN STREDDER PEARCE C.V.O.,
Governor.

EMPLOYERS' LIABILITY (DEFECTIVE EQUIPMENT) ORDINANCE 2006

(No: 5 of 2006)

(assented to: 15 March 2006)
(commencement: in accordance with section 1)
(published: 30 March 2006)

AN ORDINANCE

To make further provision with respect to the liability of an employer for injury to his employee which is attributable to any defect in equipment provided by the employer for the purposes of the employer's business; and for purposes connected with that matter.

ENACTED by the Legislature of the Falkland Islands as follows —

Short title

1. This Ordinance may be cited as the Employers' Liability (Defective Equipment) Ordinance 2006 and shall come into force at the beginning of the third month after its publication in the Gazette.

Extension of employers' liability for defective equipment

2.—(1) Where after the commencement of this Ordinance —

- (a) an employee suffers personal injury in the course of his employment in consequence of a defect in equipment provided by his employer for the purposes of the employee's business; and

(b) the defect is attributable wholly or partly to the fault of a third party (whether identified or not),

the injury shall be deemed also to be attributable to negligence on the part of the employer (whether or not he is liable in respect of the injury apart from this subsection), but without prejudice to the law relating to contributory negligence and to any remedy by way of contribution or in contract or otherwise which is available to the employer in respect of the injury.

(2) In so far as any agreement purports to exclude or limit any liability of an employer arising under subsection (1) of this section, the agreement shall be void.

(3) In this section —

“business” includes the activities carried on by any public body;

“employee” means a person who is employed by another person under a contract of service or apprenticeship and is so employed for the purposes of a business carried on by that other person, and “employer” shall be construed accordingly;

“equipment” includes any plant and machinery, vehicle, aircraft and clothing;

“fault” means negligence, breach of statutory duty or other act or omission which gives rise to liability in tort in the Falkland Islands; and

“personal injury” includes loss of life, any impairment of a person’s physical or medical condition and any disease.

(4) This section binds the Crown and persons in the service of the Crown shall accordingly be treated as employees of the Crown if they would not be so treated apart from this section.

Passed by the Legislature of the Falkland Islands this 24th day of February 2006.

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.

ELIZABETH II



FALKLAND ISLANDS

HOWARD JOHN STREDDER PEARCE C.V.O.,
Governor.

Taxes (Amendment) Ordinance 2006

(No: 6 of 2006)

ARRANGEMENT OF PROVISIONS

Section

1. Short title, commencement and interpretation
2. Amendments to meaning of "income" and "expenses", including provisions bringing dealings in fishing rights within the charge to tax
3. Amendment of section 15
4. Corporation tax: late filing penalties
5. Special provisions relating to owners of fishing rights etc
6. Capital allowances: repeal of spent transitional provisions
7. Information relating to fisheries to be given to the Commissioner of Taxation
8. Apportionment of deductions for non-residents
9. Minor and clarifying amendments

ELIZABETH II



FALKLAND ISLANDS

HOWARD JOHN STREDDER PEARCE C.V.O.,
Governor.

TAXES (AMENDMENT) ORDINANCE 2006

(No: 6 of 2006)

(assented to: 15 March 2006)
(commencement: in accordance with section 1)
(published: 30 March 2006)

AN ORDINANCE

To amend the Taxes Ordinance 1997.

ENACTED by the Legislature of the Falkland Islands as follows —

Short title, commencement and interpretation

1.—(1) This Ordinance may be cited as the Taxes (Amendment) Ordinance 2006.

(2) With the exception of section 5 this Ordinance shall come into force on 1st March 2006. Section 5 shall come into force on such date as may be fixed by a notice by the Governor published in the Gazette and which has been approved by a prior resolution of the Legislative Council. Subject to any provision to the contrary, this Ordinance shall have effect in relation to the charge to tax for corporation tax years beginning on or after 1st January 2006 and for years of assessment beginning on or after 1st January 2007.

(3) In this Ordinance “the Taxes Ordinance” means the Taxes Ordinance 1997(a).

(a) No 14 of 1997

Amendments to meaning of “income” and “expenses”, including provisions bringing dealings in fishing rights within the charge to tax

2.—(1) Section 2 of the Taxes Ordinance (interpretation) shall be amended as follows.

(2) In subsection (1) the following definitions shall be inserted in the appropriate places —

“disposal”, in relation to any individual transferable quota or charge, includes any sale or transfer of the quota or charge or of any interest in the quota or charge, whether or not registered under the Fisheries (Conservation and Management) Ordinance 2005(b);

“expenses” includes any expenditure incurred by any person in acquiring the whole or any part of an individual transferable quota, or of a charge on such a quota, (and, accordingly, the quota or charge represented by any such expenditure shall not be depreciated in the computation of that person’s chargeable income for any chargeable period);

“individual transferable quota” has the meaning given by section 17(1) of the Fisheries (Conservation and Management) Ordinance 2005.

(3) In subsection (1) the following definition shall be substituted for the definitions of “income”—

“ “income” includes —

(a) any consideration accruing to a person in respect of the disposal by that person of the whole or any part of an individual transferable quota, or in respect of the creation or transfer of a charge on such a quota, (and, accordingly, the quota or charge represented by any such expenditure shall not be depreciated in the computation of that person’s chargeable income for any chargeable period), and

(b) emoluments of an employment received otherwise than in cash and any amount in respect which an employee is chargeable to tax by virtue of section 8(1)(c)(c);

and, subject to that, references to income shall be construed in accordance with section 8;”

Amendment of section 15

3.—(1) Paragraph (d) of subsection (3) of section 15, which refers to the Old Age Pensions Ordinance which was superseded by the Retirement Pensions Ordinance(d), is hereby repealed.

(2) In section 15(3)(e), which allows contributions made under the Retirement Pensions Ordinance 1996 made by an individual to be deducted from his taxable income, after the words “made by the individual” there shall be inserted the words “in respect of himself”.

(b) No 14 of 2005

(c) inserted by No 23 of 2003

(d) No 20 of 1996

Corporation tax: late filing penalties

4.—(1) In section 33(2)(c) of the Taxes Ordinance (penalty for late filing of accounts) for the words “at the time immediately before the accounts are delivered” there shall be substituted the words “on the date immediately following the end of that 6 month period”.

(2) Subsection (1) shall apply in any case where the accounts are delivered on or after 1st March 2006.

Special provisions relating to owners of fishing rights etc

5. The following sections shall be inserted in the Taxes Ordinance after section 100 —

“Taxation of proceeds of share dealing in certain fishing companies

100A.—(1) Where a person disposes of unquoted shares which derive their value in whole or in part from any individual transferable quota, then —

(a) if the consideration for the disposal of the shares exceeds the acquisition costs of the shares, an amount equal to that excess shall be deemed to be income accruing to that person at the time of the disposal, and

(b) where the acquisition costs of the shares exceed the consideration, an amount equal to that excess shall be allowable as a deduction in the computation of that person's chargeable income for the year in which the disposal takes place.

(2) For the purposes of subsection (1) “acquisition costs” in relation to the disposal of any shares by any person, means —

(a) expenditure (in money or money's worth) incurred by that person in the acquisition of the shares, and

(b) the incidental costs incurred by him in connection with the disposal.

For this purpose “incidental costs” has the meaning given by paragraph 1(3) of Schedule 2.

(3) The following provisions of this Ordinance shall apply for the purposes of this section as they apply for the purposes of Chapter II of Part VI of this Ordinance, that is to say, sections 142(1), 144, 146 and 147(4) and (5).

(4) For the purposes of subsection (3), in Chapter II of part VI of the Taxes Ordinance —

(a) any reference to exploration or exploitation rights shall be read as a reference to individual transferable quota, and

(b) any reference to a chargeable gain shall be omitted.

Notification to Commissioner where fishing rights transferred etc

100B.—(1) Any person who acquires or disposes of the whole or any part of any individual transferable quota shall give notice in the prescribed form to the Commissioner of the acquisition or disposal not later than 28 days after the date of the acquisition or disposal.

(2) Any person who acquires or disposes of any interest in unquoted shares which derive their value in whole or in part from individual transferable quota shall give notice in the prescribed form to the Commissioner of the acquisition or disposal not later than 28 days after the date of the acquisition or disposal.

(3) Any person who fails to give notice in accordance with subsection (1) or (2) shall be liable to a penalty of £100 and to a further penalty of £50 for every month or part of a month during which the default continues.”

Capital allowances: repeal of spent transitional provision

6. Section 124 of the Taxes Ordinance, which contained transitional provisions relating to allowances under the Seventh Schedule to the Income Tax Ordinance, is hereby repealed.

Information relating to fisheries to be given to the Commissioner of Taxation

7. In section 203 of the Taxes Ordinance (public officers required to disclose information to Commissioner if required except in cases within subsection (2)) after subsection (2) there shall be inserted —

“(2A) Section 220 of the Fisheries (Conservation and Management) Ordinance 2005 shall be disregarded for the purposes of subsection (2).”

Apportionment of deductions for non-residents

8.—(1) In paragraph (1) of Rule 4 of the Apportionment of Deductions Rules(e) (which provides for deductions from taxable income under the Taxes Ordinance to be apportioned in the case of non-residents according to the time spent in the Falkland Islands during the year in which the income accrues to the taxpayer) after “not resident” there shall be inserted “nor ordinarily resident”.

(2) This section shall have effect in relation to the charge to income tax for the year of assessment 2006 and subsequent years.

Minor and clarifying amendments

9.—(1) The Taxes Ordinance shall have effect subject to the following amendments.

(2) In section 10 for paragraph (a) and the first paragraph (b) there shall be substituted —

“(a) in the case of any person other than a company —

(i) on the first £12,000 of his chargeable income, at 20 per cent.; and

(e) SR&O No 22 of 1997

- (ii) on the remainder, at 25 per cent.;"
- (3) In section 138(4) for "paragraph" substitute "section".
- (4) In section 178A(2)(a) "stating" is hereby repealed.
- (5) In section 181(2)(d) "or" is hereby repealed.
- (6) In section 183(12)(a)(i) the second "of" is hereby repealed.
- (7) In paragraph 1(8)(b) of Schedule 1, after "that section" there shall be inserted "that other company is".

Passed by the Legislature of the Falkland Islands this 24th day of February 2006.

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.

ELIZABETH II



FALKLAND ISLANDS

HOWARD JOHN STREDDER PEARCE C.V.O.,
Governor.

Criminal Justice (Amendment)(Miscarriages of Justice) Ordinance 2006

(No: 7 of 2006)

ARRANGEMENT OF PROVISIONS

Section

1. Short title
2. References to the Court of Appeal as to possible miscarriages in trials on indictment
3. Reference to the Supreme Court as to possible miscarriages of justice in summary trials
4. Conditions for making of reference
5. Further provisions about references
6. Compensation for miscarriages of justice

ELIZABETH II



FALKLAND ISLANDS

HOWARD JOHN STREDDER PEARCE C.V.O.,
Governor.

**CRIMINAL JUSTICE (AMENDMENT) (MISCARRIAGES OF JUSTICE)
ORDINANCE 2006**

(No: 7 of 2006)

(assented to: 15 March 2006)
(commencement: upon publication)
(published: 30 March 2006)

AN ORDINANCE

To provide for references by the Governor to the Court of Appeal of possible miscarriages of justice in relation to convictions on indictment in the Supreme Court; to provide for references by the Governor to the Supreme Court of possible miscarriages of justice in relation to convictions in courts of summary jurisdiction; to provide a right of compensation for miscarriages of justice in relation to convictions of criminal offences, and for connected purposes.

ENACTED by the Legislature of the Falkland Islands as follows —

Short title

1. This Ordinance may be cited as the Criminal Justice (Amendment)(Miscarriages of Justice) Ordinance 2006.

References to the Court of Appeal as to possible miscarriages in trials on indictment

2.—(1) Where a person has been convicted of an offence on indictment before the Supreme Court the Governor —

(a) may at any time refer the conviction to the Court of Appeal; and

(b) (whether or not he refers the conviction) may at any time refer to the Court of Appeal any sentence (not being a sentence fixed by law) imposed on, or in subsequent proceedings relating to, the conviction.

(2) A reference under subsection (1) of a person's conviction shall be treated for all purposes as an appeal by the person under section 4(1)(c) of the Court of Appeal Ordinance (Title 22.2).

(3) A reference under subsection (1) of a sentence imposed on, or in subsequent proceedings relating to, a person's conviction on an indictment shall be treated for all purposes as an appeal by the person under section 4(1)(d) of the Court of Appeal Ordinance against —

(a) the sentence; and

(b) any other sentence (not being a sentence fixed by law) imposed on or in subsequent proceedings relating to, the conviction or any other conviction on the indictment.

(4) On a reference under subsection (1) of a person's conviction on an indictment the Governor may give notice to the Court of Appeal that any other conviction on the indictment which is specified in the notice is to be treated as referred to the Court of Appeal under subsection (1).

(5) Where a verdict of not guilty by reason of insanity has been returned in the case of a person, the Governor may at any time refer the verdict to the Court of Appeal, and a reference under this subsection shall be treated for all purposes as an appeal under section of the Court of Appeal Ordinance against the verdict.

(6) Where a jury has returned findings, or in the case of a trial before a judge sitting without a jury, the judge has found, that a person is under a disability and that he did the act or made the omission charged against him, the Governor may at any time refer either or both of those findings to the Court of Appeal; and a reference under this subsection shall be treated for all purposes as an appeal under section 4(1)(f) of the Court of Appeal Ordinance against the finding or findings referred.

Reference to the Supreme Court as to possible miscarriages of justice in summary trials

3.—(1) Where a person has been convicted of an offence by a court of summary jurisdiction, the Governor —

(a) may at any time refer the conviction to the Supreme Court; and

(b) (whether or not he refers the conviction) may at any time refer to the Supreme Court any sentence imposed on, or in subsequent proceedings relating to, the conviction.

(2) A reference under subsection (1) of a person's conviction shall be treated for all purposes as an appeal against the conviction (whether or not he pleaded guilty).

(3) A reference under subsection (1) of a sentence imposed on, or in subsequent proceedings relating to, a person's conviction shall be treated for all purposes as an appeal by the person against —

(a) the sentence; and

(b) any other sentence imposed on, or in subsequent proceedings relating to, the conviction or any related conviction.

(4) On a reference under subsection (1) of a person's conviction the Governor may give notice to the Supreme Court that any related conviction which is specified in the notice is to be treated as referred to the Supreme Court.

(5) For the purposes of this section convictions are related if they are convictions of the same person by the same court on the same day.

Conditions for making of reference

4.—(1) A reference of a conviction, verdict, finding or sentence shall not be made under either of sections 2 and 3 unless —

(a) the Governor considers that there is a real possibility that the conviction, verdict, finding or sentence would not be upheld were the reference to be made;

(b) the Governor so considers —

(i) in the case of a conviction, verdict or finding, because of an argument, or evidence, not raised in the proceedings which led to it or on any appeal or application for leave to appeal against it; or

(ii) in the case of a sentence, because of an argument on a point of law, or information, not so raised, and

(c) an appeal against the conviction, verdict, finding or sentence has been determined or leave to appeal against it has been refused.

(2) Nothing in subsection (1)(b)(i) or (c) shall prevent the making of a reference if it appears to the Governor that there are exceptional circumstances which justify making it.

Further provisions about references

5.—(1) A reference of a conviction, verdict finding or sentence may be made under either of sections 2 and 3 either after an application has been made by or on behalf of the person to whom it relates or without an application having been made.

(2) In considering whether to make a reference of a conviction, verdict, finding or sentence under section 2 or 3 the Governor shall have regard to —

- (i) is satisfied that the conditions in section 5 are met;
- (ii) is satisfied that the regulations contain only provision which is appropriate for the purpose of preventing, controlling or mitigating an aspect or effect of the emergency in respect of which the regulations are made;
- (iii) is satisfied that the effect of the regulations is in due proportion to that aspect or effect of the emergency;
- (iv) is satisfied that the regulations are compatible with Chapter 1 of the Constitution (rights and freedoms of the individual); and
- (v) in the case of regulations made under subsection (2) is satisfied as to the matter specified in subsection (2)(b).

Conditions for making emergency regulations

5.—(1) This section specifies the conditions mentioned in section 4.

- (2) The first condition is that an emergency has occurred, is occurring or is about to occur.
- (3) The second condition is that it is necessary to make provision for the purpose of preventing, controlling or mitigating an aspect or effect of the emergency.
- (4) The third condition is that the need for provision referred to in subsection (3) is urgent.
- (5) For the purpose of subsection (3) provision which is the same as an enactment (“the existing legislation”) is necessary if, in particular —
 - (i) the existing legislation cannot be relied upon without the risk of serious delay;
 - (ii) it is not possible without the risk of serious delay to ascertain whether the existing legislation can be relied upon; or
 - (iii) the existing legislation might be insufficiently effective.
- (6) For the purpose of subsection (3) provision which could be made under an enactment other than section 4 (“the existing legislation”) is necessary if, in particular —
 - (a) the provision cannot be made under the existing legislation without the risk of serious delay;
 - (b) it is not possible without risk of serious delay to ascertain whether the provision can be made under existing legislation; or
 - (c) the provision might be insufficiently effective if made under existing legislation.

Scope of emergency regulations

6.—(1) Emergency regulations may make any provision which the Governor is satisfied is appropriate for the purpose of preventing, controlling or mitigating an aspect or effect of the emergency in respect of which the regulations are made.

(2) In particular, emergency regulations may make any provision which the Governor is satisfied is appropriate for the purpose of —

- (a) protecting human life, health or safety;
- (b) treating human illness or injury;
- (c) protecting or restoring property;
- (d) protecting or restoring a supply of money, food, water, energy or fuel;
- (e) protecting or restoring a system of communication;
- (f) protecting or restoring facilities for transport;
- (g) protecting or restoring the provision of services in relation to health;
- (h) protecting or restoring the activities of banks or other financial institutions;
- (i) preventing, containing or reducing the contamination of land water or air;
- (j) preventing, reducing or mitigating the effects of disruption or destruction of plant or animal life;
- (k) protecting or restoring activities of the Executive Council or the Legislative Council; or
- (l) protecting or restoring the performance of public functions.

(3) Emergency regulations may make provision of any kind that could be made by Ordinance or by the exercise of the Royal Prerogative; in particular, such regulations may —

(a) confer a function on a head of any Government department or other public officer, on a co-ordinator appointed under section 8 or any other specified person (and a function conferred may, in particular, be —

- (i) a power, or duty, to exercise a discretion, or
- (ii) a power to give directions or orders, whether written or oral);

(b) provide for or enable the requisition or confiscation of property, and may postpone the payment therefore of compensation for the duration of the emergency;

ELIZABETH II



FALKLAND ISLANDS

HOWARD JOHN STREDDER PEARCE C.V.O.,
Governor.

Planning (Amendment) Ordinance 2006

(No: 8 of 2006)

ARRANGEMENT OF PROVISIONS

Section

1. Short title
2. Repeal of section 5(3) of the Planning Ordinance 1991

ELIZABETH II



FALKLAND ISLANDS

HOWARD JOHN STREDDER PEARCE C.V.O.,
Governor.

PLANNING (AMENDMENT) ORDINANCE 2006

(No: 8 of 2006)

(assented to: 15 March 2006)
(commencement: upon publication)
(published: 30 March 2006)

AN ORDINANCE

To amend the Planning Ordinance 1991 (Title 55.3).

ENACTED by the Legislature of the Falkland Islands as follows —

Short title

1. This Ordinance may be cited as the Planning (Amendment) Ordinance 2006.

Repeal of section 5(3) of the Planning Ordinance 1991

2. Section 5(3) of the Planning Ordinance 1991 is repealed.

Passed by the Legislature of the Falkland Islands this 24th day of February 2006.

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

CURRENCY

Coins Order 2006

S. R. & O. No. 3 of 2006

Made: 16 March 2006

Published: 30 March 2006

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 Order 2006 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.

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 16th day of March 2006

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

SCHEDULE 1

Specifications of Falkland Islands coins to commemorate the Bicentenary of the Birth of Isambard Kingdom Brunel

Type	Cupro-nickel	Silver	Gold Proof	Gold Proof
Denomination	1 Crown	1 Crown	1/5 th Crown	1/25 th Crown
Weight (grams)	28.28	28.28	6.22	1.24
Diameter (millimetres)	38.60	38.60	22.00	13.92
Fineness	75% Cu 25% Ni	925 Sterling Silver	999.9 Gold	999.9 Gold
Quality	Brilliant Uncirculated	Proof	Proof	Proof
Shape	Round	Round	Round	Round
Edge	Milled	Milled	Milled	Milled
Edition Limit	Unlimited	10,000	2,000	5,000
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 "2006" at the bottom.			
Reverse Design	<p>The design depicts the ss Great Britain, as it would have appeared when sailing in Falkland Islands waters, with a cameo of Brunel above. The wording 'BICENTENARY OF THE BIRTH OF ISAMBARD KINGDOM BRUNEL' appears in the surround. The name of the vessel appears in the sea.</p> <p>The denomination is inscribed at the bottom of the reverse design.</p>			

SCHEDULE 2

Specifications of Falkland Islands coins to commemorate the Lives of John and James Clark Ross

Type	Cupro-nickel	Silver	Gold Proof	Gold Proof
Denomination	1 Crown	1 Crown	1/5 th Crown	1/25 th Crown
Weight (grams)	28.28	28.28	6.22	1.24
Diameter (millimetres)	38.60	38.60	22.00	13.92
Fineness	75% Cu 25% Ni	925 Sterling Silver	999.9 Gold	999.9 Gold
Quality	Brilliant Uncirculated	Proof	Proof	Proof
Shape	Round	Round	Round	Round
Edge	Milled	Milled	Milled	Milled
Edition Limit	Unlimited	10,000	2,000	5,000
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 "2006" at the bottom.			
Reverse Design	<p>The design of the North and South Poles and the vessels 'VICTORY' and 'EREBUS', with the wording '1771-JOHN ROSS-1856 ARCTIC 1800 - JAMES CLARK ROSS-1862 ANTARCTIC' appears in the surround.</p> <p>The denomination is inscribed at the bottom of the reverse design.</p>			

Printed by the Government Printer, Printing Office, Stanley, Falkland Islands.
Price: Seven Pounds and Thirty Pence.

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THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

Vol. 17

20th April 2006

No. 6

The following are published in this Supplement -

Capital Equalisation Fund Order 2006 (S. R. & O. No. 4 of 2006);

**Trade in Controlled Goods (Embargoed Destinations)(Amendment) Order 2006
(S. R. & O. No. 5 of 2006);**

Medicines Bill 2006; and

Currency (Amendment) Bill 2006.

SUBSIDIARY LEGISLATION

PUBLIC FUNDS ORDINANCE

Capital Equalisation Fund Order 2006

S. R. & O. No: 4 of 2006

Made: 24 March 2006

Published: 20 April 2006

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 Fund Order 2006 and comes into force upon publication.

Authorisation of expenditure out 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), and in addition to the sums authorised to be withdrawn from the Capital Equalisation Fund by the Capital Equalisation Fund Order 2005(b), the Capital Equalisation (No 2) Order 2005(c), the Capital Equalisation (No 3) Order 2005(d) and the Capital Equalisation (No 4) Order 2005(e) the Governor hereby authorises the Financial Secretary to withdraw from the Capital Equalisation Fund such further sums not exceeding five hundred and three thousand five hundred and forty pounds (£503,540) 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 24th day of March 2006

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

(a) s.11 inserted by s.5 of the Finance Ordinance 2004 (No 10 of 2004)

(b) SR&O No 3 of 2005

(c) SR&O No 12 of 2005

(d) SR&O No 18 of 2005

(e) SR&O No 21 of 2005

Schedule

Current Programme
2005/2006

SUMMARY OF EXPENDITURE

0954	Roads	500,000
0957	Municipal Services	3,300
0960	Departmental Assets	240
		<hr/> 503,540 <hr/>

EXPLANATORY NOTE

(not forming part of the above Order)

This Order authorises the Financial Secretary to withdraw additional sums not exceeding £503,540 out of the Capital Equalisation Fund to meet expenditure in the Government's approved Capital Programme, particulars of which additional sums are set out in the Schedule to the Order.

SUBSIDIARY LEGISLATION

TRADE

Trade in Controlled Goods (Embargoed Destinations)(Amendment) Order 2006

S. R. & O. No: 5 of 2006

Made: 24 March 2006

Published: 20 April 2006

Coming into force: in accordance with article 1

IN EXERCISE of my powers under article 5 of the Trade in Controlled Goods (Embargoed Destinations)(Overseas Territories) Order 2004(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 Trade in Controlled Goods (Embargoed Destinations)(Amendment) Order 2006 and shall be deemed to have come into force on 6th March 2006.

Amendment

2. Schedule 4 to the Trade in Controlled Goods (Embargoed Destinations)(Overseas Territories) Order is modified by deleting the words “Bosnia and Herzegovina” in Schedule 4 to the Trade in Controlled Goods (Embargoed Destinations)(Overseas Territories) Order 2004.

Made this 24th day of March 2006

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

EXPLANATORY NOTE
(not forming part of the above Order)

Bosnia and Herzegovina have by the Export Control (Bosnia and Herzegovina Order 2006 (SI 2006/300) with effect from 6th March 2006 been removed from Schedule 4 to the Trade in Controlled Goods (Embargoed Destinations) Order 2004 (SI 2004/318). That being so, the Governor is required by article 5 of the Trade in Controlled Goods (Embargoed Destinations)(Overseas Territories) Order 2004 (SI 2004/3103) to remove Bosnia and Herzegovina from Schedule 4 to that Order. The effect of doing that is that the embargo on the export of arms to Bosnia and Herzegovina is lifted.

Medicines Bill 2006

(No: of 2006)

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Schedule 1 Analysis of samples
Schedule 2 Amendment of Health Professions Ordinance

MEDICINES BILL 2006

(No: of 2006)

(assented to: 2006)
(commencement: in accordance with section 1)
(published: 2006)

A BILL

for

AN ORDINANCE

To make new provision for regulating the import, manufacture, sale and supply of and other dealings with medicinal products and veterinary medicinal products, and the sale and supply of non-medicinal poisons; to amend the Medical Practitioners, Midwives and Dentists Ordinance; and for connected purposes.

BE IT ENACTED by the Legislature of the Falkland Islands as follows —

PART 1

PRELIMINARY

Short title, commencement and application

1.—(1) This Ordinance may be cited as the Medicines 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.

(3) Nothing in this Ordinance applies to the prescription or supply of any medicinal product or veterinary medicinal product by any person acting in the course of his duty as a member of the armed forces of Her Majesty.

Interpretation: general

2.—(1) In this Ordinance —

“advertisement” has the meaning given by subsection (3);

“analysis” includes micro-biological assay but no other form of biological assay, and “analyse” has a corresponding meaning;

“animal” includes any bird, fish or reptile;

“assemble” (in relation to a medicinal product or veterinary medicinal product) means enclosing the product (with or without other products of the same description) in a container which is

labelled before the product is sold or supplied, or, where the product (with or without other products of the same description) is already enclosed in the container in which it is to be sold or supplied, labelling the container before the product is sold or supplied in it, and “assembly” has a corresponding meaning;

“authorised person” means —

- (a) the Chief Medical Officer, or
- (b) an inspector appointed under section 30(2);

“board” (in relation to a body corporate) means the body of persons controlling the body corporate, by whatever name called;

“business” includes a professional practice and any activity carried on by a body of persons, whether corporate or unincorporated;

“Community authorisation” means a marketing authorisation granted under the EC Regulation;

“composition” (in relation to a medicinal product) means the ingredients of which the product consists and the proportions, and the degrees of strength, quality and purity, in which those ingredients are contained in it respectively;

“container” (in relation to a medicinal product or veterinary medicinal product) means the bottle, jar, box, packet or other receptacle which contains or is to contain the product, not being a capsule, cachet or other article in which it is or is to be administered, and, where any such receptacle is or is to be contained in another such receptacle, includes the former but does not include the latter receptacle;

“contravention” includes failure to comply, and “contravene” has a corresponding meaning;

“dentist” means a person for the time being entered in the register of dentists kept under the Health Professions Ordinance;

“disease” includes any injury, ailment or adverse condition, whether of body or mind;

“doctor” means a person for the time being entered in the register of medical practitioners kept under the Health Professions Ordinance;

“the EC code” means Directive 2001/83/EC on the Community code relating to medicinal products for human use;

“the EC Regulation” (subject to subsection (7)) means Regulation (EC) No 726/2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency;

“the EC veterinary code” means Directive 2001/82/EC on the Community code relating to veterinary medicinal products;

“hospital” includes a clinic, nursing home or similar institution;

“ingredient” (in relation to the manufacturer or preparation of a substance) includes anything which is the sole active ingredient of that substance as manufactured or prepared;

“label” (in relation to a container or package of a medicinal product or veterinary medicinal product) means a notice describing or otherwise relating to the contents and affixed to or otherwise displayed on the container or package, and “labelling” has a corresponding meaning;

“manufacture” (in relation to a medicinal product or veterinary medicinal product) includes any process carried out in the course of making the product, but does not include dissolving or dispersing the product in, or diluting or mixing it with, some other substance used as a vehicle for the purpose of administering it and does not include the incorporation of the product in any animal feeding stuff;

“manufacturer’s licence” means a manufacturer’s licence granted in the United Kingdom under section 8(2) of the UK Act;

“medicinal product” means —

(a) any substance or combination of substances presented for treating or preventing disease in human beings; or

(b) any substance or combination of substances which may be administered to human beings with a view to making a medical diagnosis or to restoring, correcting or modifying physiological functions in human beings.

“medicinal product (or veterinary medicinal product) on general sale” means a medicinal product (or veterinary medicinal product) other than one to which section 8 applies;

“midwife” means a person for the time being entered in the register of midwives kept under the Health Professions Ordinance;

“non-medicinal poison” means a substance which is included in Part I or Part II of the poisons list and is neither —

(a) a medicinal product or veterinary medicinal product; nor

(b) a substance in relation to which, by virtue of regulations under section 44 (and whether, in the case of regulations under section 44(1), it is referred to in the regulations as a substance or as an article), sections 6, 7 and 19 to 22 (whether subject to exceptions and modifications or not and with or without other provisions of this Ordinance) have effect as they have effect in relation to medicinal products or veterinary medicinal products;

“offence under this Ordinance” includes an offence under any regulations made under this Ordinance;

“official analyst” means an analyst approved in writing by the Governor;

“the official list” means the list kept under section 26(1);

“package” (in relation to any medicinal products or veterinary medicinal products) means any box, packet or other article in which one or more containers of the products are or are to be enclosed, and, where any such box, packet or other article is or is to be itself enclosed in one or more other boxes, packets or other articles, includes each of the boxes, packets or articles in question;

“pharmacist” means a person for the time being registered in the register of pharmacists kept under the Health Professions Ordinance;

“the poisons list” means the poisons list having effect in the Falkland Islands by virtue of section 23;

“the poisons rules” means the rules mentioned in section 28, as they have effect in the Falkland Islands by virtue of regulations under that section;

“practitioner” means —

(a) in relation to medicinal products —

(i) a doctor,

(ii) a dentist,

(iii) a nurse or midwife holding prescribed qualifications or fulfilling prescribed conditions, or

(iv) any other person holding prescribed qualifications or fulfilling prescribed conditions;

(b) in relation to veterinary medicinal products —

(i) a veterinary surgeon,

(ii) a veterinary practitioner, or

(iii) any other person holding prescribed qualifications or fulfilling prescribed conditions;

“prescribed”, except in Part 5, means prescribed by regulations under this Ordinance, and in Part 5 means prescribed by the poisons rules;

“product licence” means a product licence granted in the United Kingdom under section 7 of the UK Act;

“the register” (except in relation to a register kept under the Health Professions Ordinance) means the register kept under section 19;

“nurse” means a person for the time being entered in the register kept under the Health Professions Ordinance;

“registered pharmacy” means premises in respect of which a person is for the time being entered in the register;

“requirement” includes a restriction;

“retail sale” (or selling by retail) has the meaning given by section 3;

“substance” means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour;

“supply in circumstances corresponding to retail sale” has the meaning given by section 3;

“treat” (in relation to disease) includes doing or providing anything for alleviating the effects of the disease, whether it is done or provided by way of cure or not, and “treatment” has a corresponding meaning;

“the UK Act” means the Medicines Act 1968 (an Act of Parliament);

“UK authorisation”, in relation to medicinal products, means —

(a) a marketing authorisation granted in the United Kingdom under the Medicines for Human Use (Marketing Authorisations Etc.) Regulations 1994;

(b) a certificate granted in the United Kingdom under the Medicines (Homoeopathic Medicinal Products for Human Use) Regulations 1994;

(c) a product licence;

(d) a manufacturer’s licence;

(e) a clinical trial certificate issued in the United Kingdom under section 31 of the UK Act;

“UK authorisation”, in relation to veterinary medicinal products, means —

(a) a marketing authorisation granted in the United Kingdom under the Marketing Authorisations for Veterinary Medicinal Products Regulations 1994;

(b) a product licence;

(c) a manufacturer's licence;

(d) an animal test certificate issued in the United Kingdom under section 32 of the UK Act;

“UK medicines legislation” means —

(a) any provision of the UK Act,

(b) any provision of any Act of Parliament, or of any statutory instrument, amending, varying, modifying or replacing the UK Act, whether directly or indirectly;

(c) any statutory instrument made under the UK Act or any Act referred to in paragraph (b);
or

(d) any statutory instrument made under the European Communities Act 1972 (an Act of Parliament) and giving effect to any provision of —

(i) the EC code,

(ii) the EC veterinary code,

(iii) the EC Regulation, or

(iv) any European Community legislation from time to time amending or replacing any of the instruments mentioned in sub-paragraphs (i), (ii) and (iii);

“veterinary medicinal product” means —

(a) any substance or combination of substances presented as having properties for treating or preventing disease in animals; or

(b) any substance or combination of substances that may be used in, or administered to, animals with a view either to restoring, correcting or modifying physiological functions by exerting a pharmacological, immunological or metabolic action, or to making a medical diagnosis.

“veterinary practitioner” means a person registered in the supplementary veterinary register kept under section 8 of the Veterinary Surgeons Act 1966 (an Act of Parliament) or any equivalent register maintained under a corresponding law in force in Australia or New Zealand;

“veterinary surgeon” means a person registered in the register of veterinary surgeons kept under section 2 of the said Act of 1966 or any equivalent register maintained under a corresponding law in force in Australia or New Zealand.

(2) The Governor may by regulations amend the definitions of “Community authorisation”, “UK authorisation”, “veterinary practitioner” and “veterinary surgeon” in subsection (1).

(3) Subject to subsections (4) and (5), in this Ordinance “advertisement” includes every form of advertising, whether —

(a) in a publication, or

(b) by the display of any notice, or

(c) by means of any catalogue, price list, letter (whether circular or addressed to a particular person) or other document, or

(d) by words inscribed on any article, or

(e) by means of a photograph, film, sound recording or broadcast, or

(f) in any other way,

and any reference to issuing an advertisement shall be construed accordingly.

(4) “Advertisement” does not include spoken words except words forming part of a sound recording or broadcast.

(5) In subsections (3) and (4) “film”, “sound recording” and “broadcast” have the same meanings as in Part I of the Copyright, Designs and Patents Act 1988 (an Act of Parliament).

(6) References in this Ordinance to any legislation of the United Kingdom or the European Community are to that legislation as it may from time to time be amended or replaced.

“Retail sale” and related expressions

3.—(1) In this Ordinance any reference to selling by retail, or to retail sale, is a reference to selling a substance or article to a person as being a person who buys it for a purpose other than that of —

(a) selling or supplying it; or

(b) administering it or causing it to be administered to one or more human beings,

in the course of a business carried on by that person.

(2) In this Ordinance any reference to supplying anything in circumstances corresponding to retail sale is a reference to supplying it, otherwise than by way of sale, to a person as being a person who receives it for such a purpose as is mentioned in subsection (1).

(3) For the purposes of this section the provision of services by or on behalf of a public body or public officer shall be treated as the carrying on of a business by that body or officer.

Regulations: general

4.—(1) The Governor may by regulations prescribe anything which is to be prescribed under or for purposes of this Ordinance.

(2) Before making any regulations under this Ordinance the Governor shall consult the Chief Medical Officer and such other person or persons, if any, as the Governor thinks fit.

(3) Regulations under this Ordinance shall be subject to the approval of the Legislative Council.

(4) Regulations under this Ordinance —

(a) may for the purposes of the regulations apply any UK medicines legislation to the Falkland Islands as part of the law of the Falkland Islands, subject to such exceptions, adaptations and modifications as may be specified in the regulations; and

(b) may so apply any order or regulations made under the UK Act which may from time to time be in force in the United Kingdom (that is, any such order or regulations made after as well as before the making of the regulations under this Ordinance).

(5) Regulations under this Ordinance may include provision repealing or amending any provision of an enactment (other than this Ordinance) which appears to the Governor to be inconsistent with, or to be unnecessary or to require modification in consequence of, the order or regulations or any UK medicines legislation thereby applied to the Falkland Islands.

(6) Where regulations under this Ordinance make provision —

(a) under subsection (4), or

(b) corresponding to any UK medicines legislation,

that provision may be made retrospective to such date as may be specified in the regulations, not being earlier than the date from which the relevant UK medicines legislation had effect in England and Wales.

(7) A statement contained in regulations under this Ordinance that any provision of them corresponds to any UK medicines legislation shall be conclusive evidence of that fact.

PART 2

DEALINGS WITH MEDICINAL PRODUCTS

Principles

5. In exercising his functions under this Part the Governor shall have regard to the systems of control of dealings with medicinal products for the time being operating in the United Kingdom under —

- (a) the EC code, and any enactment or instrument giving effect to it;
- (b) the EC Regulation;
- (c) the UK Act;
- (d) any instrument or enactment from time to time amending or replacing any of the instruments and enactments mentioned in paragraphs (a), (b) and (c).

Restrictions on dealing with medicinal products

6.—(1) The Governor may by regulations make provision for controlling, restricting, regulating or prohibiting the following activities —

- (a) selling, supplying or otherwise placing on the market any medicinal product;
- (b) manufacturing or assembling any medicinal product;
- (c) distributing any medicinal product;
- (d) procuring the sale, supply or placing on the market otherwise than by sale or supply, manufacture, assembly or distribution of any medicinal product;
- (e) the import or export of any medicinal product;
- (f) possessing any medicinal product, with a view to selling or supplying it or otherwise placing it on the market;
- (g) issuing, sending or delivering any advertisement, or making any representation or recommendation in the course of a business, relating to any medicinal product.

(2) Regulations under subsection (1) may impose such requirements as the Governor considers necessary or expedient for any of the purposes specified in subsection (3) with respect to —

- (a) the labelling of containers of medicinal products;
- (b) the labelling of packages of medicinal products;
- (c) the display of distinctive marks on containers and packages of medicinal products;

- (d) the supply with medicinal products of leaflets;
 - (e) the strength, materials, shape or other characteristics of containers of medicinal products.
- (3) The purposes referred to in subsection (2) are —
- (a) securing that medicinal products are correctly described and readily identifiable;
 - (b) securing that any appropriate warning or other appropriate information or instruction is given, and that false or misleading information is not given, with respect to medicinal products;
 - (c) promoting safety in relation to medicinal products; and
 - (d) in relation to subsection (2)(e), preserving the quality of medicinal products.
- (4) Regulations under this section —
- (a) may provide for giving effect in the Falkland Islands, in such circumstances and subject to such conditions as may be prescribed, to Community authorisations and UK authorisations; and
 - (b) may provide for giving effect in the Falkland Islands, subject to such conditions as may be prescribed, to any other authorisation, licence, consent, certificate or other document relating to any activity mentioned in subsection (1) and granted or issued (in the United Kingdom or elsewhere) under any Community instrument.

Exemptions

7.—(1) The Governor may by regulations provide for the exemption, in such circumstances and subject to such conditions as are prescribed, from any control, restriction, regulation or prohibition imposed under section 6(1), for —

- (a) prescribed activities in the course of his profession of a practitioner;
- (b) prescribed activities in a registered pharmacy or a hospital of, or under the supervision of, a pharmacist or the Chief Medical Officer.

(2) The Governor may by regulations provide for further exemptions, in such circumstances and subject to such conditions as are prescribed, from any such control, restriction, regulation or prohibition.

General sale of medicinal products

8.—(1) This section applies to any medicinal product, except one which under the terms of a Community authorisation or UK authorisation may be sold or supplied otherwise than by, or under the supervision of, a pharmacist.

(2) Regulations under section 6 may prohibit, except in such circumstances and subject to such conditions as may be prescribed, any person, in the course of a business carried on by him, selling by retail, offering or exposing for sale by retail, or supplying in circumstances corresponding to retail sale, any medicinal product to which this section applies unless —

(a) the product is sold, offered or exposed for sale, or supplied, in a registered pharmacy; and

(b) that person, or, if the transaction is carried out on his behalf by another person, then that other person, is, or acts under the supervision of, a pharmacist.

(3) Subsection (2) is without prejudice to the generality of section 6, and does not preclude the making of any other provision under that section with respect to any medicinal product to which this section applies.

Medicinal products on prescription only

9.—(1) This section applies to medicinal products which under the terms of a Community authorisation or UK authorisation are not to be sold by retail except in accordance with a prescription given by a person holding specified qualifications or complying with specified conditions.

(2) Regulations under section 6 may prohibit, except in such circumstances and subject to such conditions as may be prescribed, any person, in the course of a business carried on by him, selling by retail, offering or exposing for sale by retail, or supplying in circumstances corresponding to retail sale, a medicinal product to which this section applies unless it is sold or supplied in accordance with a prescription given by a person holding such qualifications, and complying with such conditions, as may be prescribed.

(3) Subsection (2) is without prejudice to the generality of section 6, and does not preclude the making of any other provision under that section with respect to any medicinal product to which this section applies.

Regulations under Part 2

10.—(1) Regulations under this Part may provide that any person contravening a specified requirement of the regulations commits an offence and is liable to a fine not exceeding the maximum of level 4 on the standard scale.

(2) Regulations under this Part may —

(a) require —

(i) as a condition for carrying on any activity to which the regulations relate, or

(ii) as a condition for any exemption conferred under section 7,

any person to be entered in a register kept, or the holder of a licence or certificate issued, by a prescribed person or authority for the purpose of the regulations, or any premises to be entered in a register so kept;

(b) impose conditions in respect of the entry or retention of persons or premises in such a register, or the issue of such a licence or certificate, including conditions requiring the payment of fees;

(c) make provision as to —

(i) applications for entry or retention in such a register, or the issue or renewal of such a licence or certificate,

(ii) the making of entries in the register or the issue of such a licence or certificate,

(iii) the duration, renewal, suspension and revocation of registration, licences or certificates;

(iv) reviews of, and appeals to a prescribed authority against, any decision relating to registration, licences or certificates.

(3) Before making any regulations under this Part the Governor shall consult the Chief Medical Officer and such persons or organisations as appear to the Governor to be representative of —

(a) any profession appearing to the Governor to be substantially affected by the regulations, and

(b) other interests likely to be substantially affected by the regulations.

(4) This section is without prejudice to section 4.

Application to veterinary medicinal products

11. This Part applies to veterinary medicinal products as it applies to medicinal products, with the following modifications —

(a) in section 5(a), for “the EC code” substitute “the EC veterinary code”;

(b) in section 10(3), after “Chief Medical Officer” insert “, the Senior Veterinary Officer”.

PART 3

CONSUMER PROTECTION

Adulteration of medicinal products

12. No person shall —

(a) add any substance to, or abstract any substance from, a medicinal product so as to affect injuriously the composition of the product, with intent that the product shall be sold or supplied in that state; or

(b) sell or supply, or offer or expose for sale or supply, or have in his possession for the purpose of sale or supply, any medicinal product whose composition has been injuriously affected by the addition or abstraction of any substance.

Protection of purchasers of medicinal products

13.—(1) No person shall, to the prejudice of the purchaser, sell any medicinal product which is not of the nature or quality demanded by the purchaser.

(2) No person shall sell or supply, in pursuance of a prescription given by a practitioner, any medicinal product which is not of the nature or quality specified in the prescription.

(3) Subsection (1) or (2) shall not be taken to be contravened by reason only that a medicinal product contains some extraneous matter, if it is proved that the presence of that matter was an inevitable consequence of the process of manufacture of the product.

(4) Subsection (1) or (2) shall not be taken to be contravened by reason only that a substance has been added to, or abstracted from, the medicinal product, if it is proved that —

(a) the addition or abstraction was not carried out fraudulently, and did not injuriously affect the composition of the product; and

(b) the product was sold having attached to it, or to a container or package in which it was sold, a conspicuous notice of adequate size and legibly printed, specifying the substance added or abstracted.

(5) For the purposes of this section, the sale of a medicinal product shall not be taken to be otherwise than to the prejudice of the purchaser by reason only that the purchaser buys the product for the purpose of analysis or examination.

Compliance with published standards

14.—(1) No person shall, in the course of a business carried on by him —

(a) sell a medicinal product which has been demanded by the purchaser by, or by express reference to, a particular name; or

(b) sell or supply a medicinal product in pursuance of a prescription given by a practitioner in which the product required is described by, or by express reference to, a particular name,

if that name is, or is an approved synonym for, a name at the head of the relevant monograph and the product does not comply with the standard specified in that monograph.

(2) No person shall, in the course of a business carried on by him, sell or supply a medicinal product which, in the course of that business, has been offered or exposed for sale and has been so offered or exposed for sale by, or by express reference to, a particular name, if that name is, or is an approved synonym for, a name at the head of the relevant monograph and the product does not comply with the standard specified in that monograph.

(3) Where a medicinal product is sold or supplied in the circumstances specified in subsection (1) or (2), and the name in question is the name, not of the product itself, but of an active ingredient of the product, then, for the purposes of the subsection in question, the product shall be taken not to comply with the standard specified in the relevant monograph if, in so far as it consists of that ingredient, it does not comply with the standard so specified.

(4) Subject to subsection (7), in this section —

“publication” means —

(a) the European Pharmacopoeia,

(b) the British Pharmacopoeia,

(c) the British Pharmaceutical Codex, or

(d) any compendium published under Part VII of the UK Act;

“the relevant monograph”, in relation to the sale or supply of a medicinal product which has been demanded, described in a prescription, or offered or exposed for sale, by or by express reference to a particular name —

(a) if, together with that name, there was specified a particular edition of a particular publication, means the monograph (if any) headed by that name, or by a name for which it is an approved synonym, in that edition of that publication, or, if there is no such monograph in that edition, means the appropriate current monograph (if any) headed by that name;

(b) if, together with that name, there was specified a particular publication, but not a particular edition of that publication, means the monograph (if any) headed by that name in the current edition of that publication, or, if there is no such monograph in that edition, means the appropriate current monograph (if any) headed by that name or by a name for which it is an approved synonym, or, in default of such a monograph, means the monograph headed by that name or by a name for which it is an approved synonym in the latest edition of the specified publication which contained a monograph so headed;

(c) if no publication was specified together with that name, means the appropriate current monograph (if any);

“current” means current at the time when the medicinal product in question is demanded, described in a prescription, or offered or exposed for sale, as mentioned in subsection (1) or (2).

(5) In this section “the appropriate current monograph”, in relation to a particular name, means—

(a) the monograph (if any) headed by that name, or by a name for which it is an approved synonym, in the current edition of the European Pharmacopoeia; or

(b) if there is no such monograph, then the monograph (if any) headed by that name in the current edition of the British Pharmacopoeia; or

(c) if there is no such monograph, then the monograph (if any) headed by that name in the current edition of a compendium published under Part VII of the UK Act; or

(d) if there is no such monograph, then the monograph (if any) headed by that name in the current edition of the British Pharmaceutical Codex.

(6) Subject to subsection (7), for the purposes of this section an edition of a publication —

(a) if it is the current edition of that publication, shall be taken as it is for the time being in force (that is to say, together with any amendments, additions and deletions made to it up to the time referred to in subsection (4)); or

(b) if it is an edition previous to the current edition of that publication, shall be taken as it was immediately before the time when it was superseded by a subsequent edition of that publication (that is to say, together with any amendments, additions and deletions made to it up to that time),

and any monograph in an edition of a publication shall be construed in accordance with any general monograph or notice or any appendix, note or other explanatory material which is contained in that edition and is applicable to that monograph, and any reference in this section to compliance with the standard specified in a monograph shall be construed accordingly.

(7) For the purposes of this section, an edition of the European Pharmacopoeia —

(a) if it is the current edition of that Pharmacopoeia at the time in question, shall be taken as it is for the time being in force in the United Kingdom (that is, together with any amendments, additions and deletions made to it which, by notice published in the London Gazette under section 65(7) of the UK Act before the time referred to in subsection (4), have been declared to have effect for the purposes of the said section 65); and

(b) if it is an edition previous to the current edition of that Pharmacopoeia, shall be taken as it was immediately before the time when it was superseded by a subsequent edition of that Pharmacopoeia in force in the United Kingdom (that is, together with any amendments, additions and deletions made to it which, by notice so published before that time, had been declared so to have effect),

and a name shall be taken to be an approved synonym for a name at the head of a monograph in the European Pharmacopoeia if, by a notice so published and not withdrawn by any subsequent notice so published, it has been declared to be approved by the Medicines Commission in the United Kingdom as a synonym for that name.

Misleading descriptions etc

15.—(1) No person shall, in the course of a business carried on by him, sell or supply, or have in his possession for the purpose of sale or supply, a medicinal product of any description in a container or package which is labelled or marked in such a way that the container or package —

(a) falsely describes the product; or

(b) is likely to mislead as to the nature or quality of the product or as to the uses or effects of medicinal products of that description.

(2) No person shall, in the course of a business carried on by him, supply with a medicinal product of any description, or have in his possession for the purpose of so supplying, a leaflet which —

(a) falsely describes the product; or

(b) is likely to mislead as to the nature or quality of the product or as to the uses or effects of medicinal products of that description.

Display of information on automatic machines

16.—(1) The Governor may by regulations impose such requirements as it considers necessary or expedient with respect to the display on automatic machines of information relating to medicinal products offered or exposed for sale by means of such machines.

(2) No person shall offer or expose for sale any medicinal product by means of an automatic machine in such circumstances as to contravene any requirements imposed by regulations under subsection (1) which are applicable to that product.

Offences

17.—(1) Any person who contravenes section 12, 13(1) or (2), 14(1) or (2) or 15(1) or (2) commits an offence and is liable to a fine not exceeding the maximum of level 5 on the standard scale.

(2) Any person who contravenes section 16(2) commits an offence and is liable to a fine not exceeding the maximum of level 3 on the standard scale.

Application to veterinary medicinal products

18. This Part applies to veterinary medicinal products as it applies to medicinal products, with the substitution, in section 14(4) and (5)(d), of "British Veterinary Codex" for "British Pharmaceutical Codex".

PART 4 PHARMACIES

Register of pharmacies

19.—(1) The Chief Medical Officer shall keep for the purposes of this Part a register ("the register") of persons entitled, on premises in respect of which their names are entered in the register, to sell by retail, or to supply in circumstances corresponding to retail sale, medicinal products or veterinary medicinal products (other than medicinal products or veterinary medicinal products on general sale).

(2) Subject to the provisions of this Part, the Chief Medical Officer shall enter in the register the name of any person who makes an application to the Chief Medical Officer in the prescribed form to have his name entered in the register in respect of the premises mentioned in the application.

(3) The Chief Medical Officer may refuse to enter in, or may remove from, the register the name of any person where it appears to the Chief Medical Officer that —

(a) that person —

(i) is not a pharmacist,

(ii) does not have actual charge of the premises in question, or

(iii) is not present when medicinal products or veterinary medicinal products (other than medicinal products or veterinary medicinal products on general sale) are sold by retail, or supplied in circumstances corresponding to retail sale, on the premises; or

(b) the premises do not comply with regulations under section 20.

(4) If any person is aggrieved by the refusal of the Chief Medical Officer to enter his name in the register or by the removal under this section of his name from that register (otherwise than by virtue of an order under subsection (5)), he may appeal against the refusal or removal to the Supreme Court.

(5) If any person whose name is entered in the register is convicted before any court of an offence under this Ordinance which, in the opinion of the court, renders him, or would if he were a pharmacist render him, unfit to be a pharmacist, the court may, as part of the sentence, order his name to be removed from the register and direct that he shall, for such period as may be specified in the order, be disqualified for having his name entered in the register.

(6) The register shall —

- (a) include particulars of the premises in respect of which the name of any person is entered in the register;
- (b) subject to paragraph (a), be in such form as may be prescribed; and
- (c) be open at all reasonable times to the inspection of any person without fee.

(7) The register may be kept otherwise than in documentary form; and where it is so kept, the requirement of subsection (6)(c) is satisfied if the Chief Medical Officer makes any part of which any person wishes to inspect available for inspection in visible and legible form.

Regulations as to premises

20.—(1) This section applies to any premises where medicinal products or veterinary medicinal products (other than medicinal products or veterinary medicinal products on general sale) are sold by retail or supplied in circumstances corresponding to retail sale.

(2) The Governor may by regulations provide for —

- (a) the standards of construction, accommodation and equipment to be complied with by premises to which this Part applies;
- (b) the precautions to be taken for the safe custody of medicinal products or veterinary medicinal products, or any class of medicinal products or veterinary medicinal products, on such premises;
- (c) the keeping of records with respect to medicinal products or veterinary medicinal products, or any class of medicinal products or veterinary medicinal products, on such premises; and
- (d) the inspection of any records so kept.

(3) Regulations under this section may provide that any person contravening a specified requirement of the regulations commits an offence and is liable to a fine not exceeding the maximum of level 4 on the standard scale.

Restrictions on use of titles, descriptions and emblems

21.—(1) No person shall —

- (a) take or use any of the following titles —
 - chemist and druggist,
 - druggist,

dispensing chemist, or

dispensing druggist; or

(b) take or use the title of chemist in connection with the sale of any goods by retail or the supply of any goods in circumstances corresponding to retail sale,

unless the conditions specified in subsection (2) are fulfilled.

(2) Those conditions are —

(a) he is a pharmacist, and

(b) he does not take or use the title in question in connection with any premises at which any goods are sold by retail, or are supplied in circumstances corresponding to retail sale, unless his name is entered in the register in respect of those premises.

(3) No person shall, in connection with a business carried on by him which consists of or includes the retail sale of any goods, or the supply of any goods in circumstances corresponding to retail sale, use the description “pharmacy” except in relation to premises in respect of which his name is entered in the register.

(4) No person who is not a pharmacist shall take or use any of the following titles —

pharmaceutical chemist,

pharmaceutist,

pharmacist,

member of the Royal Pharmaceutical Society, and

fellow of the Royal Pharmaceutical Society.

(5) Without prejudice to subsection (4), no person shall take or use any of those titles in connection with a business carried on (whether by him or by some other person) at any premises which consists of or includes the retail sale of any goods, or the supply of any goods in circumstances corresponding to retail sale, unless his name is entered in the register in respect of those premises.

(6) No person shall, in connection with any business, use any title, description or emblem likely to suggest —

(a) that he possesses any qualification with respect to the sale, manufacture or assembly of medicinal products or veterinary medicinal products which he does not in fact possess; or

(b) that any person employed in the business possesses any such qualification which that person does not in fact possess.

(7) For the purposes of subsection (6), the use of the description “pharmacy”, in connection with a business carried on at any premises, shall be taken to be likely to suggest that —

(a) the person carrying on the business is a pharmacist, and

(b) any other person, under whose personal control the business (so far as concerns the sale by retail of medicinal products or veterinary medicinal products or the supply of such products in circumstances corresponding to retail sale) is carried on at those premises, is also a pharmacist.

(8) Any person who contravenes this section commits an offence and is liable to a fine not exceeding the maximum of level 5 on the standard scale.

Modification etc. of restrictions under section 21

22.—(1) The Governor may by regulations provide that any of the restrictions imposed by section 21 shall cease to have effect, or shall have effect subject to such exceptions as may be specified in the regulations.

(2) Without prejudice to subsection (1), the Governor may by regulations impose (in addition to the restrictions under section 21) such further restrictions or other requirements with respect to the use of titles, descriptions and emblems as may be specified in the regulations.

(3) Any person who contravenes regulations under subsection (2) commits an offence and is liable to a fine not exceeding the maximum of level 5 on the standard scale.

PART 5 POISONS

Poisons list

23. The poisons list for the time being in force in Great Britain under section 2 of the Poisons Act 1972 (an Act of Parliament) shall have effect in the Falkland Islands.

Regulation of sale of poisons

24.—(1) Subject to the provisions of this Part, it is not lawful —

(a) for a person to sell any non-medicinal poison which is a substance included in Part I of the poisons list, unless the sale is effected —

(i) in a registered pharmacy, and

(ii) by, or under the supervision of, a pharmacist;

(b) for a person to sell any non-medicinal poison which is a substance included in Part II of the poisons list, unless —

(i) the sale is effected in a registered pharmacy; or

(ii) his name is entered in the official list in respect of the premises on which the poison is sold;

(c) for a person to sell any non-medicinal poison, whether it is a substance included in Part I or in Part II of the poisons list, unless the container of the poison is labelled in the prescribed manner —

(i) with the name of the poison;

(ii) in the case of a preparation which contains a poison as one of its ingredients, with the prescribed particulars as to the proportion which the poison contained in the preparation bears to the total ingredients;

(iii) with the word “poison” or other prescribed indication of the character of the article; and

(iv) with the name of the seller of the poison and the address of the premises on which it is sold.

(2) Subject to the provisions of this Part —

(a) it is not lawful to sell any non-medicinal poison which is a substance included in Part I of the poisons list to any person unless that person is either —

(i) certified in writing in the prescribed manner by a person authorised by the poisons rules to give a certificate for the purposes of this section; or

(ii) known by the seller or by a pharmacist in the employment of the seller at the premises where the sale is effected, to be a person to whom the poison may properly be sold;

(b) the seller of any such poison shall not deliver it until —

(i) he has made or caused to be made an entry in a book to be kept for that purpose stating in the prescribed form the date of the sale, the name and address of the purchaser and of the person (if any) by whom the certificate required under paragraph (a) was given, the name and quantity of the article sold and the purposes for which it is stated by the purchaser to be required; and

(ii) the purchaser has signed the entry.

(3) Subject to the provisions of this Part, it shall not be lawful for a non-medicinal poison to be exposed for sale in, or to be offered for sale by means of, an automatic machine.

Exclusion of sales by wholesale and certain other sales

25.—(1) Except as provided by the poisons rules, nothing in section 24(1) or (2) shall extend to or interfere with —

- (a) the sale of poisons by way of wholesale dealing; or
- (b) the sale of poisons to be exported to purchasers outside the Falkland Islands; or
- (c) the sale of an article to a doctor, dentist, veterinary surgeon or veterinary practitioner for the purpose of his profession; or
- (d) the sale of an article for use in or in connection with any hospital; or
- (e) the sale of an article by a person carrying on a business in the course of which poisons are regularly sold either by way of wholesale dealing or for use by the purchasers in their trade or business to —
 - (i) a person who requires the article for the purpose of his trade or business; or
 - (ii) a person who requires the article for the purpose of enabling him to comply with any requirements made by or in pursuance of any enactment with respect to the medical treatment of persons employed by him in any trade or business carried on by him; or
 - (iii) a public officer requiring the article in connection with the exercise by him or any other public officer or public authority of his or its functions; or
 - (iv) a person or institution concerned with scientific education or research, if the article is required for the purposes of that education or research.

(2) In this section “sale by way of wholesale dealing” means sale to a person who buys for the purpose of selling again.

Official list of persons entitled to sell certain poisons

26.—(1) The Chief Medical Officer shall keep for the purposes of this Part a list (“the official list”) of persons as being persons entitled, on premises in respect of which their names are entered in the official list, to sell non-medicinal poisons which are substances included in Part II of the poisons list.

(2) Subject to the provisions of this Part, the Chief Medical Officer shall enter in the official list the name of any person who makes an application to the Chief Medical Officer in the prescribed form to have his name entered in the list in respect of the premises mentioned in the application.

(3) The Chief Medical Officer may refuse to enter in, or may remove from, the official list the name of any person who fails to pay the prescribed fees, or who in the opinion of the Governor is, for any sufficient reason relating either to him personally or to his premises, not fit to be on that list.

(4) If any person is aggrieved by the refusal of the Chief Medical Officer to enter his name in the official list or by the removal under this section of his name from that list, he may appeal against the refusal or removal to the Supreme Court.

(5) In this section, "relating to him personally" means, in relation to a body corporate, relating personally to the members of the board, or to the managers or other officers of the body corporate.

Supplementary provisions as to official list

27.—(1) The official list shall —

(a) include particulars of the premises in respect of which the name of any person is entered in that list;

(b) subject to paragraph (a), be in such form as may be prescribed; and

(c) be open at all reasonable times to the inspection of any person without fee.

(2) A person whose name is entered in the official list shall pay to the Chief Medical Officer such fees as may be prescribed in respect of —

(a) the entry of his name in that list;

(b) the making of any alteration in that list in relation to the premises in respect of which his name is entered; and

(c) the retention of his name on that list in any year subsequent to the year in which his name is first entered in it (and for this purpose "year" means a period of 12 months beginning on such date as the Governor may from time to time determine).

(3) If any person whose name is entered in the official list is convicted before any court of any offence which, in the opinion of the court, renders him unfit to have his name on the list, the court may, as part of the sentence, order his name to be removed from that list and direct that he shall, for such period as may be specified in the order, be disqualified for having his name entered in the official list.

(4) It shall not be lawful for any person whose name is entered in the official list to use in connection with his business any title, emblem or description reasonably calculated to suggest that he is entitled to sell any poison which he is not entitled to sell.

Poisons rules

28. The Governor may by regulations apply to the Falkland Islands as part of the law of the Falkland Islands the poisons rules under section 7 of the Poisons Act 1972 (an Act of Parliament), subject to such exceptions, adaptations and modifications as may be specified in the regulations.

Offences

29.—(1) A person who acts in contravention of or fails to comply with any of the preceding provisions of this Part or with the poisons rules commits an offence and is liable to a fine not exceeding the maximum of level 5 on the standard scale.

(2) In the case of proceedings against a person under this section for or in connection with the sale, exposure for sale or supply of a non-medicinal poison effected by an employee —

(a) it shall not be a defence that the employee acted without the authority of the employer; and

(b) any material fact known to the employee shall be deemed to have been known to the employer.

PART 6 ENFORCEMENT

Enforcement etc

30.—(1) It is the duty of the Chief Medical Officer to enforce this Ordinance, any regulations made under it and the poisons rules.

(2) The Governor may appoint one or more inspectors to assist the Chief Medical Officer in enforcing this Ordinance, regulations made under it and the poisons rules, and may terminate any appointment made under this subsection, and every Government Medical Officer shall be deemed to have been appointed under this subsection.

Rights of entry

31.—(1) Subject to the following provisions of this section, an authorised person an authorised person shall, on production, if required, of his credentials, have a right at any reasonable time to enter any premises —

(a) for the purpose of ascertaining whether there is or has been, on or in connection with those premises, any contravention of any provision of this Ordinance or of any regulations made under this Ordinance; or

(b) generally for the purposes of the performance by the Governor or the Chief Medical Officer of his functions under this Ordinance or under any such regulations.

(2) An authorised person shall, on production, if required, of his credentials, have a right at any reasonable time —

(a) to enter any ship, aircraft or hover vehicle for the purpose of ascertaining whether there is in the ship, aircraft or vehicle any substance or article imported in contravention of any provision of this Ordinance or of any regulations made under this Ordinance;

(b) to enter any vehicle other than a hover vehicle, any stall or place other than premises, or any home-going ship, for any purpose for which under subsection (1) the person so authorised would have a right to enter any premises.

(3) Admission to any premises used only as a private dwelling-house shall not be demanded as of right by virtue of subsections (1) or (2) unless 24 hours notice of the intended entry has been given to the occupier.

(4) If a justice of the peace, on sworn information in writing, is satisfied that there are reasonable grounds for entering any premises for any purpose for which an authorised person has a right to enter them in accordance with subsections (1) to (3), and is also satisfied —

(a) that admission to the premises has been refused, or that a refusal is apprehended, and (in either case) that notice of the intention to apply for a warrant has been given to the occupier; or

(b) that an application for admission, or the giving of such a notice, would defeat the object of the entry; or

(c) that the case is one of urgency; or

(d) that the premises are unoccupied or the occupier is temporarily absent,

the justice may by warrant under his hand authorise any authorised person to enter the premises, if need be by force.

(5) Subsection (4) has effect in relation to entering any ship, aircraft, vehicle, stall or place which may be entered under subsection (2) as it has effect in relation to entering any premises as if, in subsection (4) any reference to the occupier were a reference to the master, commander or other person in charge of the ship, aircraft, vehicle, stall or place.

(6) Any warrant granted under this section shall continue in force for a period of one month.

(7) Any person entering any property by virtue of this section (whether in pursuance of a warrant or not) —

(a) may take with him such other persons and such equipment as may appear to him to be necessary; and

(b) on leaving any such property which he has entered in pursuance of a warrant under subsection (4) he shall, if the property is unoccupied or the occupier (or, in the case of a ship,

aircraft, vehicle, stall or place, the master, commander or other person in charge of it) is temporarily absent, leave it as effectively secured against trespass as he found it.

(8) In this section —

“home-going ship” means a ship engaged exclusively in voyages which start and end in the Falkland Islands and do not involve calling at any place outside the Falkland Islands;

“property” means any premises, ship, aircraft, vehicle, stall or place.

Power to inspect, take samples and seize goods and records

32.—(1) For the purpose of ascertaining whether there is or has been a contravention of this Ordinance, any regulations made under it or the poisons rules, an authorised person shall have a right to inspect —

(a) any substance or article appearing to him to be a medicinal product or a non-medicinal poison;

(b) any article appearing to him to be a container or package used or intended to be used to contain any medicinal product or a non-medicinal poison or to be a label or leaflet used or intended to be used in connection with a medicinal product; or

(c) any plant or equipment appearing to him to be used or intended to be used in connection with the manufacture or assembly of medicinal products, and any process of manufacture or assembly of any medicinal products, and the means employed, at any stage in the process of manufacture or assembly, for testing the materials after they have been subjected to those processes.

(2) Where, for the purpose specified in subsection (1), an authorised person requires a sample of any substance or article appearing to him to be —

(a) a medicinal product sold or supplied or intended to be sold or supplied;

(b) a non-medicinal poison sold or intended to be sold; or

(c) a substance or article used or intended to be used in the manufacture of a medicinal product,

he shall (if he does not obtain the sample by purchase) have a right to take a sample of that substance or article.

(3) For the purpose specified in subsection (1), an authorised person shall have a right —

(a) to require any person carrying on a business which consists of or includes the manufacture, assembly, sale or supply of medicinal products, or the sale of non-medicinal

poisons, and any person employed in connection with such a business, to produce any records relating to the business which are in his possession or under his control;

(b) to take copies of, or of any entry in, any record produced in pursuance of paragraph (a).

(4) An authorised person —

(a) is entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in used in connection with the records in question; and

(b) may require the person by whom or on whose behalf the computer is or has been used, or any person having charge of or otherwise concerned with the operation of the computer, apparatus or material, to afford him such assistance as he may reasonably require.

(5) An authorised person has a right to seize and detain —

(a) any substance or article which he has reasonable cause to believe to be a substance or article in relation to which, or by means of which, an offence under this Ordinance is being or has been committed, and

(b) any document which he has reasonable cause to believe to be a document which may be required as evidence in proceedings under this Ordinance.

(6) For the purpose of exercising any such right as is specified in subsection (5), the person having that right may, so far as is reasonably necessary in order to secure that this Ordinance, any regulations made under it or the poisons rules are duly observed, require any person having authority to do so to break open any container or package or open any vending machine, or to permit him to do so.

(7) Where a person seizes any substance or article (including any record) in the exercise of the power conferred by subsection (5), he shall inform the person from whom it is seized and, in the case of anything seized from a vending machine, the person whose name and address are stated on the machine as being those of the owner of the machine, or, if no name and address are so stated, the occupier of the premises on which the machine stands or to which it is affixed.

(8) Notwithstanding anything in subsections (1) to (7), where a person claiming to exercise a right by virtue of this section is required to produce his credentials, the right shall not be exercisable by him except on production of those credentials.

(9) Schedule 1 has effect with respect to samples obtained for the purposes of this Ordinance.

(10) The Governor shall by regulations prescribe any matter which under Schedule 1 is to be prescribed.

Application of sampling procedure to substance or article seized under section 32

33.—(1) The provisions of this section have effect where an authorised person seizes a substance or article (other than a record) in the exercise of a right specified in section 32(5).

(2) If any person who, in accordance with section 32(7), is entitled to be informed of the seizure so requests, either at the time of the seizure or at any subsequent time, not being later than 21 days after he is informed of the seizure, then, subject to subsection (3), the authorised person shall either —

- (a) set aside a sample of the substance or article seized; or
- (b) treat that substance or article as a sample,

whichever he considers more appropriate having regard to the nature of that substance or article.

(3) An authorised person is not required by virtue of subsection (2) to set aside a sample, or to treat a substance or article as a sample, if the nature of the substance or article is such that it is not reasonably practicable to do either of those things.

(4) Where, in accordance with subsection (2), an authorised person sets aside a sample, or treats a substance or article as a sample, he shall divide it into 3 parts, each part to be marked and sealed or fastened up in such manner as its nature will permit, and shall supply one part of it to the person who made the request under subsection (2).

(5) Paragraphs 10 to 12 and 15 to 21 of Schedule 1 apply in relation to a sample set aside, or a substance or article treated as a sample, under subsection (2) as if —

- (a) any reference to a sample included a reference to a substance or article treated as a sample; and
- (b) in paragraph 19(1) the reference to a substance or article obtained as mentioned in paragraph 1 were a reference to a substance or article of which a sample has been set aside, or which has been treated as a sample, under subsection (2).

Obstruction etc

34.—(1) Any person who —

- (a) intentionally obstructs an authorised person acting in pursuance of this Ordinance; or
- (b) intentionally fails to comply with any requirement properly made to him by an authorised person under section 32 (including that section as modified under section 43(1)); or
- (c) without reasonable cause, fails to give to an authorised person any other assistance or information which that person may reasonably require of him for the purpose of the performance of his functions under this Ordinance,

commits an offence and is liable to a fine not exceeding the maximum of level 4 on the standard scale.

(2) If any person, in giving any such information as is mentioned in subsection (1)(c), makes any statement which he knows to be false, he commits an offence and is liable to a fine not exceeding the maximum of level 4 on the standard scale.

(3) Nothing in this section shall be construed as requiring a person to answer any question or give any information if to do so might incriminate that person or (where that person is married) the husband or wife of that person.

Analysis of samples in other cases

35.—(1) A person who, not being an authorised person, has purchased a medicinal product or a non-medicinal poison may submit a sample of it for analysis to an official analyst who (subject to sub-paragraph (3)) shall as soon as practicable analyse the sample or cause it to be analysed by some other person under his direction.

(2) Paragraphs 2 to 13 and 15 to 18 (except paragraph 15(1)) of Schedule 1 apply in relation a sample submitted under subsection (1) as if any reference to an authorised person were a reference to the person proposing to submit or submitting the sample.

(3) Where a sample is submitted to an official analyst under subsection (1), he may demand payment in advance of —

(a) the prescribed fee, or

(b) in the case of a sample to be sent under paragraph 15(2) of Schedule 1, such sum as may be agreed;

and, if he demands such payment, he shall not be required to analyse the sample or cause or send it to be analysed until the fee or sum has been paid.

Liability to forfeiture

36.—(1) For the purposes of section 42 (forfeiture of goods improperly imported) of the Customs Ordinance 2003 any imported goods shall be deemed to be imported contrary to a restriction for the time being in force with respect to them under this Ordinance if —

(a) they are goods falling within a class specified in regulations made by the Governor for the purposes of this subsection; and

(b) they are imported in such circumstances as are specified in those regulations.

(2) For the purposes of section 60 of the Customs Ordinance 2003 (offences in relation to exportation of prohibited or restricted goods), any goods shall be deemed to be exported contrary to a restriction for the time being in force with respect to them under this Ordinance if —

(a) they are goods falling within a class specified in regulations made by the Governor for the purposes of this subsection; and

(b) they are exported in such circumstances as are specified in those regulations.

(3) Any class of goods specified in regulations under subsection (1) or (2) shall be so specified as to consist exclusively of goods appearing to the Governor to be goods which are, or normally are, medicinal products.

Restrictions on disclosure of information

37. If any person discloses to any other person —

(a) any information with respect to any manufacturing process or trade secret obtained by him in premises which he has entered by virtue of section 31; or

(b) any information obtained by or furnished to him in pursuance of this Ordinance,

unless the disclosure was made in the performance of his duty, he commits an offence and is liable to a fine not exceeding the maximum of level 5 on the standard scale.

Contravention due to default of other person

38.—(1) Where a contravention by any person of any provision to which this section applies constitutes an offence under this Ordinance, and is due to an act or default of another person, then, whether proceedings are taken against the first-mentioned person or not, that other person may be charged with and convicted of that offence, and shall be liable on conviction to the same punishment as might have been imposed on the first-mentioned person if he had been convicted of the offence.

(2) Where a person who is charged with an offence under this Ordinance in respect of a contravention of a provision to which this section applies proves to the satisfaction of the court—

(a) that he exercised all due diligence to secure that the provision in question would not be contravened; and

(b) that the contravention was due to the act or default of another person,

the first-mentioned person shall, subject to subsection (3), be acquitted of the offence.

(3) A person shall not, without the leave of the court, be entitled to rely on the defence provided by subsection (2), unless, not later than 7 clear days before the date of 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 in question as was then in his possession.

(4) This section applies to sections 13 to 16.

Warranty as defence

39.—(1) Subject to the following provisions of this section, in any proceedings for an offence under this Ordinance in respect of a contravention of a provision to which this section applies, it shall be a defence for the defendant to prove —

(a) that he purchased the substance or article to which the contravention relates in the Falkland Islands as being a substance or article which could be lawfully sold, supplied, or offered or exposed for sale, or could be lawfully sold, supplied, or offered or exposed for sale under the name or description or for the purpose under or for which he sold, supplied or offered or exposed it for sale, and with a written warranty to that effect;

(b) that, at the time of the commission of the alleged offence, he had no reason to believe that it was otherwise; and

(c) that the substance or article was then in the same state as when he purchased it.

(2) This section applies to —

(a) sections 12(b), 13 and 14, and

(b) regulations under section 6(2).

(3) A warranty shall not be a defence by virtue of this section unless the defendant has, not later than 3 clear days before the date of the hearing, sent to the prosecutor a copy of the warranty with a notice stating that he intends to rely on it and specifying the name and address of the person from whom he received it, and has also sent a like notice to that person.

(4) Where the defendant is an employee of the person who purchased the substance or article under the warranty, he shall be entitled to rely on the provisions of this section in the same way as his employer would have been entitled to do if he had been the defendant.

(5) The person by whom the warranty is alleged to have been given shall be entitled to appear at the hearing and to give evidence, and the court may, if it thinks fit, adjourn the hearing to enable him to do so.

(6) For the purposes of this section, a name or description entered in an invoice shall be deemed to be a written warranty that the article or substance to which the name or description applies can be sold, supplied or offered or exposed for sale under that name or description by any person without contravening any provision to which this section applies.

Offences in relation to warranties and certificates of analysis

40.—(1) If a defendant in any proceedings mentioned in section 39(1) intentionally applies to any substance or article —

(a) a warranty given in relation to a different substance or article; or

(b) a certificate issued under section 35, or under paragraph 15(3) of Schedule 1, which relates to a sample of a different substance or article,

he commits an offence.

(2) A person who, in respect of any substance or article sold by him in respect of which a warranty might be pleaded under section 39, gives to the purchaser a false warranty in writing commits an offence, unless he proves that, when he gave the warranty, he had reason to believe that the statement or description contained in it was accurate.

(3) Any person who commits an offence under this section is liable to a fine not exceeding the maximum of level 5 on the standard scale.

Offences by bodies corporate

41. Where an offence under this Ordinance which is committed by a body corporate is proved to have been committed with the consent and 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, that person, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Presumptions

42.—(1) For the purposes of any proceedings under this Ordinance for an offence consisting of offering a medicinal product for sale, or for sale by retail, in contravention of section 12(b) or regulations under section 6, where it is proved that the medicinal product in question was found on a vehicle from which medicinal products are sold, it shall be presumed, unless the contrary is proved, that the person in charge of the vehicle offered that medicinal product for sale, or for sale by retail, as the case may be.

(2) For the purposes of any proceedings under this Ordinance for an offence consisting of having a medicinal product in one's possession for the purpose of sale or supply, in contravention of section 12(b) or regulations under section 6, where it is proved that the medicinal product in question was found on premises at which the person charged with the offence carries on a business consisting of or including the sale or supply of medicinal products, it shall be presumed, unless the contrary is proved, that he had that medicinal product in his possession for the purpose of sale or supply.

(3) For the purposes of any proceedings under this Ordinance for an offence consisting of the supply of a leaflet with a medicinal product, where it is proved that the leaflet in question was found on premises at which the person charged with the offence carries on a business consisting of or including the sale or supply of medicinal products, it shall be presumed, unless the contrary is proved, that he had the leaflet in his possession for the purpose of supplying it with a medicinal product.

Veterinary medicinal products and animal feeding stuffs

43.—(1) This Part applies to veterinary medicinal products as it applies to medicinal products.

(2) The Governor may by regulations provide that any of the provisions of this Part shall apply, with or without prescribed modifications, in relation to animal feeding stuffs as they apply (by virtue of subsection (1)) to veterinary medicinal products.

(3) The Governor may by regulations make provision as to the manner in which —

(a) samples may be taken by virtue of section 32 (as applied under subsection (2)),

(b) samples may be set aside, or substances or articles may be treated as samples, by virtue of section 33 (as so applied),

(c) samples may be submitted for analysis by virtue of section 35 (as so applied), and

(d) such samples, substances and articles are to be dealt with;

and provision under paragraph (d) may be in substitution for, or by way of modification of or addition to, any of the provisions of Schedule 1.

(4) For the purposes of proceedings for prescribed offences under this Ordinance relating to animal feeding stuffs, the Governor may by regulations —

(a) prescribe a method of analysis to be used in analysing samples of animal feeding stuffs in order to determine what quantity or proportion (if any) of a substance or article of a description or class specified in the regulations has been incorporated in them; and

(b) provide that, on production in the proceedings of such evidence as may be so prescribed of the results of an analysis of a sample performed by the method so prescribed, evidence of the results of any analysis of any part of the sample performed by any other method shall not be admissible in those proceedings.

PART 7

MISCELLANEOUS AND SUPPLEMENTAL

Registration of health professions

44.—(1) The Medical Practitioners, Midwives and Dentists Ordinance —

(a) is renamed “the Health Professions Ordinance”, and

(b) is amended in accordance with Schedule 2.

(2) Any reference to that Ordinance by its former title in any enactment or other document (whenever enacted or made) shall be read as a reference to it by the title of “the Health Professions Ordinance”.

(3) The Governor may by regulations make such transitional provision as appears to him to be necessary or expedient with respect to persons who are registered under that Ordinance immediately before the coming into operation of this section.

Medicated animal feeding stuffs

45.—(1) The Governor may by regulations make provision for controlling, restricting, regulating or prohibiting the following activities —

(a) the incorporation by any person, in the course of a business carried on by him, of a veterinary medicinal product of any description in an animal feeding stuff;

(b) selling, supplying or otherwise placing on the market by any person in the course of a business carried on by him of any animal feeding stuff in which a veterinary medicinal product has been incorporated,

(c) the importation by any person of any animal feeding stuff in which a veterinary medicinal product has been incorporated.

(2) The Governor may by regulations —

(a) prohibit or restrict the sale or supply, or the import, of animal feeding stuffs in which veterinary medicinal products of any description, or falling within any class, specified in the regulations have been incorporated, or

(b) in such manner as may appear to it to be sufficient to identify the feeding stuffs in question, designate particular animal feeding stuffs in which veterinary medicinal products have been incorporated and prohibit or restrict the sale or supply, or the import, of those particular feeding stuffs.

(3) Section 6 applies to any animal feeding stuff in which a veterinary medicinal product of any description has been incorporated as if the references in section 6(2)(a) to (d) (as modified by section 11) to veterinary medicinal products included references to any such animal feeding stuff.

(4) Section 10 applies to regulations under this section as it applies to regulations under Part 2.

Extension of application of Ordinance

46.—(1) The Governor may by regulations —

(a) specify any description or class of articles or substances appearing to it to be articles or substances which are not medicinal products or veterinary medicinal products but are manufactured, sold, supplied, imported or exported for use wholly or partly for a medicinal purpose, and

(b) direct that, subject to such exceptions and modifications as may be specified in the regulations, such provisions of this Ordinance as may be so specified (including provisions

so specified which relate to offences or penalties) shall have effect in relation to articles or substances of that description or class as those provisions have effect in relation to medicinal products or veterinary medicinal products, as the case may be.

(2) The Governor may by regulations —

(a) specify any substance appearing to the Governor to be a substance which is not itself a medicinal product or veterinary medicinal product but —

(i) is used as an ingredient in the manufacture of medicinal products or veterinary medicinal products; or

(ii) if used without proper safeguards, is capable of causing danger to the health of the community, or of causing danger to the health of animals generally or of one or more species of animals, and

(b) direct that, subject to such exceptions and modifications as may be specified in the regulations, such provisions of this Ordinance as may be so specified (including any provisions so specified which relate to offences or penalties) shall have effect in relation to that substance as those provisions have effect in relation to medicinal products or veterinary medicinal products, as the case may be.

(3) The power conferred by subsection (2) may be exercised in relation to a class of substances if it appears to the Governor that the conditions specified in subsection (2)(a)(i) or (ii) are fulfilled in relation to all substances falling within that class.

References to specified publications

47.—(1) In this section “specified publication” means —

(a) the European Pharmacopoeia;

(b) the British Pharmacopoeia;

(c) the British Pharmaceutical Codex;

(d) the British Veterinary Codex;

(e) the British National Formulary;

(f) the Dental Practitioners' Formulary;

(g) any compendium prepared and published under section 99(3) and (6) of the UK Act;

(h) any list of names prepared and published under section 100 of the UK Act.

(2) Where any authorisation, licence or certificate refers to a specified publication, but not to a particular edition of that publication, then, for the purpose of determining whether anything done, at a time when the licence or certificate is in force, is done in accordance with the licence or certificate, the reference shall, unless the licence or certificate otherwise expressly provides, be construed as a reference to the current edition of that publication as in force at that time.

(3) In this section —

(a) any reference to the current edition of a specified publication as in force at any particular time is a reference to the edition of that publication in force at that time together with any amendments, additions or deletions made to it up to that time; and

(b) any reference to making an instrument in the exercise of a power conferred by a statutory provision includes a reference to issuing, approving or varying such an instrument.

SCHEDULE 1

(section 0(9))

SAMPLING

Introductory

1. This Schedule has effect where an authorised person obtains a sample of any substance or article —

(a) for the purpose of ascertaining whether there is or has been, in connection with that substance or article, any contravention of any provisions of this Ordinance or of any regulations made under it; or

(b) otherwise for any purpose connected with the performance by the Governor of his functions under this Ordinance or under any such regulations,

and the authorised person obtains the sample by purchase or in the exercise of any power conferred by section 35.

Division of sample

2. The authorised person shall forthwith divide the sample into 3 parts, each part to be marked and sealed or fastened up in such manner as its nature will permit.

3. If the sample was purchased by the authorised person, otherwise than from an automatic machine, he shall supply one part of the sample to the seller.

4. If the authorised person obtained the sample from a automatic machine, then —

(a) if a person's name, and an address in the Falkland Islands, are stated on the machine as being the name and address of the owner of the machine, the authorised person shall supply one part of the sample to that person;

(b) in any other case, the authorised person shall supply one part of the sample to the occupier of the premises on which the machine stands or to which it is affixed.

5. If the sample is of goods consigned from outside the Falkland Islands and was taken by the authorised person before delivery to the consignee, the authorised person shall supply one part of the sample to the consignee.

6. If, in a case not falling within paragraphs 3 to 5, the sample was obtained by the authorised person at the request or with the consent of a purchaser, the authorised person shall supply one part of the sample to the seller.

7. If, in a case not falling within paragraphs 3 to 6, the sample was taken in transit, the authorised person shall supply one part of the sample to the consignor.

8. In any case not falling within paragraphs 3 to 7, the authorised person shall supply one part of the sample to the person appearing to him to be the owner of the substance or article from which the sample was taken.

9. In every case falling within paragraphs 3 to 8, the authorised person shall inform the person to whom the part of the sample in question is supplied that the sample has been obtained for the purpose of analysis or other appropriate examination.

10. Of the remaining parts of the sample into which the sample is divided in accordance with paragraph 2, the authorised person, unless he decides not to submit the sample for analysis or other appropriate examination, shall —

(a) retain one part for future comparison; and

(b) submit the other part for analysis or examination in accordance with the following provisions of this Schedule.

11. Where a sample consists of substances or articles enclosed in unopened containers, and it appears to the authorised person that to open the containers and divide the containers into parts—

(a) is not reasonably practicable; or

(b) might affect the composition or impede the proper analysis or other examination of the contents,

the authorised person may divide the sample into parts by dividing the containers into 3 lots without opening them.

12. Any part of a sample to be supplied to any person in pursuance of the preceding paragraphs of this Schedule may be supplied by post; and section 9 of the Interpretation and General Clauses Ordinance applies to supplying a part of a sample as it applies to the service of a document.

13. If, after reasonable inquiry, the authorised person is unable to ascertain the name of a person to whom, or the address at which, a part of a sample ought to be supplied in pursuance of paragraphs 1 to 12, he may retain that part of the sample instead of supplying it.

Notice to person named on container

14.—(1) Where it appears to the authorised person that a substance or article of which he has obtained a sample was manufactured or assembled by a person whose name and address in the Falkland Islands are stated on the container, and who is not a person to whom a part of the sample is required to be supplied under the preceding provisions of this Schedule, the authorised person, unless he decides not to submit the sample for analysis or other appropriate examination, shall serve notice on that person —

(a) stating that the sample has been obtained by the authorised person; and

(b) specifying the person from whom the authorised person purchased it, or, if he obtained it otherwise than by purchase, the place from which he obtained it.

(2) The notice required to be served under paragraph (1) shall be served before the end of the period of 3 days beginning with the day on which the sample was obtained.

Analysis or other examination of sample

15.—(1) If the authorised person decides to submit the sample for analysis, he shall submit it to an official analyst, who (subject to sub-paragraph (2)) shall as soon as practicable analyse the sample or cause.

(2) An official analyst who has analysed a sample under this paragraph shall issue to the authorised person a certificate specifying the result of the analysis.

(3) Where a sample taken or purchased by an authorised person has been analysed by an official analyst, any person to whom a part of the sample was given in accordance with paragraphs 2 to 8 is entitled, on paying the prescribed fee to the Chief Medical Officer, to be supplied with a copy of the certificate given by the analyst under sub-paragraph (3).

(4) A certificate under sub-paragraph (3) shall be in a prescribed form and signed by the official analyst who issues it.

Provisions as to evidence

16. In any proceedings for an offence under this Ordinance, a document produced by one of the parties to the proceedings and purporting to be a certificate issued under paragraph 15 shall be

sufficient evidence of the facts stated in the document, unless the other party requires that the person who issued the certificate shall be called as a witness.

17. In any proceedings for an offence under this Ordinance, a document produced by one of the parties to the proceedings, which has been supplied to him by the other party as being a copy of such a certificate, shall be sufficient evidence of the facts stated in the document.

18.—(1) If, in any such proceedings, a defendant intends to produce such a certificate, or to require that the person by whom such a certificate was issued shall be called as a witness, a notice of his intention, and (where he intends to produce such a certificate) a copy of the certificate, shall be given to the other party at least 3 clear days before the day on which the summons is returnable.

(2) If sub-paragraph (1) is not complied with, the court may, if it thinks fit, adjourn the hearing on such terms as it thinks proper.

Analysis under direction of court

19.—(1) In any proceedings for an offence under this Ordinance, where the proceedings relate to a substance or article of which a sample has been obtained as mentioned in paragraph 1, the part of the sample retained in pursuance of paragraph 10(a) shall be produced as evidence; and the court —

(a) at the request of either party to the proceedings, shall; and

(b) in the absence of any such request, may if it thinks fit,

cause that part of the sample to be sent for analysis to the person having the management or control of a laboratory specified by the court.

(2) If, in a case where an appeal is brought, no action has been taken under sub-paragraph (1), that sub-paragraph shall have effect in relation to the court by which the appeal is heard.

(3) A person to whom a part of a sample is sent under this paragraph for analysis or other examination shall analyse or examine it, or cause it to be analysed or examined, on his behalf, and shall transmit to the court a certificate specifying the result of the analysis or examination.

(4) Any such certificate shall be signed by that person, or signed on his behalf by the person who made the analysis or examination or a person under whose direction it was made.

(5) Any such certificate shall be evidence of the facts stated in the certificate unless any party to the proceedings requires that the person by whom it was signed shall be called as a witness.

20. The costs of any analysis or examination under paragraph 19 shall be paid by the prosecutor or the defendant, as the court may order.

Power to modify sampling provisions

21. The Governor may by regulations provide that, in relation to substances or articles of any prescribed description, paragraphs 1 to 20 shall have effect subject to such exceptions and modifications as may be prescribed.

Payment for sample taken under compulsory powers

22.—(1) Where an authorised person takes a sample in the exercise of any power conferred by section 35, he shall, if payment is demanded, pay the value of the sample to the person to whom a part of the sample is required under paragraph 5, 7 or 8, as the case may be, to be supplied.

(2) In default of agreement between the authorised person and the person mentioned in subparagraph (1), the value of the sample shall be determined by the arbitration of a single arbitrator appointed by the authorised person and the other person in question or, if they are unable to agree on the appointment of an arbitrator, shall be determined by the Summary Court.

Application of section 0 to samples

23. Where a medicinal product is taken as a sample by an authorised person in the exercise of any power conferred by section 35, section 13(1) to (4) applies as if the taking of the product as a sample were a sale of it to the authorised person by the person from whom it is taken; and, if the product was prepared in pursuance of a prescription given by a practitioner, section 13(1) to (4) shall so apply as if, in section 13(1), for “demanded by the purchaser” there were substituted “specified in the prescription”.

SCHEDULE 2

(section 44(1)(b))

AMENDMENT OF HEALTH PROFESSIONS ORDINANCE

Short title

1. In section 1, for “Medical Practitioners, Midwives and Dentists Ordinance” substitute “Health Professions Ordinance”.

Extension of application of Ordinance

2. After section 2 insert —

“Extension of application of Ordinance

2A.—(1) The Governor may by order make provision for —

(a) the registration of members of any profession, other than that of medical practitioner, nurse, midwife, dentist or pharmacist, which appears to him to be concerned (wholly or partly) with the physical or mental health of individuals, and

(b) the application (with or without modifications) to that profession of any of the following provisions of this Ordinance.

(2) An order under this section may —

(a) amend or repeal any enactment which appears to the Governor in Council to be inconsistent with, or to have become unnecessary or to require modification, in consequence of the order; and

(b) make such incidental, supplementary, consequential and transitional provisions as appear to the Governor to be necessary or expedient.”

Registration

3.—(1) For section 3(1) substitute —

“(1) Separate registers of medical practitioners, nurses, midwives, dentists, dental nurses and pharmacists shall be kept in such form as the Governor may by regulations prescribe.”.

(2) In section 3(2) —

(a) for “midwives and dentists” substitute “nurses, midwives, dentists and pharmacists”; and

(b) the proviso is repealed.

(3) The Schedule is repealed.

Registrar

4. In section 4, for “midwives and dentists” substitute “nurses, midwives, dentists and pharmacists”.

Entitlement to registration

5. For section 6 substitute —

“Persons entitled to be registered

6. Any person who —

(a) is registered in the United Kingdom —

(i) as a fully registered medical practitioner in accordance with the Medical Act 1983;

(ii) in the register maintained under the Nursing and Midwifery Order 2001 by virtue of a qualification in nursing;

(iii) in the register maintained under that Order by virtue of a qualification in midwifery;

(iv) in the dentists register maintained under the Dentists Act 1984; or

(v) in the register of pharmaceutical chemists maintained under section 2(1) of the Pharmacy Act 1954; or

(b) is entered as a medical practitioner, nurse, midwife, dentist or pharmacist in a register—

(i) which maintained in a country or territory outside the United Kingdom, and

(ii) entry in which is declared by order of the Governor in Council to be a qualification for registration under this Ordinance,

shall be entitled to registration as a medical practitioner, nurse, midwife, dentist or pharmacist, as the case may be, under this Ordinance.”

Additional qualifications

6. Section 7 is repealed.

Striking off in case of conviction

7. In section 13(1), for “midwife or dentist” substitute “nurse, midwife, dentist or pharmacist”.

Penalties

8. For section 14 substitute —

“Penalty for pretending to be qualified

14.—(1) A person who is not registered as a medical practitioner under this Ordinance and pretends to be, or takes or uses any name, title, addition or description implying that he is —

(a) qualified to practise medicine or surgery, or

(b) registered as a medical practitioner, or

(c) recognised by law as a physician, surgeon or medical practitioner,
commits an offence.

(2) If a person who is not registered as a nurse or midwife under this Ordinance pretends to be, or takes or uses any name, title, addition or description implying that he is —

- (a) registered as a nurse or midwife, as the case may be, or
 - (b) qualified or recognised by law as a nurse or midwife, as the case may be, he is guilty of an offence.
- (3) A person who is not registered as a dentist under this Ordinance and pretends to be, or takes or uses any name, title, addition or description implying that he is, registered as a dentist commits an offence.
- (4) A person who is not registered as a dentist or medical practitioner under this Ordinance and pretends to be, or takes or uses any name, title, addition or description implying that he is—
- (a) qualified to practise dentistry, or
 - (b) recognised by law as a dentist, dental surgeon or dental practitioner, commits an offence.
- (5) A person who is not registered as a pharmacist under this Ordinance and pretends to be, or takes or uses any name, title, addition or description implying that he is —
- (a) qualified to practise pharmacy, or
 - (b) recognised by law as a pharmaceutical chemist or pharmacist, commits an offence.
- (6) Regulations made by the Governor may exempt from any of subsections (1) to (5) persons holding such qualifications or fulfilling such conditions as are prescribed by the regulations.
- (7) Subject to subsection (6), a person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding the maximum of level 5 on the standard scale."

Currency (Amendment) Bill 2006

(No: of 2006)

ARRANGEMENT OF PROVISIONS

Clause

1. Short title
2. Amendment of the Currency Ordinance

CURRENCY (AMENDMENT) BILL 2006

(No: of 2006)

(assented to: 2006)

(commencement: on publication)

(published: 2006)

A BILL

for

AN ORDINANCE

To amend the Currency Ordinance (Title 25.1).

BE IT ENACTED by the Legislature of the Falkland Islands as follows —

Short title

1. This Ordinance may be cited as the Currency (Amendment) Ordinance 2006.

Amendment of the Currency Ordinance

2. The Currency Ordinance is amended —

(a) in section 5(3), by replacing the words “six months” with “twelve months”;

(b) by adding the following subsection to section 8 —

“(3) Nothing in subsection (1) applies to or in respect of any payment made under any law which requires the payment to be made in a currency other than currency issued by the Commissioners.”;

(c) in section 21(3), by replacing the words “half yearly” with the words “yearly” and the deletion of the word “half” before the words “financial year”; and

(d) in section 22, by deleting the words “made with the prior approval of the Secretary of State”.



THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

Vol. 17

3rd May 2006

No. 7

The following are published in this Supplement -

Fishing Licences (Applications and Fees) Regulations Order 2006 (S. R. & O. No. 6 of 2006);

Revised Edition of the Laws (Amendment) Bill 2006;

Road Traffic (Amendment) Bill 2006;

Marine Farming Bill 2006;

Fishery Products Bill 2006;

Fishery Products (Hygiene) Regulations 2006;

Fish Health Regulations 2006; and

Water Quality (Shellfish) Regulations 2006.

The Road Traffic (Amendment) Bill 2006 will be considered by the Executive Council at its meeting on 23 May 2006 and if approved by it will be introduced in the Legislative Council on 24th or 25th May 2006.

The Marine Farming Bill 2006, the Fishery Products Bill 2006, the Fishery Products (Hygiene) Regulations 2006, the Fish Health Regulations 2006 and the Water Quality (Shellfish) Regulations 2006 are published in this Supplement to the Gazette for consultation purposes. It is intended that the Bills will be introduced, with any amendments agreed by the Executive Council, at a meeting of the Legislative Council proposed to take place on 28th July 2006 any comments or queries on the Bills or draft Regulations should please be sent to the Attorney General at Attorney General's Chambers Stanley (email bsteen@sec.gov.fk) and may be copied if wished to Councillors' Office (email cclifford@sec.gov.fk) and the Director of Fisheries (email: director@fisheries.gov.fk). The Regulations cannot of course be made unless the Bill relating to them is enacted.

SUBSIDIARY LEGISLATION

FISHERIES

Fishing Licences (Applications and Fees) Regulations Order 2006

S.R. & O. No: 6 of 2006

Made: 27 April 2006

Published: 3 May 2006

Coming into force: upon publication

IN EXERCISE of my powers under section 223(2)(p) of the Fisheries (Conservation and Management) Ordinance 2005(a), I make the following Order —

Commencement and citation

1.—(1) This Order may be cited as the Fishing Licences (Applications and Fees) Regulations Order 2006 and shall come into operation on the date it is first published in the *Gazette* and cease to have effect on 31st December 2006.

(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 2005;

“FOCZ” means the outer zone as defined in Section 2 of the Fisheries (Conservation and Management) Ordinance 2005;

“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 2006 and ending 31st December 2006;

(b) in relation to an “R” licence a period commencing on 1st July 2006 and ending on 31st December 2006;

(c) in relation to an “S” licence a period commencing on 1st July 2006 and ending 31st December 2006;

(d) in relation to an “X” licence a period commencing on 15th July 2006 and ending on 30th September 2006;

(e) in relation to a “Y” licence a period commencing on 1st July 2006 and ending on 31st December 2006;

(f) in relation to a “Z” licence a period commencing on 1st July 2006 and ending on 31st December 2006;

“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; and

(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, except in respect of Type 'L' and Type 'X' licences, so as to be received there by Monday, 17th April 2006.

(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) Transshipping 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 licensed 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 2006 to the 31st December 2006 shall be £150 per transshipment operation.

Made this 27th day of April 2006

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 2006 and ends on 31st December 2006.
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:

£ 29093

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 2006 and ends on 31st December 2006 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:

$$£(2.645 * GT) + 21361$$

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 2004⁶⁵ and ends on 31st December 2006 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 2006 and ends on 30th September 2006 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:

$$£ (57.205 \times \text{GRT}) + 101395$$

TABLE 5

Finish 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 2006 and ends on 31st December 2006 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 2006 and ends on the 31st December 2006 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:

$$£(6.176 * GT) + 10850$$

Revised Edition of the Laws (Amendment) Bill 2006

(No: of 2006)

ARRANGEMENT OF PROVISIONS

Clause

1. Short title
2. Amendment of Title 67.3

Schedule

REVISED EDITION OF THE LAWS (AMENDMENT) BILL 2006

(No: of 2006)

(assented to: 2006)
(commencement: upon publication)
(published: 2006)

A BILL

for

AN ORDINANCE

To amend the Revised Edition of the Laws Ordinance (Title 67.3) so as to permit the Revised Edition to be published on CD-ROM.

BE IT ENACTED by the Legislature of the Falkland Islands as follows —

Short title

1. This Ordinance may be cited as the Revised Edition of the Laws (Amendment) Ordinance 2006.

Amendment of Title 67.3

2. The Schedule to this Ordinance shall have effect to amend the Revised Edition of the Laws Ordinance (Title 67.3).

The Schedule

1. In this Schedule “the Ordinance” means the Revised Edition of the Laws Ordinance (Title 67.3).

2. Section 4 of the Ordinance is replaced by the following —

“Form and promulgation of the Revised Edition

4.—(1) The Revised Edition as most recently revised shall be published at least annually on CD-ROM by a publisher approved by the Governor and shall be so published with reference to the laws in force on the date specified therein (“the revision date”).

(2) Each publication of the Revised Edition subject to sections 8 and 9 shall contain —

(a) all the Ordinances and subsidiary legislation of the Falkland Islands enacted or made prior to the revision date (and not prior thereto revoked or repealed or which have otherwise ceased to have effect) organised into Titles (groups of Ordinance and subsidiary legislation) in relation to their subject matter;

(b) Tables as follows —

(i) a chronological Table of Ordinances revision enacted before the revision date and after the Laws of the Falkland Islands 1950;

(ii) a Table of the Ordinances in force on the day before the revision date;

(iii) a Table of the subsidiary legislation of the Falkland Islands in force on the day before the revision date;

(iv) a Table of the imperial principal legislation in force in the Falkland Islands on such date as is specified in relation to that Table;

(v) a Table of the imperial subsidiary legislation in force in the Falkland Islands on such date as is specified in relation to that Table; and

(vi) a Table of Disapplied Imperial enactments.

(2) Each publication (“issue”) of CD-ROMs containing the Revised Edition to be published in accordance with subsection (1) shall be authorised by Order made by the Governor which shall be published in the Gazette, and that issue shall come into operation and issues published by reference to earlier revision dates shall thereupon cease to be operative.”

3. Section 5 is repealed.

4. Section 6(1) is replaced by the following —

“(1) Upon publication of an Order under section 4(2) the Attorney General shall transmit to the Courts Administrator three copies of the CD-ROM of the issue of the Revised Edition thereby authorised to be published. If any question shall thereafter arise as to what is contained in that issue of the Revised Edition, that question shall be determined by reference to one of the copies so transmitted, but if no such copy is available by the Attorney General producing to the relevant court a CD-ROM under cover of a certificate under his hand to the effect that the copy is a true and complete copy of the last published issue of the Revised Edition.”

5. Section 6(2) is replaced by —

“(2) Subject to subsection (3) the issue of the Revised Edition last authorised by Order under section 4(2) shall be deemed accurately to reflect the law of the Falkland Islands as at the revision date in relation to which it is issued.”

6. The proviso to section 6(3) is repealed.

7. Section 7 is repealed.

Road Traffic (Amendment) Bill 2006

(No: of 2006)

ARRANGEMENT OF PROVISIONS

Clause

1. Short title and commencement
2. Amendment of Road Traffic Ordinance (Title 63.1)

Schedule

ROAD TRAFFIC (AMENDMENT) BILL 2006

(No: of 2006)

(assented to: 2006)

(commencement: 2006)

(published: 2006)

A BILL

for

AN ORDINANCE

To amend the Road Traffic Ordinance (Title 63.1)

BE IT ENACTED by the Legislature of the Falkland Islands as follows —

Short title and commencement

1. This Ordinance may be cited as the Road Traffic (Amendment) Ordinance 2006 and comes into operation on 1st June 2006.

Amendment of Road Traffic Ordinance (Title 63.1)

2. The Road Traffic Ordinance (Title 63.1) is amended in the manner specified in the Schedule.

SCHEDULE

Amendment of the Road Traffic Ordinance (Title 63.1)

1. In this Schedule “the principal Ordinance” means the Road Traffic Ordinance (Title 63.1) appearing in the Revised Edition of the Laws of the Falkland Islands on 31st December 2005, but

incorporating the amendments made to section 36 by the Road Traffic (Amendment) Ordinance 1995 (No 16 of 1995) which have, in error, been omitted from the Revised Edition.

2. Section 2 of the principal Ordinance is amended —

(a) by inserting the following definition after the definition of “fail” —

“ “highway” means any carriageway, street, thoroughfare, lane or access to a farm constructed by or at the expense of the Crown in right of the Falkland Islands with the intention that it shall be available for use by the public with motor vehicles as of right and regardless of whether —

(a) it is within Stanley or within four miles of the boundary thereof; or

(b) has been declared by the Governor by order to be a road for the purposes of this Ordinance;”

3. Section 36(1) of the principal Ordinance (wearing of seat belts) is amended by replacing the word “road” with the word “highway”.

OBJECTS AND REASONS

To apply section 36 of the Road Traffic Ordinance (wearing of seat belts) to all highways.

Marine Farming Bill 2006

(No: of 2006)

ARRANGEMENT OF PROVISIONS

Introductory

1. Short title and commencement
2. Interpretation

Licences

3. Issue of marine farming licences
4. Applications for licences
5. Determination of applications
6. Duration of licence
7. Conditions of licence
8. Variation of licence
9. Action in case of breach of condition etc
10. Action where licence is cancelled
11. Appeal against cancellation of licence
12. Action by Crown where licence is cancelled
13. Assignment etc
14. Effect of termination etc of licence

Sub-licences

15. Sub-licences

Registration etc

16. Map of licensed areas
17. Register of licences etc

Royalties

18. Royalties

Regulations

19. Regulations

Enforcement

20. Enforcement: general
21. Offences

22. Injunctions

Amendments

23. Amendments

SCHEDULE — Powers of entry and search

MARINE FARMING BILL 2006

(No: of 2006)

(assented to: 2006)

(commencement: in accordance with section 1)

(published: 2006)

A BILL

for

AN ORDINANCE

To provide for the licensing of fish farming in marine waters; and for connected purposes.

BE IT ENACTED by the Legislature of the Falkland Islands as follows —

Introductory

Short title and commencement

1.—(1) This Ordinance may be cited as the Marine Farming Ordinance 2006.

(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. In this Ordinance, unless the context otherwise requires —

"application" means an application in writing;

“approved company” means a company which is incorporated in the Falkland Islands and the beneficial ownership of not less than the relevant proportion of the issued ordinary share capital of which is vested in persons enjoying Falkland Islands status; and for this purpose “the relevant proportion” is 25.1 per cent. or such other proportion as is prescribed;

“the Court” means the Supreme Court;

"the Director" means the Director of Fisheries holding office under section 4 of the Fisheries (Conservation and Management) Ordinance 2005;

“Falkland Islands status” has the meaning given by section 17(5) of the Constitution;

“fish farming” means the breeding, rearing or keeping of fish, whether or not for profit, with a view to their sale or their transfer to other marine waters;

"fish" includes any kind of crustacean or mollusc;

“fisheries officer” has the same meaning as in the Fisheries (Conservation and Management) Ordinance 2005, but includes an examiner appointed under section 20(3);

“holder”, in relation to a licence or sub-licence, means the person to whom the licence or sub-licence is issued or, where a licence is assigned, the person to whom it is so assigned;

“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;

“licence” means a marine farming licence issued under section 3;

“marine waters” means waters within the seaward limits of the territorial sea adjacent to the Falkland Islands, other than inland waters;

“notice” means a notice in writing;

“the Planning Officer” means the Planning Officer appointed under section 10 of the Planning Ordinance 1991;

“planning permission” has the same meaning as in that Ordinance;

“prescribed” means prescribed by regulations;

“qualifying company” means a company —

(a) which is incorporated in the Falkland Islands, or

(b) is a company the grant to which of a marine farming licence is authorised by the Governor pursuant to section 3;

“regulations” means regulations made by the Governor; and

“sub-licence” means an instrument issued under section 15(1).

Licences

Issue of marine farming licences

3.—(1) The Governor may, on an application for the purpose, issue to the applicant an instrument in writing (a “marine farming licence”) authorising the holder of the licence —

(a) to carry on within the marine waters specified in the licence fish farming of such a description as is so specified; and

(b) to construct or provide and to maintain within those waters for the purpose of fish farming such structures, plant, apparatus and equipment as are so specified.

(2) Subject to subsection (3) so far as concerns paragraph (a) a licence may not be issued unless—

(a) the person to whom it is issued is a qualifying company; and

(b) planning permission is in force for such of the activities authorised by the licence as amount to development for the purpose of the Planning Ordinance 1991.

(3) The Governor may, if he is satisfied that there is sufficient reason to do so, issue a licence notwithstanding that the applicant is not a qualifying company.

Applications for licences

4.—(1) An application for a licence shall be made to the Director and shall include or be accompanied by —

(a) a map showing the marine waters in respect of which the licence is sought;

(b) particulars of the fish farming proposed to be carried on in those waters;

(c) particulars of any other activities, being activities connected with that fish farming, which are proposed to be carried in those waters, or in any other waters or on any land in the vicinity of those waters;

(d) particulars of any structure, plant, apparatus or equipment to be constructed, provided or maintained within those waters for the purpose of the fish farming;

(e) the periods, expiring not later than 5 years (or such shorter period as may be prescribed) after the date on which the licence comes into force, —

(i) within which the fish farming is to commence, and

(ii) within which the construction or provision of any structure, plant, apparatus or equipment referred to in paragraph (d) is to be completed;

(f) particulars of the sources of finance for those activities and works;

(g) the applicant's business plan, that is —

(i) an overview of the fish farming business to be carried on by the applicant;

(ii) the marketing and sales strategy of the business;

(iii) the proposed management and staffing of the business; and

(iv) financial forecasts of the income and expenditure of the business in the period of 5 years (or such shorter period as may be prescribed) beginning with the date on which the licence (if issued) comes into force;

(h) particulars of the beneficial owners of, and their respective interests in, the applicant;

(i) particulars of any planning permissions in force, and planning applications made, relating to the matters referred to in paragraphs (b), (c) and (d); and

(j) such other information as may be prescribed.

(2) Subject to subsection (3), only a company wholly beneficially owned by persons enjoying Falkland Islands status may apply for a marine farming licence.

(3) The Governor may, whether on the application of the company concerned or otherwise and upon such conditions, if any, as he sees fit, designate a company as a qualifying company in relation to application for and the grant to it of marine farming licences, notwithstanding that the company concerned is not wholly beneficially owned by persons enjoying Falkland Islands status.

(4) The Director may require the applicant to provide such information additional to that required by subsection (1) as he may specify.

(5) Any information provided in the application or under subsection (4) shall, if the Director so requires, be in such form or verified in such manner as he may specify.

(6) The application shall be accompanied by the prescribed fee and shall be forwarded by the Director, together with —

(a) any additional information provided pursuant to subsection (4), and

(b) the Director's recommendation in relation to the application,

to the Governor for consideration.

Determination of applications

5. The Governor shall have regard in particular to the following matters in deciding whether an application for a licence should be granted —

(a) the benefits to the Falklands Islands which the fish farming the subject of the application will generate;

(b) the effects which —

(i) the fish farming the subject of the application,

(ii) any activities connected with it, and

(iii) any structures, plant, apparatus or equipment to be constructed, provided or maintained within marine waters for the purpose of the fish farming,

will have on the marine environment;

(c) any obligations under an international agreement relating to the sea or the marine environment to which the United Kingdom is a party and which extends to the Falkland Islands;

(d) whether the applicant appears to be capable of —

(i) commencing the fish farming the subject of the application, and

(ii) completing any structures, plant, apparatus or equipment to be constructed, provided or maintained within marine waters for the purpose of the fish farming,

within the periods specified under section 4(1)(e);

(e) whether the applicant appears to be capable of complying with —

(i) the terms and conditions to which the licence, if issued, will be subject,

(ii) the conditions of any relevant planning permission, and

(iii) any other obligations imposed by law and affecting the fish farming the subject of the application; and

(f) such other matters as may be prescribed.

Duration of licence

6.—(1) A licence shall come into force on such day as is specified in it, not being earlier than the day on which it is issued or later than one year after that day.

(2) Subject to sections 9 and 13(3) and to regulations under section 18(5)(f), the licence shall remain in force for such period, from the day on which it comes into force, as is specified in it.

Conditions of licence

7.—(1) A licence shall contain conditions that —

(a) the fish farming the subject of the licence shall commence, and

(b) the construction or provision of any structure, plant, apparatus or equipment which is required or permitted by the licence to be constructed or provided shall be completed,

within such periods as are specified for the purpose in the licence, none of which shall expire later than the end of 5 years, or such shorter period as may be prescribed, after the date on which the licence comes into force.

(2) Subject to subsection (3), the licence shall contain such other conditions as the Governor thinks fit.

(3) The Governor may not impose a condition under subsection (2) without the consent of the applicant for the licence, except a condition appearing to the Governor to be calculated —

(a) to mitigate the effects referred to in section 5(b);

(b) to secure compliance with an obligation referred to in section 5(c); or

(c) to secure the health of fish or to prevent or control diseases of fish.

(4) In imposing any obligation under subsection (2) the Governor shall have regard in particular to —

(a) the matters specified in section 5(a), (b) and (c), and

(b) any relevant Community legislation (within the meaning of section 3 of the Fishery Products Ordinance 2006, in relation to Part 3 of that Ordinance).

(5) A condition of a licence may require the holder to pay to the Director such charges as may be prescribed, or specified in or determined in accordance with the licence, towards the expense of —

(a) ensuring that the conditions of the licence have been or are being complied with;

(b) otherwise checking the manner in which the fish farming the subject of the licence has been or is being carried on; and

(c) monitoring the effect of the fish farming the subject of the licence.

(6) In subsections (3) and (4) “relevant Community legislation” has the meaning given by section 3 of the Fishery Products Ordinance 2006 in relation to Part 3 of that Ordinance.

Variation of licence

8.—(1) The Governor may, on the application of the holder of a licence, vary the licence by amending —

(a) the marine waters specified in it;

(b) the descriptions of fish farming so specified; or

(b) the structures, plant, apparatus or equipment so specified;

or by varying or cancelling any condition contained in it.

(2) Sections 3(2)(a) and (b), 4 and 5 apply, with any necessary modifications, to a licence as varied under subsection (1) or an application under that subsection as they apply to a licence or an application for a licence, as the case may be.

(3) Subject to subsection (4), the Governor may by notice to the holder of the licence —

(a) impose such further conditions as he thinks fit, or

(b) vary or cancel any condition contained in the licence.

(4) Section 7(3), (4) and (5) apply to the imposition or variation of a condition under subsection (3) as they apply to the imposition of a condition under section 7(2).

(5) A condition imposed under subsection (3)(a) shall be deemed for all purposes to be contained in the licence.

(6) Before imposing or varying a condition under subsection (3) without the holder's consent, the Governor shall give the holder notice of his proposal to do so —

(a) giving his reasons for the proposal; and

(b) stating that, within 28 days after the date of service of the notice, the holder may make representations or objections in writing to him with respect to the proposal.

(7) The Governor —

(a) shall not make a decision on the proposal before the period specified in the notice under subsection (6) expires; and

(b) shall before making such a decision consider any representations or objections duly made in accordance with the notice.

Action in case of breach of condition etc

9.—(1) Where the Governor is satisfied that a condition contained in a licence has not been complied with, he may by notice to the holder —

(a) require it, within such time as is specified in the notice or such longer period as he may allow, to carry out such works or to take such other steps as appear to him to be necessary to comply with the condition and are so specified; or

(b) cancel the licence, either —

- (i) as to the whole of the marine waters to which it relates, or
- (ii) as to such part of those waters as is specified in the notice,

Provided that, subject to subsection (2), if the breach of condition is capable of remedy, the Governor shall not cancel the licence unless a notice served under paragraph (a) of this subsection has not been complied with within the time specified by such notice or such greater time as the Governor may allow.

(2) Where the Governor is satisfied that the holder of a licence has ceased to be a qualifying company, he shall by notice to the holder cancel the licence.

(3) Subject to subsection (4), before giving a notice under subsection (1) or (2) the Governor shall give the holder notice of his proposal to do so —

(a) giving his reasons for the proposal; and

(b) stating that, within 21 days after the date of service of the notice, the holder may make representations or objections with respect to the proposal in writing to him.

(4) Subsection (3) does not apply to a notice under subsection (1)(a) which contains a statement that the Governor is satisfied that the failure to comply with the condition has caused, or poses an imminent risk of, serious damage to the marine environment.

(5) Where a notice under subsection (1)(a) contains a statement of the kind mentioned in subsection (4), the Director —

(a) may himself carry out any works or take other steps which are specified in the notice and appear to him to be necessary to remedy or mitigate, or to remove or reduce the risk of, serious damage to the marine environment, and

(b) whether or not the notice is withdrawn or cancelled, may recover from the holder of the licence any expenses reasonably incurred by him in so doing.

(6) Where the Governor gives a notice under subsection (3) —

(a) he shall not make a decision on the proposal before the period specified in the notice under subsection (3) expires;

(b) he shall before making such a decision consider any representations or objections duly made in accordance with the notice; and

(c) after considering any such representations or objections, he may —

(i) serve the notice under subsection (1) or (2) in accordance with the proposal (with or without modifications, in the case of a proposal to serve a notice under subsection (1));

(ii) withdraw the proposal; or

(iii) in the case of a proposal to serve a notice under subsection (1)(b), instead give to the holder of the licence a notice under subsection (1)(a).

(7) If the Governor is satisfied that the holder of the licence has failed to comply with a notice under subsection (1)(a), he may by notice to the holder cancel the licence, either —

(a) as to the whole of the marine waters to which it relates, or

(b) as to such part of those waters as is specified in the notice under this subsection,

with effect from such date, not being less than 3 months after the date on which the notice under this subsection is given, as is specified in it.

(8) Where a mortgage or charge of a licence is entered in the register kept under section 17, a copy of any notice under this section shall be given to the person registered as the mortgagee or chargee.

Action where licence is cancelled

10.—(1) This section applies where the Governor gives —

(a) a notice under section 9(1)(b), (2) or (7) cancelling a licence, or

(b) a notice under section 9(3) of a proposal to cancel a licence, or

(c) a notice pursuant to regulations under section 18(5)(f) cancelling or proposing to cancel such a licence.

(2) Subject to subsection (3), the holder of the licence may, before the expiry of the period of 3 months referred to in section 9(7), remove from the marine waters to which the licence relates —

(a) any fish kept in those waters pursuant to the licence, and

(b) any structure, plant, apparatus or equipment constructed, provided or maintained within those waters for the purpose of the fish farming.

(3) A notice referred to in subsection (1) may contain a direction prohibiting within the marine waters to which the licence relates any activity which is specified in the direction as appearing to the Governor to be likely to cause, or to pose an imminent risk of, serious damage to the marine environment; and nothing in subsection (2) permits the removal of any thing from those waters in contravention of such a direction.

(4) A direction under subsection (3) shall take effect as soon as the notice referred to in subsection (1) is served on the holder of the licence, and shall remain in force until —

- (a) the notice is withdrawn or is quashed under section 11;
- (b) the direction is cancelled by the Governor by a further notice to the holder of the licence;
or
- (c) any action is taken under section 12.

Appeal against cancellation of licence

11.—(1) Where the Governor gives —

- (a) a notice under section 9(1)(b), (2) or (7), or
- (b) a notice pursuant to regulations under section 18(5)(f),

cancelling a licence, the notice shall not take effect until the expiration of 21 days beginning with the date on which it is served on the holder of the licence.

(2) Subsection (1) does not apply to a direction under section 10 contained in the notice.

(3) Before the expiration of the period mentioned in subsection (1) —

- (a) the holder of the licence, or
- (b) where a mortgage or charge of the licence is entered in the register kept under section 17, the person registered as the mortgagee or chargee,

may appeal to the Court against the notice, and in that case the notice shall not take effect until the appeal is dismissed or withdrawn.

(4) On an appeal under this section the Court may by order quash the notice if it is satisfied that the Governor in cancelling the licence —

- (a) erred in law; or
- (b) based his decision on any incorrect material fact; or
- (c) exercised his discretion in an unreasonable manner.

(5) Pending the determination of an appeal under this section the Court may give such directions and make such interim orders as it thinks just and appropriate.

Action by Crown where licence is cancelled

12.—(1) Where a licence is cancelled, the Crown may —

- (a) within 28 days after the cancellation takes effect, enter on or take possession of —

(i) the relevant marine waters;

(ii) any structure, plant, apparatus or equipment which is in the relevant marine waters or on that land or those premises and was before such cancellation wholly or mainly used for the purpose of the fish farming authorised by the licence; and

(iii) any fish in the relevant marine waters; and

(b) carry on fish farming in the relevant marine waters with a view to the issue of a fresh licence in relation to those waters.

(2) Where the Crown enters on or takes possession of any property under subsection (1)(a)(ii) or (iii), all relevant interests in the property shall thereupon vest in the Crown.

(3) The vesting of any property in the Crown under subsection (2) shall not affect any right to recover any debt the payment of which was secured on the property before such vesting took effect.

(4) In this section —

“former holder”, in relation to a licence, means the person who was the holder of it immediately before its cancellation took effect;

“relevant interest” means an estate or interest which was vested in the former holder of the licence immediately before the notice in question was served on it, and any estate or interest deriving (whether mediately or immediately) from any such estate or interest;

“the relevant marine waters” means —

(a) where the notice cancelling the licence related to the whole of the marine waters to the licence relates, those waters;

(b) where that notice related to part only of those waters, that part of those waters.

Assignment etc

13.—(1) A licence may not be assigned —

(a) without the consent of the Governor, or

(b) to any person other than a qualifying company.

(2) Nothing in subsection (1)(a) applies to —

(a) a sub-licence under section 15,

(b) a mortgage or charge of a licence granted by the holder of the licence to secure the payment of money, or

(c) an assignment of the licence by the mortgagee or chargee in the exercise of a power of sale conferred by such a mortgage or charge.

(3) The holder of a licence may, with the consent of the Governor, surrender the licence, which shall thereupon cease to have effect.

(4) No change (otherwise than by operation of law) in the beneficial ownership of a share in the holder of a licence shall have effect without the consent of the Governor; and any transaction or instrument by virtue of which any such change would, apart from this subsection, take effect shall to that extent be void.

Effect of termination etc of licence

14.—(1) A condition of a licence relating to the carrying out of works after any activity the subject of the licence ceases shall remain in effect notwithstanding the expiry or sooner termination of the licence, and may be enforced against the person who was the holder of the licence immediately before such expiry or termination.

(2) Without prejudice to subsection (1), the cancellation, assignment or surrender of a licence shall not affect any civil or criminal liability arising before it takes effect.

Sub-licences

Sub-licences

15.—(1) The holder of a licence may by an instrument in writing (a “sub-licence”) authorise an approved company —

(a) to carry on within so much of the marine waters to which the main licence relates as is specified in the sub-licence (“the relevant waters”) fish farming of a description authorised by the main licence and specified in the sub-licence; and

(b) to construct or provide and to maintain within the relevant waters for the purpose of fish farming so much of the structures, plant, apparatus and equipment authorised by the main licence as are so specified,

subject to such terms and conditions, not being inconsistent with this Ordinance, any regulations under it and the conditions contained in the main licence, as may be contained in the sub-licence.

(2) No sub-licence shall have effect unless the prescribed notice of it is given to the Governor.

(3) Subject to subsections (4) and (5), a sub-licence shall remain in force for such period, not exceeding the unexpired residue of the term of the main licence, as is specified in it.

(4) The holder of a main licence may cancel or suspend any relevant sub-licence, and the holder of a sub-licence may surrender the sub-licence, in accordance with the terms of the sub-licence.

(5) Where a licence is cancelled with effect from any date, any relevant sub-licence is also cancelled with effect from the same date; but where the Governor gives any notice referred to in section 9(1) to the holder of a licence —

(a) he shall also give a copy of it to the holder of any relevant sub-licence, and

(b) anything which may be done or is required to be done under section 9, 10, 11 or 12 or under regulations under section 18(5)(f) by, to or in relation to the holder of the licence may be done or shall be done, as the case may be, by, to or in relation to the holder of any relevant sub-licence.

(6) The holder of a licence may not surrender the licence under section 13(3) without the consent of the holder of any relevant sub-licence.

(7) Regulations may provide that, in default of payment by the holder of a licence, any sum due under section 18(1) may be recovered from the holder of any relevant sub-licence.

(8) Where the Governor is satisfied that the holder of a sub-licence has ceased to be an approved company, he shall by notice to the holder of the main licence cancel that licence; and sections 9(3) and (6), 10, 11 and 12 and subsection (5) apply with any necessary modifications in relation to a notice under this subsection as they apply in relation to a notice under section 9(2).

(9) In this section —

“main licence”, in relation to a sub-licence, means the licence relating to the marine waters to which the sub-licence relates; and

“relevant sub-licence”, in relation to a licence, means a sub-licence relating to the whole or part of the marine waters to which the licence relates.

Registration etc

Map of licensed areas

16.—(1) The Director shall prepare and maintain a map at a suitable scale on which shall be delineated all marine waters for the time being specified in licences.

(2) The Director shall —

(a) make the map prepared under subsection (1), or a copy of it, available for inspection by any person at his office at all reasonable times, and

(b) supply a copy of it, or of an extract from it, to any person on payment of such reasonable charge as he may determine.

Register of licences etc.

17.—(1) The Director shall keep a register containing prescribed information about —

- (a) applications for licences;
- (b) licences;
- (c) sub-licences;
- (d) any assignment, mortgage, charge, suspension, cancellation or surrender of a licence;
- (e) any suspension, cancellation or surrender of a sub-licence;
- (f) notices of prescribed kinds given to holders of licences or sub-licences;
- (g) appeals under section 11, and any orders made or directions given on any such appeals; and
- (h) action taken under section 12.

(2) Regulations may provide —

- (a) for the making, amendment and cancellation of entries in the register;
- (b) for the supply by holders of licences and sub-licences and other persons of information for inclusion in the register;
- (c) that a specified transaction, instrument or other matter shall be of no effect unless the prescribed information about it is entered in the register.

(3) The Director shall —

- (a) make the register available for inspection by any person at his office at all reasonable times, and
- (b) supply a copy of any entry in it to any person on payment of such reasonable charge as he may determine.

(4) The register may be kept otherwise than in documentary form; and where it is so kept, the requirement of subsection (3)(a) is satisfied if the Director makes any part of which any person wishes to inspect available for inspection in visible and legible form.

Royalties

Royalties

18.—(1) The holder of a licence shall pay to the Crown in respect of the licence such sums as are —

- (a) from time to time prescribed, or
- (b) calculated in such manner as is from time to time prescribed.

(2) In prescribing sums under this section the Governor shall have regard to —

- (a) the general levels of world prices of fish, and
- (b) such other factors as appear to him to be relevant for the purpose.

(3) Regulations may prescribe different sums under this section in respect of —

- (a) different species of fish,
- (b) marine waters of different descriptions or in different locations, and
- (c) fish farming of different descriptions.

(4) Before making regulations prescribing sums under this section, the Governor shall consult such persons carrying on or likely to carry on fish farming in the Falkland Islands, or such body or bodies appearing him to be representative of those persons, as appear to him appropriate.

(5) Such regulations may —

(a) provide that the sums shall be payable on such annual, seasonal or other periodic basis as is prescribed;

(b) provide that no sums shall be payable in respect of any period specified in the regulations, either —

- (i) generally,
- (ii) in respect of licences of a description so specified, or
- (iii) in respect of fish farming in marine waters so specified;

(c) require holders of licences and sub-licences to keep and make available for inspection such accounts and records, and to make such returns, as are prescribed;

(d) require holders of licences and sub-licences to keep and use such apparatus as is prescribed for the purpose of measuring the weight or volume of fish or any other matter relevant for the purpose of calculating any sum payable under this section;

(e) provide for the testing of any such apparatus;

(f) without prejudice to section 21, provide for the suspension or cancellation of a licence by the Governor by notice to the holder of the licence, in the case of any failure by the holder of the licence —

(i) to pay any sum due under subsection (1), or

(ii) to comply with any requirement imposed by or under the regulations.

Regulations

Regulations

19. The Governor may make regulations prescribing anything which may be prescribed under this Ordinance.

Enforcement

Enforcement: general

20.—(1) The Director shall be responsible for enforcing this Ordinance.

(2) The Deputy Director may, subject to any directions of the Governor to the contrary, exercise any function conferred upon the Director by or under this Ordinance.

(3) The Director may appoint any public officer to be an examiner to assist in the enforcement and administration of this Ordinance by examining and verifying any accounts, records and returns required to be kept or made by regulations under section 18 or under any condition contained in a licence.

(4) In performing his functions under this Ordinance the Director shall act in accordance with any directions, not inconsistent with this Ordinance, which the Governor may give to him.

(5) The Schedule to this Ordinance has effect for conferring on fisheries officers powers for enforcing this Ordinance; and in the exercise of those powers fisheries officers shall act in accordance with any directions, not inconsistent with this Ordinance, which the Director may give to them.

Offences

21.—(1) If a person carries on fish farming, or causes or permits fish farming to be carried on, in any marine waters otherwise than —

(a) by authority of a licence or sub-licence, or

(b) pursuant to section 12(1)(b),

he commits an offence and is liable to a fine not exceeding the maximum of level 8 on the standard scale.

(2) If a person constructs, provides or maintains within marine waters for the purpose of fish farming any structure, plant, apparatus or equipment otherwise than by authority of a licence or sub-licence, he commits an offence and is liable to a fine not exceeding the maximum of level 8 on the standard scale.

(3) If any condition contained in a licence (other than a condition imposed under section 7(1)) is not complied with, the holder of the licence commits an offence and is liable to a fine not exceeding the maximum of level 8 on the standard scale.

(4) If the holder of a licence or sub-licence fails —

(a) to supply any information required by regulations under section 17(2)(b) to be supplied for inclusion in the register,

(b) to pay any sum due under section 18(1) or recoverable under regulations under section 15(7), as the case may be, or

(c) to comply with any requirement imposed by or under regulations prescribing sums under section 18,

it commits an offence and is liable to a fine not exceeding the maximum of level 5 on the standard scale (but without prejudice to the right of the Crown to recover any sum by civil proceedings or otherwise).

(5) In proceedings for an offence under subsection (3) or (4)(c) it is a defence for the accused to prove that it took all reasonable precautions and exercised all due diligence to avoid such an act or omission by itself or any person under its control.

(6) If the holder of a licence fails to comply with any requirement imposed by a notice under section 9(1)(a), it commits an offence and is liable to a fine not exceeding the maximum of level 8 on the standard scale.

(7) If a person knowingly contravenes a direction under section 10, he commits an offence and is liable to a fine not exceeding the maximum of level 8 on the standard scale.

(8) If a person in making any application under this Ordinance, or purporting to comply with a requirement made by or under this Ordinance or regulations made under it —

(a) furnishes information which he knows is false in a material particular; or

(b) recklessly furnishes information which is false in a material particular,

he commits an offence and is liable to a fine not exceeding the maximum of level 8 on the standard scale.

(9) If a person intentionally obstructs another person in the exercise of a power conferred on the other person by the Schedule to this Ordinance, he commits an offence and is liable to a fine not exceeding the maximum of level 8 on the standard scale.

(10) If a person who has entered on any land, premises, vehicle or vessel in the exercise of a power conferred by the Schedule to this Ordinance discloses to another person information obtained by him there about a manufacturing process or trade secret, then, unless the disclosure is made —

(a) in the course of performing his duty in connection with the purposes for which he was authorised to enter on the land, premises, vehicle or vessel, or

(b) to another agency for the purpose of investigating or prosecuting an offence,

he commits an offence and is liable to a fine not exceeding the maximum of level 8 on the standard scale.

(11) If a person, within the marine waters to which a licence or sub-licence applies and without the authority of the holder of the licence or sub-licence, as the case may be, or other lawful authority —

(a) searches for or takes any fish the farming of which is authorised by the licence or sub-licence, or

(b) releases any such fish from any pen, compound or other structure,

he commits an offence and is liable to a fine not exceeding the maximum of level 8 on the standard scale.

(12) Where an offence under this section which has been 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, 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 is guilty of that offence and liable to be proceeded against and punished accordingly.

(13) In subsection (12) “director”, in relation to any body corporate whose affairs are managed by its members, means a member of that body corporate.

Injunctions

22.—(1) Where the Director considers it necessary or expedient for —

- (a) a failure to comply with a condition contained in a licence;
- (b) a direction under section 10;
- (c) a transaction or disposition appearing to him to be intended to defeat the vesting of any property under section 12(2) or to prevent or interfere with the exercise of the power under section 12(2),
- (d) a failure to comply with a requirement imposed by or under regulations prescribing sums under section 18; or
- (e) any act constituting an offence under section 21 and not falling within paragraphs (a) to (d),

whether actual or apprehended, to be restrained by injunction, he may apply to the Court for an injunction, whether or not he has taken any other steps for the prosecution or prevention of the matter.

(2) On an application under subsection (1) the Court may grant such an injunction as it thinks appropriate for the purpose of restraining the matter.

Amendments

Amendments

23.—(1) For section 39(1) (planning applications to be referred to Governor) of the Planning Ordinance 1991 substitute —

“(1) Any application for planning permission for —

- (a) exploration for or winning and working of minerals, or
- (b) marine fish farming,

shall, subject to subsection (3) below, not be determined by the Committee but shall be referred to the Governor for determination.

(1A) In subsection (1) above “marine fish farming” means fish farming in waters other than inland waters; and for the purpose of that definition “fish farming” and “inland waters” have the same meanings as in section 26(6) above.”

(2) In section 2(1) (interpretation) of the Fisheries (Conservation and Management) Ordinance 2005 —

- (a) for the definition of “fish farmer” substitute —

“ “fish farming” means the breeding, rearing or keeping of fish, whether or not for profit, with a view to their sale or their transfer to fishing waters;”;

(b) in the definition of “fishing”, after paragraph (f) insert —

“but does not include fish farming or any activity which is part of a business of fish farming;”

(3) In section 90(6) (disposal of fish by commercial fishers) of that Ordinance, after paragraph (c) insert —

“(ca) fish produced in the course of a lawful fish farming operation, except fish (other than shellfish) which have been released from captivity;”

SCHEDULE

POWERS OF ENTRY AND SEARCH

Section 20(5)

Interpretation

1. In this Schedule —

“examine”, in relation to fish, includes count, measure, weigh, grade or gauge; and

“premises” includes any structure, plant, apparatus or equipment in marine waters.

Powers of fisheries officers

2. A fisheries officer may —

(a) where he has reasonable grounds to believe that there is on any land or 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 paragraph 5 —

(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 he 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 he has reasonable grounds to believe may afford evidence as to the commission of an offence under this Ordinance;

(b) where he has reasonable grounds to believe that there is in any vehicle or vessel 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 vessel or under a warrant issued under paragraph 5 —

(i) stop and detain the vehicle or vessel or; and

(ii) enter or board and search the vehicle or vessel;

(iii) break open and search any compartment, container or other receptacle in which he has reasonable grounds to believe that there is any thing; and

(iv) examine and take possession of, or secure against interference, any document or other thing that he has reasonable grounds to believe may afford evidence as to the commission of an offence under this Ordinance;

(c) examine any equipment found in any place, being equipment that he has reasonable grounds to believe has been used, is being used, or is intended to be used, for fish farming;

(d) seize, detain, remove or secure —

(i) any fish which he has reasonable grounds to believe has been kept in contravention of this Ordinance;

(ii) any equipment which he 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 or other thing which he has reasonable grounds to believe may afford evidence as to the commission of an offence under this Ordinance;

(e) enter on and examine any premises which he has reasonable grounds to believe has been used or is being used in connection with fish farming, for the purpose of ascertaining whether any offence under this Ordinance has been or is being committed;

(f) in furtherance of that purpose —

(i) search the premises for, and examine, any fish;

(ii) search the premises for, inspect, take extracts from, and make copies of, any documents relating to fish farming; and

(iii) if he finds, during the course of the search, anything that he believes, on reasonable grounds, may provide evidence of an offence under this Ordinance, secure the thing pending the obtaining of a warrant to seize it;

(g) with the consent of the holder of a licence or sub-licence or under a warrant issued under paragraph 5, seize anything found during the course of a search which he believes on reasonable grounds may provide evidence of an offence under this Ordinance; and

(h) require a person found on or in any land or premises entered under paragraph (a) or (e) or in any vehicle or vessel entered, boarded, detained or searched under paragraph (b) —

(i) to state the person's name and address,

(ii) to produce any document in the person's possession or under the person's control relating to any fish farming, or

(iii) to give information concerning any fish farming.

Production of authority

3.—(1) Where a fisheries officer proposes to enter and search any land or premises, he must, if there is a person on the land or premises, produce his warrant card and, if he fails to do so, he is not authorised to enter and search the land or premises.

(2) Where a fisheries officer proposes to enter, board, search or detain a vehicle or vessel, he must, if there is a person in charge of the vehicle or vessel, produce his warrant card and, if he fails to do so, he is not authorised to enter, board, search or detain the vehicle or vessel.

(3) Where a fisheries officer makes a requirement of a person under any provision of paragraph 1, he must produce his warrant card to that person and, if the officer fails to do so, that person is not obliged to comply with the requirement.

(4) This paragraph does not apply to a member of Her Majesty's Services who is in uniform.

Assistance of fishery officer

4.—(1) Any fishery officer exercising any of the powers conferred on him by this Schedule 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 fishery officer to assist him in the exercise of any of the powers conferred by this Schedule is authorised to render such assistance.

(3) A person who, while assisting a fishery officer does any act under this Schedule, or omits to do any act required by this Schedule, is not 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 fishery officer under the authority of sub-paragraph (2) unless he has himself incurred liability for the act or omission.

Search warrants

5.—(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 vessel if the justice 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 or premises or in the vehicle or vessel.

(2) A warrant issued under this section must set out —

- (a) the offence to which the warrant relates;
- (b) a description of the land, premises, vehicle or vessel to which the warrant relates;
- (c) the kinds of evidential material that had to 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 must not exceed 7 days; and
- (f) whether the warrant may be executed at any time or only during particular hours.

(3) The warrant must also state that it authorises the seizure of a thing (other than evidential material of a kind referred to in sub-paragraph (2)(c)) found on the land or premises or in the vehicle or vessel 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, 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.

(4) Nothing in sub-paragraph (2)(e) prevents the issue of successive warrants in relation to the same land, premises, vehicle or vessel.

Matters authorised by a search warrant

6.—(1) A warrant authorises the executing officer or a person assisting him —

- (a) to enter the land, premises, vehicle or vessel to which the warrant relates and, in the case of a vehicle or vessel, to enter it wherever it is;
- (b) to take samples of things found on the land or premises or in the vehicle or vessel for forensic purposes;
- (c) to search the land, premises, vehicle or vessel for the kinds of evidential material specified in the warrant, and to seize things of that kind found on the land or premises or in the vehicle or vessel;
- (d) seize other things found on the land or premises or in the vehicle or vessel 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, 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.

(2) If the warrant states that it may be executed only during particular hours, the warrant must 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 relates.

Availability of assistance and use of force in executing a warrant

7. In executing a warrant —

(a) the executing officer may be accompanied by such persons and make use of such assistance as is reasonable in the circumstances;

(b) the executing officer, or a person who is a fisheries officer or a police officer and is assisting in the execution of the warrant, may use such force against such person and things as is reasonable in the circumstances; and

(c) a person who is neither a fisheries officer nor a police officer and is assisting in the execution of a warrant may use such force against things as is reasonable in the circumstances.

Copy of warrant to be given to occupier etc.

8.—(1) If while a warrant is being executed in relation to land or premises, the occupier of the land or premises or another person apparently representing him is present on the land or premises, the executing officer or a person assisting him must make available to that person a copy of the warrant and the executing officer must produce to that person his warrant card.

(2) The copy of the warrant referred to in sub-paragraph (1) need not include the signature of the justice of the peace.

Powers available to officer executing warrant

9.—(1) In executing a warrant in relation to land or premises, the executing officer or person assisting him may, for a purpose incidental to the execution of the warrant or if the occupier of the land or premises consents in writing, take photographs (including video recordings) of the premises or of things on the land or 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 have temporarily left the land or premises —

(a) for not more than one hour; or

(b) for a longer period if the occupier of the land premises consents in writing.

Use of equipment to examine or process things

10.—(1) In executing a warrant in relation to land or premises, the executing officer or a person assisting him may bring to the land or premises the subject of the warrant any equipment reasonably necessary for the examination or processing of things found on the land or 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 land or 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 sub-paragraph (2), the executing officer must, 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 examinational 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 the 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

11.—(1) In executing a warrant in relation to premises, 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 facilities to put the material in to 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 sub-paragraph (2)(a) only if —

(a) it is not practicable to put the material in documentary form as mentioned in sub-paragraph (2)(b) or to copy the material as mentioned in sub-paragraph (2)(c); or

(b) possession by the occupier of the equipment would constitute an offence under this Ordinance.

(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 sub-paragraph, 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 must give notice to the occupier of the premises the subject of the warrant of his or her intention to secure equipment and of the fact that the equipment may be secured for up to 24 hours.

(6) The equipment may be secured under sub-paragraph (4) until the end of a period of not more than 24 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 requirement to operate the electronic equipment on the premises which has been secured pursuant to sub-paragraph (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 sub-paragraph (7), he must 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 Schedule relating to the issue of warrants apply, with any necessary modifications, to the issuing of an extension.

Compensation for damage to equipment

12.—(1) Where —

(a) damage is caused to equipment as a result of being operated as mentioned in paragraph 10 or 11; and

(b) the damage was caused as a result of insufficient care being exercised —

(i) in selecting the person who was to operate the equipment, or

(ii) 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

13.—(1) Subject to sub-paragraph (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 must, 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) Sub-paragraph (1) does not apply if —

(a) the thing that has been seized was seized under paragraph 11(2)(b) or (c), or

(b) possession by the occupier of the thing or information would constitute an offence under any law having effect in the Falkland Islands.

Occupier entitled to be present during search

14. If a warrant is being executed in relation to land or premises and the occupier of the land or premises or another person who apparently represents him is present on the land or 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 warrant

15. The executing officer or a person assisting him must provide a receipt for a thing seized under a warrant or moved under paragraph 10(2), but if two or more things are seized or moved, they may be covered in the one receipt.

Fishery Products Bill 2006

(No: of 2006)

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FISHERY PRODUCTS BILL 2006

(No: of 2006)

(assented to: 2006)

(*commencement*: in accordance with section 1)

(published: 2006)

A BILL

for

AN ORDINANCE

To make provision for securing the quality of marine and other waters, and of water used for washing or otherwise processing fishery products; the designation of areas as suitable or unsuitable for the production, collection or relaying of shellfish; for securing the health of shellfish and aquaculture animals; for regulating the treatment, placing on the market, transport, despatch, export, import, introduction and movement of fishery products; and for connected purposes

BE IT ENACTED by the Legislature of the Falkland Islands as follows —

PART 1 PRELIMINARY

1. Short title and commencement

(1) This Ordinance may be cited as the Fishery Products Ordinance 2006.

(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.

2. Interpretation

In this Ordinance —

“aquaculture animals” means live fish or shellfish coming from a farm, or coming from the wild and intended for a farm;

“aquaculture products” means products derived from aquaculture animals, whether intended for farming, such as eggs and gametes, or for human consumption;

"analysis", in relation to any matter, includes subjecting it or a sample of it to a test of any description;

“controlled waters” means inland waters or marine waters for the time being designated by an order under section 4;

“the Director” means the Director of Fisheries;

“eggs” means fertilized ova, including eyed ova and any associated fluid, of fish or shellfish;

“farm” means any establishment or, in general, any geographically defined installation in which fish, shellfish or crustaceans are reared or kept with a view to their being placed on the market;

“farmed”, in relation to fish, shellfish or crustaceans, means at or from a farm;

references to fish, shellfish or crustaceans are to fish, shellfish or crustaceans, as the case may be, at any stage of development;

“fishery products” means —

(a) any of the following (whether live or dead, and whether wild or reared or kept in a farm)—

(i) fish;

(ii) shellfish;

(iii) crustaceans;

(iv) any other seawater or freshwater animals;

(b) parts of any animals mentioned in paragraph (a), except in circumstances where they —

(i) are combined (in whatever way) with other foodstuffs, and

(ii) comprise less than 10% of the total weight of the combined foodstuffs; and

(c) the roes of any such animals;

but excludes aquatic or amphibious animals of a description prescribed for the purpose of this definition, and parts of such animals;

“food authority” means the Senior Veterinary Officer or any other public officer appointed by the Governor to be a food authority for the purposes of this Ordinance;

“gametes” means sperm or unfertilized ova and any associated fluid of fish or shellfish;

“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;

“marine waters” means waters within the seaward limits of the territorial sea adjacent to the Falkland Islands, other than inland waters;

“notice” means a notice in writing;

“place on the market” means hold or display for sale, offer for sale, sell, deliver, transfer or place on the market in any other way, but does not include sell by retail;

“polluting matter” includes any toxic or objectionable compound, whether artificial or occurring naturally;

“premises” includes any place, farm, installation in which fish or shellfish are kept, vehicle, ship, vessel, boat, craft, hovercraft or aircraft;

“regulations” means regulations made by the Governor;

“relevant Community legislation” has the meaning given by section 3;

“relaying”, in relation to shellfish, means deposit or immersion in marine waters;

“shellfish” means any kind of mollusc;

“trade effluent” means any liquid, either with or without particles of matter in suspension in the liquid, which is wholly or partly produced in the course of any trade or industry carried on at trade premises;

“trade premises” means any premises used or intended to be used for carrying on any trade or industry (except agriculture, horticulture or the farming of seawater or freshwater animals);

“sewage effluent” means the contents of lavatories, water used for washing or cooking (except water used for the business of a laundry or for a business of preparing food or drink) and surface water;

“UK legislation” means any legislation of the United Kingdom, and includes —

(a) legislation having effect in a constituent part of the United Kingdom, and

(b) any European Community legislation having direct effect as law in the United Kingdom;

“vessel” means any ship or craft, or any structure capable of navigation;

“water quality objectives” has the meaning given by section 5(4); and

“wild”, in relation to fish or shellfish, means not farmed.

3. Meaning of “relevant Community legislation”

In this Ordinance “relevant Community legislation” means —

(a) in relation to Part 2 —

(i) Council Directive 79/923/EEC of 30th October 1979 on the quality required of shellfish waters;

(ii) Council Directive 98/83/EC of 3rd November 1998 on the quality of water intended for human consumption;

(iii) any European Community legislation from time to time amending or replacing either of those Directives;

(b) in relation to Part 3 —

(i) Council Directive 91/67/EEC of 28th January 1991 concerning the animal health conditions governing the placing on the market of aquaculture animals and products;

(ii) Council Directive 93/53/EEC of 24 June 1993 introducing minimum Community measures for the control of certain fish diseases;

(iii) Council Directive 95/70/EC of 22nd December 1995 introducing minimum Community measures for the control of certain diseases affecting bivalve molluscs;

(iv) any European Community legislation from time to time amending or replacing any of those Directives;

(c) in relation to Part 2, Part 3 or Part 4, any of the following so far as they relate to fishery products —

(i) Regulation 178/2002EC laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety;

(ii) Directive 2004/41/EC of 21 April 2004 repealing certain Directives concerning food hygiene and health conditions for the production and placing on the market of certain products of animal origin intended for human consumption and amending Council Directives 89/662/EEC and 92/118/EEC and Council Decision 95/408/EC;

(iii) Regulation (EC) 852/2004 of 29th April 2004 on the hygiene of foodstuffs;

(iv) Regulation (EC) 853/2004 of 29th April 2004 laying down specific hygiene rules for food of animal origin;

(v) Regulation (EC) 854/2004 of 29th April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption;

(vi) Regulation (EC) No 882/2004 of 29th April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules;

(v) any European Community legislation from time to time amending or replacing any of legislation referred to in the foregoing paragraphs of this subsection;

and includes any European Community legislation giving effect to, or otherwise relating to the subject matter of, any legislation mentioned in paragraph (a), (b) or (c).

PART 2 WATER QUALITY

Quality of controlled waters

4. Designation of waters

(1) If it appears to the Governor that any marine waters need protection or improvement in order that they or any part of them may support fish, shellfish or crustaceans, or fish, shellfish or crustaceans of a particular description, he may by order designate —

(a) those waters, and

(b) any inland waters (whether natural or artificial, or above or below ground) which discharge either directly or indirectly into those waters,

as controlled waters for the purpose of this Part.

(2) Before making an order under subsection (1) the Governor shall cause a notice of the proposal to be published in the Gazette —

(a) specifying by reference to a map the marine waters proposed to be designated, and

(b) stating that, within 28 days after the date of publication, representations or objections may be made in writing to the Governor with respect to the proposal;

(3) The Governor may cause an inquiry to be held into a proposal to make an order under subsection (1), and where he does so, he shall —

(a) appoint a person to consider the proposal and to report thereon to him; and

(b) consider the report and have regard to any recommendations made in it.

(4) A person appointed under subsection (3)(a) shall give —

(a) the Director, and

(b) every person by whom a representation or objection was duly made in accordance with the notice under subsection (2)(b),

an opportunity of being heard by him.

5. Water quality objectives

(1) The Governor may by regulations (which shall have regard to the relevant Community legislation) prescribe a system of classifying the quality of any description of controlled waters according to their compliance with criteria specified in the regulations.

(2) For the purposes of any such classification, regulations may provide that the question whether prescribed requirements are satisfied may be determined by reference to such samples as may be prescribed.

(3) For the purpose of protecting or improving any marine waters in order that they or any part of them may support fish, shellfish or crustaceans, or fish, shellfish or crustaceans of a specified description, the Governor may by order specify the water quality objectives for —

(a) any controlled waters, or

(b) controlled waters of a description specified in the order,

by reference to one or more of the classifications prescribed under subsection (1).

(4) The water quality objectives for controlled waters of any prescribed description are that the quality of those waters shall satisfy the criteria for controlled waters of that description in order to achieve the classification required of the waters by regulations under subsection (1).

(5) Before making regulations or an order under this section, the Governor shall consult such persons concerned in taking, processing or supplying fish, shellfish or crustaceans in the Falkland Islands, or such body or bodies appearing him to be representative of those persons, as appear to him appropriate.

6. Monitoring of pollution

The Director shall monitor the extent of pollution in controlled waters and shall provide to the food authority such information as the food authority may require in relation to such monitoring and its results.

7. Offences of polluting controlled waters

(1) No person shall cause or knowingly permit —

(a) any poisonous, noxious or polluting matter, or

(b) any solid waste matter,

to enter any controlled waters.

(2) No person shall cause or knowingly permit any trade effluent to be discharged into any controlled waters, either directly or through any drain or sewer.

(3) No person shall cause or knowingly permit any effluent or other matter to enter or be discharged into any controlled waters, either directly or through any drain or sewer, in contravention of a prohibition imposed under section 9.

(4) No person shall cause or knowingly permit any matter whatever to enter any inland waters so as to tend (either directly or in combination with other matter which he or another person causes or permits to enter those waters) to impede the proper flow of the waters in a manner leading, or likely to lead, to a substantial aggravation of —

(a) pollution of controlled waters due to other causes, or

(b) the consequences of such pollution.

(5) No person shall contravene or fail to comply with a condition of a consent under section 10.

(6) Any person who contravenes subsection (1), (2), (3), (4) or (5) commits an offence and is liable to a fine not exceeding the maximum of level 10 on the standard scale.

(7) Subsection (2) does not, for a period of 3 years from the commencement of this section, apply to the discharge from any premises from which any trade effluent was discharged at any time within a period of 12 months ending on such commencement, of trade effluent of the same description as was discharged in that period, at rates and in quantities not exceeding the rates at which and the quantities in which it was discharged during that period.

8. Authority for discharges

(1) A person does not contravene section 7(1) or (2) in respect of the entry of any matter into any waters or any discharge if the entry occurs or the discharge is made under and in accordance with, or as a result of any act or omission under and in accordance with, —

(a) a consent under section 10; or

(b) a licence under Part II of the Food and Environment Protection Act 1985, as it has effect in the Falkland Islands.

(2) A person does not contravene section 7(1), (2), (3), (4) or (5) in respect of the entry of any matter into any waters or any discharge if —

(a) the entry is caused or permitted, or the discharge is made, in an emergency in order to avoid danger to life or health; and

(b) that person takes all such steps as are reasonably practicable in the circumstances for minimising the extent of the entry or discharge and of its polluting effects; and

(c) particulars of the entry or discharge are furnished in writing to the Director as soon as reasonably practicable after it occurs.

(3) A person does not contravene section 7(1) or (2) by reason of his causing or permitting any discharge of trade effluent or sewage effluent from a vessel.

9. Prohibition of certain discharges

(1) For the purpose of achieving the water quality objectives established for any controlled waters, the Governor may by regulations prohibit the entry or discharge into those or any other controlled waters, either directly or through any drain or sewer, of any effluent or other matter which —

(a) contains a prescribed substance or a prescribed concentration of such a substance; or

(b) derives from a prescribed process or from a process involving the use of prescribed substances or the use of such substances in quantities which exceed the prescribed amounts.

(2) For the purpose of achieving the water quality objectives established for any controlled waters, the Governor may by notice to any person prohibit him from causing or permitting any effluent or other matter of a description specified in the notice to enter or be discharged into those or any other controlled waters so specified, either directly or through any drain or sewer, and either absolutely, or without complying with any conditions so specified, after the expiry of such period as is so specified.

(3) The period specified in a notice under subsection (2) shall not be less than 3 months beginning with the day on which the notice is given, except where the Governor is satisfied that there is an emergency which requires the prohibition in question to come into force within a shorter period.

(4) Where —

(a) apart from this subsection, a prohibition contained in a notice under subsection (2) and relating to the discharge of trade effluent or sewage effluent into controlled waters would come into force at the expiry of a period of 3 months or more beginning with the day on which the notice is given, and

(b) before the notice comes into force an application is made for a consent under section 10 relating to the discharge in question,

the prohibition shall not come into force until the application is determined by the grant or refusal of such a consent.

(5) Regulations under subsection (1), and a notice under subsection (2), may not prohibit any discharge of trade effluent or sewage effluent from a vessel.

10. Consent for discharges

(1) The Governor may, on an application for the purpose, issue a consent to the discharge of trade effluent or sewage effluent into controlled waters for such minimum term and subject to such conditions as he thinks fit.

(2) An application for a consent under this section shall be made in writing and shall be accompanied by all such information as the Governor may reasonably require.

(3) The Governor may treat an application under subsection (2) which relates to proposed discharges at 2 or more places as separate applications for consents for discharges at each of those places.

(4) The Governor may require the applicant for a consent under this section to supply such information and permit such examinations and tests as in his opinion may be necessary or expedient to enable him to determine the application.

(5) The minimum term of a consent under this section shall not, without the agreement of the applicant, be less than 2 years beginning with the date on which it is issued.

(6) A consent under this section may include in particular conditions —

(a) as to the places at which discharges to which the consent relates may be made and as to the design and construction of any outlets for the discharges;

(b) as to the nature, origin, composition, temperature, volume and rate of the discharges and as to the periods during which they may be made;

(c) as to the steps to be taken, in relation to the discharges or by way of subjecting any substance likely to affect the description of matter discharged to treatment or any other process, for minimising the polluting effects of the discharges on any controlled waters;

(d) as to the provision of facilities for taking samples of the matter discharged, and in particular as to the provision, maintenance and use of manholes, inspection chambers, observation wells and boreholes in connection with the discharges;

(e) as to the provision, maintenance and testing of meters for measuring or recording the volume and rate of the discharges and apparatus for determining the nature, composition and temperature of the discharges;

(f) as to the keeping of records of the nature, origin, composition, temperature, volume and rate of the discharges and, in particular, of records of readings of meters and other recording apparatus provided in accordance with any other condition included in the consent; and

(g) as to the making of returns and the giving of other information to the Director about the nature, origin, composition, temperature, volume and rate of the discharges.

(7) A consent for any discharges is not limited to discharges by a particular person and extends to discharges which are made by any person.

(8) Where automatic recording equipment is used in accordance with a provision included in a consent by virtue of subsection (6)(e), any record produced by means of the equipment shall, in any proceedings under this Ordinance, be evidence of the matters appearing from the record.

(9) The Governor shall give notice to the applicant of his decision on an application for a consent under this section; and the notice shall state —

(a) the reasons for the Governor's decision; and

(b) the right of appeal under section 12 and the time within which such an appeal may be brought.

(10) Regulations may make provision for the fees and charges to be paid in respect of an application for a consent under this section.

11. Review, revocation etc. of consents

(1) The Governor shall from time to time review all consents under section 10 and the conditions (if any) included in such consents.

(2) Where the Governor has reviewed a consent under this section, he may by a notice given to the person making a discharge in pursuance of the consent —

(a) revoke the consent;

(b) vary the conditions of the consent; or

(c) in the case of an unconditional consent, provide that it shall include such conditions as may be specified in the notice;

and a notice under paragraph (b) or (c) shall specify a further minimum term of the consent (which shall not, without the agreement of the person making the discharge, be less than 2 years beginning with the date of the notice).

(3) Where the Governor reviews a consent under this section and it appears to him that no discharge has been made in pursuance of the consent at any time during the preceding 12 months, he may revoke the consent by notice given to the owner and (if different) the occupier of the land from which discharges would be made in pursuance of the consent.

(4) The powers conferred by subsection (2) may not, without the agreement of the person making the discharge, be exercised in relation to any consent within the minimum term specified under section 10(1) or, as the case may be, a further minimum term specified under subsection (2).

(5) Subsection (4) does not apply if, and to the extent that, it appears to the Governor appropriate to exercise those powers in order to give effect to any international agreement to which the United Kingdom is a party and which extends to the Falkland Islands.

(6) Before giving a notice under subsection (1) or (2) the Governor shall consult the person making the discharge, or the owner and (if different) the occupier of the land, as the case may be.

(7) Subject to section 12, a notice under subsection (2) or (3) shall —

(a) state the reasons why it is given; and

(b) take effect —

(i) if it is given with the agreement of every person to whom it is required to be given, on the date on which it is given to him or them (or, where it is given to different persons on different dates, on the last such date);

(ii) otherwise, on the expiration of 21 days beginning with that date.

(c) unless paragraph (b)(i) applies, state the right of appeal under section 12 and the time within which such an appeal may be brought.

12. Appeals against refusal etc. of consent

(1) Before the expiration of 21 days beginning with the date on which notice of the Governor's decision on an application for a consent under section 10 is given, the applicant may appeal to the Supreme Court —

(a) where the consent is refused, against the refusal;

(b) where the consent is given, against any condition included in it.

(2) Before the date on which a notice under section 11(2) or (3) would, apart from this subsection, take effect, any person to which it was required to be given (other than a person with whose agreement it was given) may appeal to the Supreme Court against the notice; and in that case the notice shall not take effect until the appeal is dismissed or withdrawn.

(3) On an appeal under this section the Court may by order quash the decision or notice if it is satisfied that the Governor in refusing the consent or including the condition, as the case may be—

(a) erred in law; or

(b) based his decision on any incorrect material fact; or

(c) exercised his discretion in an unreasonable manner.

- (4) Pending the determination of an appeal under this section the Court may give such directions and make such interim orders as it thinks just and appropriate.

Quality of water used for processing fishery products

13. Standards of purity

- (1) The Governor may by regulations specify the standards with which water used for washing or otherwise processing fishery products must comply.

- (2) Regulations under subsection (1) may in particular —

(a) prescribe specific requirements as to the substances that are to be present in or absent from the water and as to the concentrations of substances which are or are required to be present in the water;

(b) prescribe specific requirements as to other characteristics of the water;

(c) provide that the question whether prescribed requirements are satisfied may be determined by reference to such samples as may be prescribed;

(d) enable the Governor —

(i) to authorise such relaxations of and departures from the prescribed requirements (or from any of them) as may be prescribed;

(ii) to make any such authorisation subject to such conditions as may be prescribed; and

(iii) to modify or revoke any such authorisation or condition.

14. Compliance with standards

- (1) The Governor may by regulations require —

(a) the occupier of any premises where fishery products are washed or otherwise processed, and

(b) any person by whom fishery products are washed or otherwise processed,

to take prescribed steps for the purpose of securing compliance with regulations under section 13(1).

- (2) Regulations under subsection (1) may in particular impose an obligation on a person mentioned in subsection (1)(a) or (b) —

(a) to take prescribed steps for monitoring and recording the quality of water from any source or combination of sources which is or may be used for washing or otherwise processing fishery products;

(b) to ensure that water from any source is not used for washing or otherwise processing fishery products until prescribed requirements for establishing the quality of water which may be supplied from that source have been complied with;

(c) to comply with prescribed requirements with respect to the analysis of water samples.

15. Use of processes and substances

(1) The Governor may by regulations make provision with respect to the use of such processes and substances, and of products that contain or are made with such substances and materials, as he considers may affect the quality of any water which is or may be used for washing or otherwise processing fishery products.

(2) Regulations under subsection (1) may in particular —

(a) forbid the use of processes, substances and products which have not been approved under the regulations or which contravene the regulations;

(b) for the purposes of provision made under paragraph (a), require processes, substances and products to conform to such standards as may be prescribed by or approved under the regulations;

(c) impose such other requirements as may be prescribed with respect to the use of prescribed processes, substances and products;

(d) provide for giving, refusal and revocation by prescribed persons of approvals required for the purposes of the regulations, for such approvals to be capable of being made subject to such conditions as may be prescribed and for the modification and revocation of any such condition.

16. Regulations: supplementary

(1) Regulations under section 13, 14 or 15 may apply to water which is or may be used for washing or otherwise processing —

(a) fishery products generally, or

(b) fishery products of a specified description.

(2) Any person who contravenes, or fails to comply with, a provision of regulations under section 13, 14 or 15, contravention of or non-compliance with which is declared by the regulations to be an offence, is liable to a fine not exceeding a prescribed maximum (which shall not exceed level 6 on the standard scale).

PART 3
HEALTH OF SHELLFISH ETC.

Introductory

17. Interpretation of Part 3

In this Part —

“approved”, in relation to any matter, means approved by the Governor as meeting the requirements of any relevant Community legislation;

“health inspection” means a visit by a food authority for the purpose of conducting health checks on a farm or zone;

“movement document” means a document in a prescribed form, complying with prescribed requirements and duly completed.

Designation of production areas etc.

18. Designation of production areas

(1) The Governor shall by order designate marine waters from which shellfish or crustaceans, or shellfish or crustaceans of a specified description, may be taken in accordance with requirements specified under subsection (2).

(2) An order under subsection (1) shall specify, as respects each area of water designated by it—

(a) the requirements which must be satisfied —

(i) for shellfish or crustaceans, or shellfish or crustaceans of a specified description, to be gathered in that area, or

(ii) for shellfish or crustaceans, or shellfish or crustaceans of a specified description, gathered there to be placed on the market; and

(b) such further limitations, conditions or restrictions as to —

(i) the gathering of shellfish or crustaceans, or shellfish or crustaceans of a specified description, in that area, or

(ii) the placing on the market of shellfish or crustaceans, or shellfish or crustaceans of a specified description, gathered there,

as appear to the Governor to be called for by any relevant Community legislation.

(3) The Governor may by order designate as a relaying area any area which appears to him to be suitable for the relaying of shellfish, or shellfish of a specified description.

(4) An order under subsection (3) shall specify, as respects each area designated by it, such limitations, conditions or restrictions as to the relaying there of shellfish, or shellfish of a specified description, as appear to the Governor to be called for by any relevant Community legislation.

19. Designation of prohibited areas for shellfish or crustaceans production

The Governor may by order designate any area as an area unsuitable, for health reasons, for the production or collection of shellfish or crustaceans, or shellfish or crustaceans of a specified description.

20. Amendment etc of designation order

(1) The Governor may by order at any time amend an order under section 18 or 19 so as —

- (a) to vary the boundary of any area designated by the order;
- (b) to impose a new requirement, limitation, restriction or condition of a kind referred to in section 18(2) or (4) in relation to any area designated under section 18;
- (c) to vary or cancel any requirement, limitation, restriction or condition imposed under section 18(2) or (4), or under paragraph (b), in relation to any such area;
- (d) to restrict the application of the order to shellfish or crustaceans of a specified description;
- (e) to vary the description of shellfish or crustaceans to which the order applies.

(2) The Governor may by order revoke an order under section 18 if it appears to him that the area designated by it is no longer suitable for the gathering or relaying of shellfish or crustaceans, or of shellfish or crustaceans of the description specified in the order, as the case may be.

(3) The Governor may by order revoke an order under section 19.

21. Temporary prohibition orders concerning production areas

(1) Subject to subsection (4), a food authority may, if he is satisfied that the consumption of live shellfish or crustaceans taken from any marine waters is likely to cause a risk to public health, make a temporary prohibition order prohibiting the collecting of any live shellfish or crustaceans from those waters.

(2) A temporary prohibition order shall cease to have effect at the expiration of a period of 28 days after it was made, unless it is sooner revoked by a further order made by a food authority.

(3) Forthwith after making temporary prohibition order a food authority shall refer the matter to the Governor, who if he sees fit, revoke the temporary prohibition order.

(4) Forthwith after making temporary prohibition order, or an order under subsection (2) revoking such an order, a food authority take such steps as may be prescribed for bringing the order to the notice of persons who may be affected by the order.

(5) A food authority shall not without the Governor's consent make a temporary prohibition order in respect of any production area if such an order has been made in respect of that area within the preceding 28 days.

22. Restriction on collection etc. of shellfish or crustaceans

(1) No person shall, in the course of a business, gather shellfish or crustaceans of any description —

(a) from marine waters other than waters designated by an order under section 18(1) as those from which shellfish or crustaceans of that description may be taken;

(b) otherwise than in accordance with the requirements imposed under section 18(2)(a) in relation to shellfish or crustaceans of that description;

(c) in contravention of any limitation, condition or restriction imposed under section 18(2)(b) in relation to shellfish or crustaceans of that description.

(2) No person shall place on the market shellfish or crustaceans of any description —

(a) gathered from marine waters other than waters designated by an order under section 18(1) as those from which shellfish or crustaceans of that description may be taken; or

(b) otherwise than in accordance with the requirements imposed under section 18(2)(a) in relation to shellfish or crustaceans of that description;

(c) in contravention of any limitation, condition or restriction imposed under section 18(2)(b) in relation to shellfish or crustaceans of that description.

(3) No person shall relay shellfish or crustaceans of any description —

(a) in marine waters other than waters designated by an order under section 18(3) as those in which shellfish or crustaceans of that description may be relaid; or

(b) in contravention of any limitation, condition or restriction imposed under section 18(4) in relation to shellfish or crustaceans of that description.

(4) Any person who contravenes subsection (1), (2) or (3) commits an offence and is liable to a fine not exceeding the maximum of level 8 on the standard scale.

23. Collecting or marketing shellfish or crustaceans from prohibited areas

(1) Where an area is for the time being designated under section 19 as unsuitable for the production or collection of shellfish or crustaceans, or shellfish or crustaceans of a specified

description, no person shall collect shellfish or crustaceans, or shellfish or crustaceans of that description, as the case may be, from that area.

(2) Where a temporary prohibition order under section 21 is in force in respect of any waters, no person shall collect shellfish or crustaceans from those waters.

(3) No person shall place on the market shellfish or crustaceans of any description collected in contravention of subsection (1) or (2).

Aquaculture animals and products

24. Placing on the market of aquaculture animals and products

(1) No person shall place aquaculture animals on the market for human consumption unless they meet the prescribed requirements.

(2) No person shall place aquaculture products for breeding purposes on the market unless they originate from aquaculture animals which meet the prescribed requirements.

(3) No person shall place aquaculture products for human consumption on the market unless they originate from aquaculture animals which meet the prescribed requirements.

25. Transport of aquaculture animals

No person shall transport aquaculture animals unless the prescribed requirements are met.

26. Identification of aquaculture animals and aquaculture products

No person shall despatch aquaculture animals or aquaculture products unless prescribed information is provided in the prescribed manner.

27. Export to Community of aquaculture animals and aquaculture products

Regulations may make provision for securing that no aquaculture animal or aquaculture product which —

(a) does not meet, or is not despatched in accordance with, the relevant Community legislation, or

(b) is not accompanied by any documents required by the relevant Community legislation,

is exported from the Falkland Islands to any part of the European Community.

Controls on movement of fish etc

28. Introduction of live fish etc

(1) Regulations may prohibit the introduction into the Falkland Islands, or any prescribed zone within the Falkland Islands, or subsequently move within the Falkland Islands or such a zone, any live fish, shellfish, crustaceans, eggs or gametes of a prescribed description unless they are accompanied by valid movement documents confirming that —

(a) they come from an area free from a prescribed disease; or

(b) where a movement document does not require that they come from an area free from a prescribed disease, they fulfil the conditions set out in that movement document.

(2) Regulations may prohibit the relaying in any zone within the Falkland Islands of any live fish, shellfish, crustaceans, eggs or gametes of a prescribed description from outside that zone unless they are accompanied by valid movement documents confirming that —

(a) they come from an area free from a prescribed disease; or

(b) where a movement document does not require that they come from an area free from a prescribed disease, they fulfil the conditions set out in that movement document.

(3) Regulations may prohibit the relaying of any live fish, shellfish, crustaceans, eggs or gametes from a prescribed area —

(a) in another prescribed area; or

(b) outside prescribed areas;

unless they have been authorised to do so in writing by a food authority.

29. Quarantine requirements

No person shall introduce into an approved zone or an approved farm any wild fish, shellfish or crustaceans, or their eggs or gametes, which have been caught in the deep sea and which are to be used for breeding purposes unless those fish, shellfish, crustaceans, eggs or gametes are first placed in quarantine in suitable facilities and in appropriate conditions to be determined by a food authority.

Control of disease

30. Notification of disease

(1) Any person who —

(a) knows of any observed abnormal mortality amongst shellfish or crustaceans in marine waters, farms, farming areas, harvested natural beds, or purification centres or storage tanks which discharge water into the sea;

(b) knows of any symptom amongst fish, shellfish or crustaceans which might constitute grounds for suspecting the presence of a prescribed disease;

(c) has any reason for suspecting the presence amongst fish, shellfish or crustaceans, of a prescribed disease;

shall notify a food authority as quickly as possible.

(2) Any person who has in his possession or under his charge an infected item, or an item which he suspects is an infected item, shall detain it until —

(a) it has been examined by a food authority; or

(b) a food authority has instructed him to dispose of it.

(3) A food authority may take such samples of or from fish or shellfish as may be necessary to establish whether a prescribed disease is present amongst fish or shellfish.

(4) For the purposes of this section —

“infected item” means a fish, crustacean or shellfish or the carcase or part of the carcase of the same which is infected with a prescribed disease; and

“observed abnormal mortality” means sudden mortality of a prescribed description.

31. Powers to control diseases of fish, shellfish etc.

(1) If a food authority has reasonable grounds for suspecting amongst fish, shellfish or crustaceans the presence of a prescribed disease he may —

(a) by notice in writing given to the person appearing to have charge of any fish shellfish or crustaceans kept on such premises as are specified in the notice, prohibit the movement of any fish, shellfish or crustaceans, or fish, shellfish or crustaceans of a specified description, on to or off such premises, except under the written authority of a food authority; or

(b) by notice in writing given to any person appearing to him to be appropriate, prohibit the taking of any fish, shellfish or crustaceans, or fish, shellfish or crustaceans of a specified description, from any area specified in the notice except under the written authority of a food authority.

(2) A notice given under paragraph (1) shall remain in force until withdrawn by a further notice in writing given by a food authority to the person to whom the initial notice was given.

(3) If the result of a test for the presence of a prescribed disease is positive, a food authority may, by notice in writing given to the person appearing to have charge of any fish, shellfish, crustaceans, facilities or equipment —

(a) require the destruction of all infected or contaminated fish, shellfish or crustaceans, or fish, shellfish or crustaceans of a specified description; and

(b) require the disinfection of facilities and equipment.

32. Control of disease: further measures

(1) Regulations made by the Governor under this subsection may enable the Governor, if he has reasonable grounds for suspecting or believing that fish, shellfish or crustaceans in any inland

waters or marine waters are or may become infected with a prescribed disease, by order to designate those waters, and any land or waters adjacent to them, for the purpose of the regulations.

(2) Regulations under subsection (1) may also, for the purpose of preventing, eliminating, or controlling or preventing the spread of, that disease —

(a) prohibit, restrict or regulate any prescribed activity within any waters or land so designated, and

(b) prescribe measures of control —

(i) which are to be taken by any person of a description specified in the regulations, or

(ii) which a food authority may by notice to any such person require him to take,

within any waters or land so designated.

33. Default powers

(1) If any person fails to comply with the requirements of a notice given under this Part then, without prejudice to any proceedings consequent upon the failure, a food authority may —

(a) enter on any premises to which such notice relates, and

(b) take or cause to be taken such steps as appear to him to be necessary either to ensure compliance with the requirements of the notice or to remedy the consequences of the failure to carry them out.

(2) All reasonable costs of taking such steps shall be recoverable by the food authority from the person to whom the notice was given.

34. Offences

(1) Any person who contravenes, or fails to comply with, —

(a) a provision of this Part, or

(b) a provision or requirement of a notice given under this Part,

commits an offence.

(2) Any person who, for the purposes of procuring the approval of any matter for the purposes of this Part or the issue of a movement document —

(a) makes a statement which he knows to be false in a material particular;

(b) recklessly make a statement which is false in a material particular; or

(c) intentionally fails to disclose any material particular,

commits an offence.

(3) A person who commits an offence under subsection (1) or (2) is liable to a fine not exceeding level 8 on the standard scale.

(4) Any person who contravenes, or fails to comply with, a provision of regulations under this Part, contravention of or non-compliance with which is declared by the regulations to be an offence, is liable to a fine not exceeding a prescribed maximum (which shall not exceed level 8 on the standard scale).

PART 4 HYGIENE

35. Designation of vessels, establishments etc

(1) The Governor may by order designate for the purposes of this Part, any relevant Community legislation, and any regulations under section 36 —

(a) a dispatch centre,

(b) a factory vessel,

(c) a fishery products establishment,

(d) a purification centre, or

(e) any other vessel, establishment or installation of a prescribed description.

(2) No order may be made under subsection (1) except in respect of a vessel, establishment or installation which has been approved for the purpose by the food authority.

(3) The Governor may by order revoke any order under subsection (1).

(4) In this section —

“dispatch centre” means an on-shore or off-shore installation for the reception, conditioning, washing, cleaning, grading and wrapping of fishery products of a prescribed description fit for human consumption;

“factory vessel” means any vessel on which fishery products undergo one or more of the following operations —

filleting,

slicing,

skinning,

mincing,

freezing,

processing,

followed by packaging; but the following are not factory vessels —

(a) fishing vessels in which only shrimps and molluscs are cooked on board; and

(b) fishing vessels on board which only freezing is carried out;

“fishery products establishment” means, with regard to the production of fishery products for human consumption, any premises where fishery products are prepared, processed, chilled, frozen, packaged or stored, other than cold stores where only the handling of wrapped products takes place;

“purification centre” means an establishment with tanks fed by naturally clean sea water or sea water that has been cleaned by appropriate treatment, in which fishery products of a prescribed description are placed for the time necessary to remove microbiological contamination, so making them fit for human consumption.

36. Regulation of designated vessels etc.

(1) Regulations may provide for —

(a) the persons to whom and the manner in which applications may be made for approval of vessels, establishments and installations to which section 35 applies;

(b) the procedures to be followed by applicants for approvals;

(c) the standards of hygiene which shall apply to such vessels, establishments and installations;

(d) the obligations to be observed by —

(i) the owner, charterer or operator of a vessel, and

(ii) the owner, lessee or operator of an establishment or installation,

to which section 35 applies;

(e) laying down health conditions for the production, processing and placing on the market of fishery products for human consumption, in particular the harvesting, handling, storage, transport and distribution of live fishery products;

(f) securing the hygienic handling of fishery products at all stages of production and during storage, transport and distribution;

(g) the fees and charges to be paid in respect of —

(i) an application for an approval or a variation of an approval;

(ii) the issue of any certificate by or on behalf of a food authority;

(iii) an inspection of any vessel, establishment or installation to which section 35 applies; and

(iv) time reasonably spent by a food authority in connection with the carrying out of his powers and duties;

(h) the forms to be used for the purposes of this Part;

(i) the powers which may be exercised by a food authority.

(2) Any person who contravenes, or fails to comply with, a provision of regulations under subsection (1), contravention of or non-compliance with which is declared by the regulations to be an offence, is liable to a fine not exceeding a prescribed maximum (which shall not exceed level 10 on the standard scale).

PART 5 SUPPLEMENTARY

Regulations, orders, directions and codes of practice

37. Power to make regulations

(1) The Governor may make regulations —

(a) for prescribing anything which is to be prescribed under this Ordinance, and

(b) otherwise for the better carrying into effect of the purposes of this Ordinance.

(2) Any power to make regulations conferred by any other provision of this Ordinance is without prejudice to the general power conferred by subsection (1).

38. Application of UK legislation

(1) The Governor may by order apply, subject to such modifications and exceptions as he considers necessary, to or in relation to —

(a) the quality of marine waters or waters referred to in section 4(1)(b);

(b) the quality of water used for washing or otherwise processing fishery products;

- (c) the suitability or otherwise of areas for the production, collection or relaying of shellfish;
- (d) the health of shellfish and aquaculture animals;
- (e) the harvesting, handling, placing on the market, storage, transport, despatch, export, import, distribution, introduction, movement or labelling of fishery products;
- (f) vessels, establishments and installations to which section 35 applies,

any UK legislation appearing to him to give effect to any relevant Community legislation in relation to any of those matters, or any matter appearing to him to be connected with any of those matters.

(2) The Governor may by order revoke any order made under subsection (1).

39. Power to give directions

(1) The Governor acting in his discretion may give any public body or public officer such directions of a general or specific character as the Governor considers appropriate to secure that, in exercising its or his functions under this Ordinance, that body or officer gives effect to the requirements of —

- (a) any relevant Community legislation, or
- (b) any international agreement to which the United Kingdom is for the time being a party and which extends to the Falkland Islands;

and it is the duty of the body or officer to comply with any such direction.

(2) In determining any appeal against or review of a decision under this Ordinance, the court or tribunal making the determination shall be bound by any direction given under this section to the same extent as the public body or public officer to whom it was given.

40. Codes of practice

(1) For any purpose of Part 2, Part 3 or Part 4 the Governor may —

- (a) issue a code of practice, or
- (b) by order apply, subject to such modifications and exceptions, if any, as are specified in the order, any code of practice in force in any part of the United Kingdom under by virtue of or for the purposes of any UK legislation.

(2) A failure on the part of any person to observe any provision of a code of practice issued or applied under this section shall not of itself render him liable to any proceedings, but in any proceedings before a court or tribunal —

- (a) any such code shall be admissible in evidence, and

(b) any provision of the code which appears to the court or tribunal to be relevant to the question arising in the proceedings shall be taken into account in determining that question.

41. Transfer of functions

(1) The Governor may by order transfer to a public officer specified in the order any function conferred on the Governor by any of the following provisions of this Ordinance —

(a) section 9(2) or (3);

(b) section 10;

(c) section 11;

(d) section 13(2)(d).

(2) The Governor may by order revoke any order made under subsection (1).

(3) An order under subsection (1) or (2) may —

(a) amend or repeal any provision of this Ordinance, or of any regulations made under it, appearing to the Governor to be inconsistent with, or to be unnecessary or to require modification in consequence of, the order; and

(b) make such supplemental, consequential and transitional provision as the Governor considers necessary or appropriate for the purposes of the order.

Enforcement

42. Offences by bodies corporate

(1) Where an offence under this Ordinance or any regulation made pursuant to any power conferred by this Ordinance has been 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) any director, manager, secretary or other similar officer of the body corporate; or

(b) any person who was purporting to act in such capacity,

he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) For the purposes of subsection (1) "director", in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

43. Powers of entry

(1) A food authority shall, on producing, if required to do so, some duly authenticated document showing his authority, have the right at all reasonable hours to enter any land or premises for the

purposes of ascertaining whether there is or has been on the premises any contravention of this Ordinance.

(2) A food authority may carry out all checks and examinations necessary for the enforcement of this Ordinance, and in particular may —

- (a) carry out inspections of any premises;
- (b) take samples of or from fishery products;
- (c) examine relevant documentary or computer material.

(3) A food authority may make such inspections and take such samples as may be necessary to carry out the health inspections, sampling plans and diagnostic methods required by any relevant Community legislation .

(4) A food authority entering any premises under this section may take with him such persons, equipment and vehicles as are necessary for the purpose of facilitating the exercise of his powers under this Ordinance.

44. Obstruction

(1) No person shall —

- (a) intentionally obstruct any person acting in the execution of this Ordinance;
- (b) without reasonable cause, fail to give to any person acting in the execution of this Ordinance any assistance or information which that person may reasonably require of him for the purposes of his functions under this Part; or
- (c) furnish to any person acting in the execution of this Ordinance any information which he knows to be false or misleading.

(2) Nothing in subsection (1)(b) shall be construed as requiring any person to answer or give any information if to do so might incriminate him.

(3) Any person who contravenes subsection (1) commits an offence and liable to a fine not exceeding the maximum of level 8 on the standard scale.

45. Procurement of samples

(1) A food authority may —

- (a) take a sample of any fishery product which —
 - (i) appears to him to be intended for human consumption; or

(ii) is found by him on or in any premises which he is authorised to enter by or under section 43; or

(b) take a sample of any article or substance which is found by him on or in any such premises and which he has reason to believe may be required as evidence in proceedings under any of the provisions of this Ordinance or of regulations under it.

46. Analysis etc of samples

(1) A food authority who has procured a sample under section 45 and considers that the sample should be analysed or examined, submit it to be analysed or examined, as the case may be, by or under the direction of —

(a) such person as the Governor may direct, either generally or in the particular case, or

(b) if no such direction is given, such person as appears to the food authority to be suitably qualified to carry out the analysis or examination.

(2) In any proceedings under this Ordinance the production by one of the parties of a document purporting to be a certificate given by a person referred to in subsection (1)(a) or (b) specifying the result of an analysis or examination shall be sufficient evidence of the facts stated in it.

47. Regulation of sampling and analysis etc

(1) The Governor may by regulations make provision for supplementing or modifying the provisions of section 45 or 46.

(2) Without prejudice to the generality of subsection (1), regulations under that subsection may make provision with respect to —

(a) the manner of procuring samples, including the steps to be taken in order to ensure that any samples procured are fair samples;

(b) the method of dealing with samples, including (where appropriate) their division into parts;

(c) the persons to whom parts of samples are to be given and the persons by whom such parts are to be retained;

(d) the notices which are to be given to, and the information which is to be furnished by, the persons in charge of any fishery product, article or substance of or from which samples are procured;

(e) the methods which are to be used in analysing or examining samples, or parts of samples, or in classifying the results of analyses or examinations;

(f) the circumstances in which an analyst or examiner is to be precluded, by reason of a conflict of interest, from analysing or examining a particular sample or part of a sample; and

(g) the circumstances in which samples, or parts of samples, are to be or may be submitted for analysis or examination to a prescribed person, or a person of a prescribed description.

Registers

48. Registers of orders etc.

(1) The Director shall prepare and maintain a register of orders under section 4 indicating by reference to maps at a suitable scale all waters for the time being designated under that section.

(2) The Director shall prepare and maintain a register of orders under sections 18 to 21 indicating by reference to maps at a suitable scale —

(a) every area for the time being designated under section 18 or 19;

(b) where appropriate, the description of shellfish to which the designation relates;

(c) any requirement, limitation, restriction or condition for the time being in force under section 18(2) or (4) or 20(1)(b) in relation to any designated area;

(d) every prohibition for the time being in force under section 21.

(3) The Director shall keep a register containing prescribed information about —

(a) any approval of any matter by the Governor for the purposes of Part 3;

(b) any prohibition imposed pursuant to regulations under section 27; and

(c) any notice given under section 31.

(4) Regulations may provide for the making, amendment and cancellation of entries in the register.

(5) The Director shall —

(a) make every register kept under this section, together with any related maps, available for inspection by any person at his office at all reasonable times, and

(b) supply a copy of any entry in it, and a copy of any related map, to any person on payment of such reasonable charge as he may determine.

(6) A register or map may be kept otherwise than in documentary form; and where it is so kept, the requirement of subsection (5)(a) is satisfied if the Director makes any part of the register or map which any person wishes to inspect available for inspection in visible and legible form.

Repeal

49. Repeal

The Fishery Products (Hygiene) Ordinance 1998 is repealed.

SUBSIDIARY LEGISLATION

FISHERY PRODUCTS

Fishery Products (Hygiene) Regulations 2006

S.R. & O. No. of 2006

Made: 2006

Published: 2006

Coming into force: upon publication

IN EXERCISE of my powers conferred on me by sections 36 and 37 of the Fishery Products Ordinance 2006, and of all other enabling powers, I make the following Regulations —

PART I INTRODUCTORY

1. Citation and commencement

These Regulations may be cited as the Fishery Products (Hygiene) Regulations 2006 and shall come into force on publication in the Gazette.

2. Interpretation

(1) In these Regulations —

“the Ordinance” means the Fishery Products Ordinance 2006;

“approved relaying area”, in relation to any description of shellfish or crustaceans, means a relaying area which is designated under section 18(3) as suitable for relaying of shellfish or crustaceans of that description;

“batch” means —

(a) in relation to fishery products, a quantity of fishery products obtained under practically identical circumstances;

(b) in relation to live shellfish, a quantity of live shellfish collected from a production area and subsequently intended for delivery to an approved dispatch centre, purification centre, relaying area or processing plant;

“bivalve molluscs” means filter-feeding lamellibranch molluscs;

“chilling” means the process of cooling fishery products to a temperature approaching that of melting ice;

“clean seawater” means, with regard to the production of —

(a) fishery products for human consumption, seawater or briny water which is free from any microbiological contamination, harmful substances or toxic marine plankton in such quantities as may affect the health quality of fishery products, and which is used under the conditions laid down in these Regulations;

(b) live shellfish for human consumption, seawater or brackish water which is to be used under the conditions laid down in these Regulations and which is free from microbiological contamination and toxic and objectionable substances occurring naturally or after discharge in the environment such as those listed in the Annex to Council Directive 79/923/EEC, in such quantities as may adversely affect the health quality of shellfish or impair their taste;

“conditioning” means the storage of live shellfish in tanks or any other installation containing clean seawater or in natural sites to remove sand, mud or slime;

“consignment”, except in the expression “private consignment”, means —

(a) in relation to fishery products, a quantity of such products bound for one or more customers in the country of destination and conveyed at any one time by one means of transport only;

(b) in relation to live shellfish, a quantity of such shellfish handled in a dispatch centre or treated in a purification centre and subsequently intended for one or more customers;

“E. coli” means faecal coliforms which also form indole from tryptophan at 44°C plus or minus 0.2°C within 24 hours;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993;

“faecal coliform” means facultative, aerobic, gram-negative, non-sporeforming, cytochrome oxidase negative, rod-shaped bacteria that are able to ferment lactose with gas production in the presence of bile salts, or other surface active agents with similar growth-inhibiting properties, at 44°C plus or minus 0.2°C within 24 hours;

“Falkland Islands factory vessel” means a factory vessel registered in the Falkland Islands.

“the Fishery Products Directive” means Council Directive 91/493/EEC of 22nd July 1991 laying down the health conditions for the production and placing on the market of fishery products;

“the Fishing Vessels Directive” means Council Directive 92/48/EEC of 16th June 1992 laying down the minimum hygiene rules applicable to fishery products caught on board certain vessels in accordance with article 3(1)(a)(i) of the Fishery Products Directive;

“fresh products” means any fishery products whether whole or prepared, including products packaged under vacuum or in a modified atmosphere, which have not undergone any treatment to ensure preservation other than chilling;

“frozen products” means fishery products which have undergone a freezing process;

“gatherer” means any natural or legal person who collects live shellfish by any means from a production area for the purposes of handling and placing on the market;

“the Health Checks Decision” means Commission Decision 94/356/EC of 20th May 1994 laying down detailed rules for the application of the Fishery Products Directive as regards own health checks on fishery products;

“healthmark” means a healthmark which is in accordance with Part 9 of Schedule 1;

“laying” means a foreshore, bed, pond, pit, ledge, float or similar place, including a relaying area, where live shellfish are liable to be gathered, harvested or deposited;

“the Live Bivalve Molluscs Directive” means Council Directive 91/492/EEC of 15th July 1991 laying down the health conditions for the production and the placing on the market of live bivalve molluscs, as adapted for the purposes of the EEA Agreement and as amended;

“marine biotoxins” means poisonous substances accumulated by bivalve molluscs feeding on plankton containing toxins;

“means of transport” means those parts set aside for goods in automobile vehicles (which includes trailers), rail vehicles, aircraft or vessels, and containers for transport by land, sea or air;

“movement document” means a document which meets the requirements of paragraph 6(4) and (5) of Part 1 of Schedule 1;

“packaging” means, in relation to fishery products, the procedure for protecting fishery products by a wrapper, a container or any other suitable device;

“permanent transport authorisation” means a written authorisation which has been issued by the food authority and meets the requirements of paragraph 6(8) of Part 1 of Schedule 1;

“placing on the market” means, with regard to —

(a) fishery products, the holding or displaying for sale, offering for sale, selling, delivering or any other form of placing on the market, except for —

(i) retail sales (which includes retail sales to catering businesses and sales by catering businesses), and

(ii) direct transfers on local markets of small quantities by fishermen to retailers or consumers in the circumstances specified in regulation 28; and

(b) live shellfish, the holding or displaying for sale, offering for sale, selling, delivering or any other form of placing on the market of live shellfish for human consumption either raw or for the purposes of processing in the European Community, except for direct transfers on local markets of small quantities by fishermen to retailers or consumers in the circumstances specified in regulation 28;

“preserve” means the process whereby products are packaged in hermetically sealed containers and subjected to heat treatment to the extent that any micro-organisms that might proliferate are destroyed or inactivated, irrespective of the temperature at which the product is to be stored;

“processed” means —

(a) except in relation to shellfish, having undergone a chemical or physical process such as the heating, smoking, salting, dehydration or marinating of chilled or frozen products, or a combination of these various processes;

(b) in relation to shellfish, any process or any combination of processes such as those referred to in sub-paragraph (a), unless as a result of that process or combination of processes the shellfish remain alive;

“production area” means any sea, estuarine or lagoon area containing natural deposits of shellfish or sites used for the cultivation of shellfish (including relaying areas) from which live shellfish are taken;

“relaying” means an operation whereby live bivalve molluscs are transferred to a sea, lagoon or estuarine area in order to remove contamination, but does not include a transfer to an area more suitable for further growth or fattening;

“relaying area” means any sea, lagoon or estuarine area with boundaries clearly marked and indicated by buoys, posts or any other fixed means which is used exclusively for the natural purification of live bivalve molluscs;

“wrapping” means, in relation to live shellfish, any operation whereby live shellfish are placed in packaging material adequate for the purpose.

(2) References in these Regulations to a numbered section (without more) are to the section so numbered of the Ordinance.

PART 2
APPROVAL OF VESSELS, ESTABLISHMENTS ETC.

3. Requirement for designation of vessel or establishment

No person shall operate —

- (a) a dispatch centre;
- (b) a Falkland Islands factory vessel;
- (c) a factory vessel (other than a Falkland Islands factory vessel) which the Governor certifies as a factory vessel which has a close economic connection with the Falkland Islands;
- (d) a fishery products establishment; or
- (e) a purification centre;

unless it is for the time being designated as such by order under section 35(1).

Factory vessels and fishery products establishments

4. Approval of factory vessels and fishery products establishments

(1) An application for approval for the purpose of section 35(2) of a factory vessel or fishery products establishment shall be —

- (a) made in writing to the food authority, and
- (b) accompanied by such supplementary information, documents, plans and diagrams as are necessary to enable the food authority to determine the application.

(3) An approval in respect of a factory vessel may only be granted if the food authority is satisfied that it meets such of the conditions set out in Parts 1 and 2 of Schedule 2 as apply to it.

(4) An approval in respect of a fishery products establishment may only be granted if the food authority is satisfied that it meets such of the conditions set out in Parts 3 and 4 of Schedule 2 as apply to it.

(5) An approval for a factory vessel or establishment under this regulation may be granted subject to limitations as to the particular activities approved, the method of operation approved and the intensity of use approved.

(6) The food authority shall give written notification to each person who makes an application pursuant to paragraph (1) of the result of the application and, in the case of refusal, of the reasons for that refusal.

(7) If an application pursuant to paragraph (1) is approved, the food authority shall —

- (a) designate the establishment or vessel with a unique approval number; and
- (b) notify the Governor of the approval and the approval number allocated.

5. Variation of approvals for factory vessels or establishments

A person may at any time apply to the food authority for it to vary any term or limitation in any approval for a factory vessel or fishery products establishment granted to him, and the food authority may vary any such term or limitation.

6. Revocation of approvals for factory vessels or establishments

(1) The food authority may revoke an approval of a factory vessel or fishery products establishment if, after inspection of or any inquiry into the method of operation of vessel or establishment, it is satisfied that —

(a) there has been a serious (on animal or public health grounds) and manifest breach of the limitations subject to which the approval was granted or of the applicable provisions of Parts 1 to 4 of Schedule 2;

(b) the person who is operating the establishment or vessel is either unable or not prepared to ensure that the breach is remedied; and

(c) the food authority is satisfied that the breach poses a risk to public health.

(2) When the food authority informs a person operating a factory vessel or fishery products establishment of a decision to revoke the approval for the vessel or establishment, it shall explain to the proprietor in writing when the revocation or cancellation will take effect.

7. Obligations of operators of factory vessels and establishments

(1) A person who is operating a fishery products establishment or a Falkland Islands factory vessel which is designated under section 35(1) shall ensure that, as respects his establishment or vessel, the requirements of the approval for his establishment or vessel are complied with.

(2) A person who is operating a factory vessel on board which fishery products which are intended for placing on the market for human consumption are handled shall ensure that the applicable provisions of Parts 1 and 2 of Schedule 2 are complied with as respects his vessel.

(3) A person who is operating a fishery products establishment at which fishery products which are intended for placing on the market for human consumption are handled shall ensure that the applicable provisions of Parts 3 and 4 of Schedule 2 are complied with as respects his establishment.

(4) A person who is operating a factory vessel or fishery products establishment shall carry out checks at his vessel or establishment based on the following principles —

(a) identification of points critical to ensuring safe and hygienic production in his vessel or establishment on the basis of the manufacturing processes used, and for these purposes a

critical point is any point, step or procedure at which control can be applied and a food safety hazard can be prevented, eliminated or reduced to acceptable levels;

(b) establishment and implementation of methods for monitoring and checking such critical points;

(c) taking samples for analysis in a laboratory recognised by the Governor for the purpose of checking —

(i) cleaning and disinfection methods, and

(ii) compliance with the standards established by this Part of these Regulations.

(d) keeping a written record or a record registered in an indelible fashion of the preceding points which shall be made available to the food authority on request, and that record shall —

(i) satisfy any applicable requirements of article 6.2 of the Health Checks Decision, and

(ii) include results of the different checks for a period going back at least 2 years,

and in the course of so doing, he shall have regard to any relevant recommendations in the Annex to the Health Checks Decision.

(5) The person referred to in paragraph (4) shall ensure that all staff involved in checks under that paragraph receive adequate training in order to participate effectively in their implementation.

(6) If the results of that person's checks under paragraph (4) reveal a serious health risk or suggest one might exist, he shall immediately notify the food authority of that risk or possible risk and confirm such notification in writing within 48 hours.

8. Notice of arrival by masters of certain factory vessels

The master of a factory vessel (other than a Falkland Islands factory vessel) shall, before landing any fishery products in the Falkland Islands which are for placing on the market, give the food authority notice of arrival of at least 24 hours.

Dispatch and purification centres

9. Approval of dispatch and purification centres

(1) An application for approval for the purpose of section 35(2) of a dispatch centre or purification centre shall be —

(a) made in writing to the food authority, and

(b) accompanied by such supplementary information, documents, plans, and diagrams as are necessary to enable the food authority to determine the application.

(2) An approval in respect of a dispatch centre may only be granted if the food authority is satisfied that it meets such of the conditions set out in Sections 1, 2 and 4 of Part 3 of Schedule 1 as apply to it.

(3) An approval in respect of a purification centre may only be granted if the food authority is satisfied that it meets —

(a) such of the conditions set out in Sections 1, 2 and 3 of Part 3 of Schedule 1 as apply to it; and

(b) any additional conditions of which the food authority has been notified by the Governor pursuant to paragraph (4).

(4) An approval for a dispatch centre or purification centre under this regulation may be granted subject to limitations as to the particular activities approved, the method of operation approved and intensity of use approved, and where the Governor notifies the food authority that specified conditions for the operation of a purification centre relating to matters mentioned in Part 3 of Schedule 1 should be complied with, the food authority shall give his approval subject to those conditions.

(5) The food authority shall give written notification to —

(a) the Governor, and

(b) each person who makes an application pursuant to paragraph (1),

of the result of the application and, in the case of refusal, of the reasons for that refusal.

10. Variation of approvals for dispatch and purification centres

(1) A person may at any time apply to the food authority for the authority to vary or revoke any term or limitation in any approval for a dispatch centre or purification centre granted to him, and subject to paragraph (2), the food authority may, in appropriate circumstances, vary any such term or limitation.

(2) The food authority may only vary or revoke any additional condition of which the food authority has been notified by the Governor pursuant to regulation 9(4) with the consent of the Governor.

11. Revocation of approvals for dispatch and purification centres

(1) The food authority may revoke an approval of a dispatch centre or purification centre situated in its area if, after inspection of or any inquiry into the method of operation of the centre, he is satisfied that —

(a) there has been a serious (on animal or public health grounds) and manifest breach of the conditions or limitations subject to which the approval was granted or of the applicable provisions of Part 3 of Schedule 1; and

(b) the person who is operating the centre is either unable or not prepared to ensure that the breach is remedied.

(2) Where the food authority informs the food business proprietor who is operating a dispatch or purification centre of a decision to revoke the approval for the centre, he shall explain to the proprietor in writing when the revocation will take effect.

12. Obligations on operators of dispatch and purification centres

(1) A person who is operating a dispatch centre or purification centre which is designated under section 34(1) and at which live shellfish which are intended for placing on the market are handled shall ensure that —

(a) the requirements of the approval for his centre and of the applicable provisions of Part 3 of Schedule 1 are complied with as respects his centre;

(b) regular microbiological checks are carried out on —

(i) those of his shellfish which he is required to check for microbiological contamination in order to comply with the requirements set out in Part 3 of Schedule 1, and

(ii) if he is operating a purification centre, the water for use in the purification system at this centre, by or in laboratories which meet the applicable requirements of Part 3 of Schedule 1; and

(c) the results of the checks mentioned in sub-paragraph (b)(i) are recorded in a historical record which, in relation to each area from which the shellfish come, gives details of the health quality of the shellfish from that area both before and after handling at the centre.

Fishing vessels

13. Registration of fishing vessels on board which shrimps or molluscs are cooked

(1) This regulation applies to fishing vessels on board which shrimps or molluscs are, for the purposes of a food business, processed by cooking.

(2) A person operating a fishing vessel to which this regulation applies shall, unless such processing is to be supplemented subsequently by cooking, comply with paragraphs (3) and (5).

(3) The person operating the fishing vessel shall, prior to engaging for the first time in such cooking, notify the food authority in writing of his intention to do so, and shall at the same time supply the authority with the following information —

(a) the name of the vessel,

(b) the usual place of landing of the processed products,

(c) the name and address of the owner of the vessel,

and he shall notify the food authority in writing of any changes to the information originally supplied.

(4) The food authority shall maintain a register of all the information supplied pursuant to paragraph (3).

(5) Any cooking on board a fishing vessel of shrimps or molluscs shall be in accordance with the requirements of —

(a) paragraph 8 of section 2 of Part 1 of Schedule 2; and

(b) paragraph 7 of section 4 of Part 4 of Schedule 2.

14. Hygiene conditions for fishing vessels

(1) A person who is operating a fishing vessel on board which fishery products which are intended for placing on the market for human consumption are handled shall ensure that the applicable provisions of Part 1 of Schedule 3 are complied with as respects his vessel.

(2) A person who is operating a fishing vessel —

(a) which is designed and equipped to preserve fishery products on board under satisfactory conditions for more than 24 hours, other than those equipped for keeping fish and shellfish alive without other means of conservation on board; and

(b) on board which fishery products which are intended for placing on the market for human consumption are handled,

shall also ensure that the applicable provisions of Part 2 of Schedule 3 are complied with as respects his vessel.

(3) A person operating a fishing vessel —

(a) which is designed and equipped to preserve fishery products on board under satisfactory conditions for more than 24 hours, other than those equipped for keeping fish and shellfish alive without other means of conservation on board; and

(b) on board which fishery products which are intended for placing on the market for human consumption are handled,

shall take all the measures necessary to prevent persons liable to contaminate fishery products from working on and handling them, until there is evidence that such persons can do so without risk.

PART 3
PRODUCTION AND PLACING ON THE MARKET OF LIVE SHELLFISH

15. Wrapping of live shellfish

A proprietor of a food business in the course of which live shellfish which are intended for placing on the market for human consumption are wrapped or repackaged shall ensure that the wrapping or repackaging of such shellfish is in accordance with the applicable requirements of those set out in Part 6 of Schedule 1.

16. Storage and transportation of live shellfish after dispatch

A proprietor of a food business in the course of which live shellfish which are intended for placing on the market for human consumption are stored or transported after they have left a dispatch or purification centre, shall ensure that such shellfish are stored and transported in accordance with the applicable requirements of those set out in Parts 6 and 7 of Schedule 1.

17. Splitting consignments of live shellfish

(1) A person other than the final consumer who splits the contents of a consignment of live shellfish which are not wrapped in individual consumer-sized parcels shall keep —

- (a) any healthmark which is attached to the consignment; or
- (b) a copy of any certificate which accompanied that consignment.

for a period of not less than 60 days from the date of the splitting of the contents of that consignment.

(2) A person who repackages a consignment of live shellfish in accordance with paragraph 3 of Part 6 of Schedule 1 shall keep the original healthmark (if one was required) which was attached to the consignment for a period of not less than 60 days from the date of the splitting of the contents of that consignment.

18. Placing live shellfish on the market

(1) Subject to paragraphs (2) to (4), no person shall place on the market for immediate human consumption any live shellfish, unless —

- (a) they originate, if they are live bivalve molluscs, from an area which is designated by order under section 18(1) as an area from which live bivalve molluscs may be taken, and any relevant condition or limitation specified the order has been complied with,
- (b) they have been harvested, kept and transported to a designated dispatch centre, designated purification centre or designated relaying area to which they are thereafter transferred in accordance with the applicable requirements of Part 1 of Schedule 1 accompanied by a valid movement document or a valid permanent transport authorisation,
- (c) if they are live bivalve molluscs, they have, where necessary, been relaid in accordance with Part 2 of Schedule 1,

(d) they have been handled hygienically and, if they are live bivalve molluscs, they have, where appropriate, been purified at a designated purification centre,

(e) they are as specified in Part 4 of Schedule 1;

(f) they have been wrapped in accordance with the applicable requirements of Part 6 of Schedule 1;

(g) they have been stored and transported in accordance with the applicable requirements of Parts 7 and 8 of Schedule 1;

(h) they comprise or form part of a consignment which bears a healthmark which is in accordance with Part 9 of Schedule 1.

(2) Paragraph (1)(a) shall not apply to pectinidae, unless they are products to which regulation 24 applies.

19. Requirements relating to the harvesting, transporting and relaying of live shellfish

No person shall —

(a) harvest or transport from a production area to a dispatch centre or processing plant any live echinoderms, tunicates or marine gastropods otherwise than in accordance with Part 1 of Schedule 1;

(b) harvest or transport from a production area to a relaying area, dispatch centre, purification centre or processing plant any live bivalve molluscs otherwise than in accordance with Part 1 of Schedule 1; or

(c) relay any live bivalve molluscs otherwise than at a designated relaying area and in accordance with the applicable conditions for relaying in Part 2 of Schedule 1,

if they are intended for placing on the market for human consumption.

PART 4

PRODUCTION AND PLACING ON THE MARKET OF FISHERY PRODUCTS

20. Gutting of fishery products

Where gutting of a fishery product which is intended for placing on the market for human consumption is possible from a technical and commercial standpoint, a person operating a factory vessel or a fishery products establishment who has control over the timing of the gutting of the product shall ensure that it is carried out as soon as possible after the product has been caught or landed.

21. Packaging of fishery products

A person operating a factory vessel or fishery products establishment where fishery products which are intended for placing on the market for human consumption are packaged shall ensure

that the packaging of such products is in accordance with the applicable requirements of those set out in Part 6 of Schedule 2.

22. Storage and transportation of fishery products

A person operating a factory vessel or a fishery products establishment where fishery products which are intended for placing on the market for human consumption are stored or transported shall ensure that such products are stored, except at cold stores where only the handling of wrapped products takes place, and transported in accordance with any applicable requirements of those set out in Part 8 of Schedule 2.

23. Placing fishery products on the market

(1) Subject to paragraph (2), no person shall place on the market for human consumption any fishery products unless —

(a) if they have been handled on board a Falkland Islands fishing vessel, the applicable requirements of —

(i) Part 1 of Schedule 2, and

(ii) Schedule 3,

have been satisfied in relation to those fishery products;

(b) if they were landed in the Falkland Islands, during and after landing the applicable requirements of Part 2 of Schedule 2 have been satisfied in relation to those fishery products;

(c) where gutting of those fishery products is or was possible from a technical and commercial viewpoint, gutting was carried out as quickly as possible after the products were caught or landed;

(d) at an establishment on land in the Falkland Islands, they have been handled and, where appropriate, packaged, prepared, processed, frozen, defrosted, stored hygienically and inspected in accordance with the applicable requirements of Parts 3 and 4 of Schedule 2;

(e) they have been subject to such of the health control and monitoring of production conditions described in Part 5 of Schedule 2 as is appropriate in the particular circumstances of the case, unless the food authority authorised the transfer of those fishery products ex quay to a designated fishery products establishment to be checked there, in which case a check on the conditions of landing is not required;

(f) they have been appropriately packaged in accordance with Part 6 of Schedule 2;

(g) they comprise or form part of a consignment which bears an identification mark which is in accordance with Part 7 of Schedule 2;

(h) except at cold stores where only the handling of packaged products takes place, they have been stored and transported in accordance with Part 8 of Schedule 2;

(i) any additional requirements in regulations 24 and 25 which are applicable to his case are satisfied in relation to those fishery products.

(2) Paragraph (1)(a) and (b) does not apply to products to which regulation 24 applies.

24. Placing aquaculture products on the market

(1) This regulation applies to —

(a) all fishery products born and raised in controlled conditions until placed on the market as a foodstuff; and

(b) all seawater fish, freshwater fish or crustaceans caught in their natural environment when juvenile and kept until they reach the desired commercial size for human consumption, other than fish or crustaceans of commercial size caught in their natural environment and kept alive to be sold at a later date, if they are merely kept alive without any attempt being made to increase their size or weight.

(2) No person shall place fishery products to which this regulation applies on the market for human consumption, unless —

(a) they have been slaughtered under appropriate conditions of hygiene;

(b) they have not been soiled with earth, slime or faeces;

(c) if they were not processed immediately after being slaughtered, they have been kept chilled.

25. Placing processed shellfish on the market

(1) Subject to paragraph (2), no person shall place processed shellfish on the market for human consumption unless, prior to processing, there were satisfied in relation to those products those of the requirements of regulation 18 to which they would have been subject if, when they were processed, they had instead been kept for placing on the market as live shellfish.

(2) For the purposes of paragraph (1) the reference in regulation 18(1)(b) to transportation to a designated dispatch centre includes a reference to transportation to a processing plant.

26. Fishery products to be placed on the market alive

A person with control over the survival conditions of a fishery product for human consumption which is to be placed on the market alive shall ensure that it is at all times kept under the most suitable survival conditions.

27. Prohibition on placing certain fishery products on the market

No person shall sell, supply in the course of a food business or place on the market for human consumption —

(a) poisonous fish of any of the following families: Tetraodontidae, Molidae, Diodontidae, and Canthigasteridae; or

(b) fishery products containing biotoxins such as ciguatera toxins or muscle-paralysing toxins.

**PART 5
MISCELLANEOUS**

28. Direct transfers of fishery products on local markets

(1) Regulations 15, 16, 18, 19 and 20 to 26 shall not apply to a direct transfer to a retailer or final consumer in the Falklands Islands of a small quantity of fishery products by a fisherman.

(2) For the purposes of paragraph (1), a “small quantity” means an amount which comprises part of the fisherman’s annual allowance, that is, a total amount of not more than 10 tonnes of fishery products in a calendar year,

29. Offences

(1) Contravention of any provision of regulations 3, 7, 8, 12, 13(2) and (3) and 15 to 28 is an offence punishable on conviction by a fine not exceeding the maximum of level 6 on the standard scale.

(2) For the purpose of these Regulations any fishery product commonly used for human consumption (whether in the Falkland Islands or elsewhere) shall, if placed on the market, be presumed, until the contrary is proved, to have been placed on the market for human consumption.

30. Revocation

The Fishery Products (Hygiene) Regulations 1998 are revoked.

SCHEDULE 1
PRODUCTION AND PLACING ON THE MARKET CONDITIONS FOR LIVE SHELLFISH
(BASED ON ANNEX TO LIVE BIVALVE MOLLUSCS DIRECTIVE)

Part 1

Requirements for harvesting and transportation of batches to a dispatch or purification centre, relaying area or processing plant

1. Harvesting techniques must not cause excessive damage to the shells or tissue of live shellfish.
2. Live shellfish must be adequately protected from crushing, abrasion or vibration after harvesting and must not be exposed to extremes of hot or cold temperature.
3. Techniques for harvesting, transporting, landing and handling live shellfish must not result in additional contamination of the product, nor in a significant reduction in the quality of the product, nor in any changes significantly affecting their ability to be treated by purification, processing or relaying.
4. Live shellfish must not be re-immersed in water which could cause additional contamination between harvesting and landing.
5. (1) The means of transport used for transporting live shellfish must be used under conditions which protect the latter from additional contamination and crushing of shells, and must permit adequate drainage and cleaning.

(2) In the event of bulk transport over long distances of live shellfish to a dispatch centre, purification centre, relaying area or processing plant, the means of transport must be equipped in such a way as to ensure the best survival conditions possible, and in particular must comply with the requirements laid down in paragraph 2 of Part 8.
6. (1) A movement document, as prescribed in this paragraph, for the identification of each batch of live shellfish during transport from the production area to a dispatch centre, purification centre, relaying area or processing plant shall be issued by the food authority, on request, to the gatherer for completion by the gatherer in respect of each batch in a way which is both legible and indelible.

(2) The gatherer shall ensure the completed movement document accompanies each batch at all times.

(3) If a batch in respect of which a movement document has been issued is split for any reason, the person having control of the original batch at the time of the splitting shall ensure that the information accompanying the original batch accompanies each sub-batch in the same form as the movement document together with the full name and address of the person splitting the batch.

(4) A movement document shall be in the following form -

LIVE SHELLFISH MOVEMENT DOCUMENT

Movement Document No.

Issued by:

Date of Issue:

Name of gatherer:

Signature of gatherer:

Address of gatherer:

Date of gathering:

Location of production area:

Name of shellfish species being moved
(common and scientific) and quantity
of shellfish being moved:

Place of destination, including (if
applicable) approval number:

Date of receipt:

Place of receipt:

REMINDER - This document is to be kept by the person receiving the shellfish for a period of not less than 60 days.

- (5) Each movement document must be numbered permanently in sequence by the food authority.
 - (6) Each food authority shall keep a register indicating the number of each movement document together with the name of the person collecting the live shellfish and of the person to whom the document was issued.
 - (7) The person receiving a movement document for each batch of live shellfish shall put on it the date the batch was received by either a dispatch centre, purification centre, relaying area or processing plant and shall keep it available for inspection for a period of at least 60 days.
 - (8) If gathering is or is to be carried out by a person employed by the person who operates the dispatch centre, purification centre, relaying area or processing plant of destination, the food authority may, if satisfied that the gatherer will comply with the requirements of Part 2 concerning gathering and handling, issue to the gatherer a permanent transport authorization (which may be withdrawn at any time) absolving the gatherer from the requirement to use movement documents for transfers from a production area specified in that authorization to a dispatch centre, purification centre, relaying area, or processing plant specified in that authorization.
7. If a production or relaying area is closed temporarily pursuant to section 21, the food authority shall refrain from issuing further movement documents and permanent transport authorizations for that area and the food authority may suspend the validity of any such documentations or authorizations already issued for the area.

Part 2

Conditions for relaying live bivalve molluscs

The following conditions must be met —

- 1. live bivalve molluscs must be gathered and transported, under the supervision of the food authority, in accordance with the requirements of Part 1;
- 2. techniques for handling live bivalve molluscs intended for relaying must permit the resumption of filter-feeding activity after immersion in natural waters;
- 3. live bivalve molluscs must not be relaid at a density which does not permit purification;
- 4. live bivalve molluscs must be immersed in seawater at the relaying area for an appropriate period which must exceed the time taken for levels of faecal bacteria to become reduced to the levels permitted by these Regulations and in particular the standards specified in Part 4 where relaying is to be followed by purification;
- 5. the minimum water temperature for effective relaying must, where necessary, be determined for each species of live bivalve mollusc and each approved relaying area, by the food authority and be announced by the food authority;

6. the boundaries of the sites must be physically delineated by buoys, poles or any other fixed means; there must be a minimum distance of 300 metres between relaying areas, and also between relaying areas and production areas;
7. sites within a relaying area must be well separated to prevent mixing of batches; the 'all in, all out' system must be used, so that a new batch cannot be brought in before the whole of the previous batch has been removed;
8. permanent records of the source of live bivalve molluscs, relaying periods, relaying areas and subsequent destination of the batch after relaying must be kept by the operators of relaying areas for inspection by the food authority;
9. after harvesting from the relaying area, batches must, during transport from the relaying area to the approved dispatch centre, purification centre or processing plant, be accompanied by the movement document referred to in paragraph 6 of Part 1, unless a permanent transport authorisation has been issued by the food authority.

Part 3

Conditions for the approval of dispatch or purification centres

Section 1

General conditions relating to premises and equipment

Centres must not be located in areas which are close to objectionable odours, smoke, dust and other contaminants. The location must not be subject to flooding by ordinary high tides or run-off from surrounding areas. Centres must have at least —

1. on premises where live shellfish are handled or stored —
 - (a) buildings or facilities of sound construction, designed and maintained adequately for the purpose of preventing contamination of live bivalve molluscs by any type of waste, dirty water, fumes, dirt or by the presence of rodents or other animals;
 - (b) flooring which is easy to keep clean and is laid in such a way as to facilitate drainage;
 - (c) adequate working space to allow for satisfactory performance of all operations;
 - (d) durable walls which are easy to clean;
 - (e) adequate natural or artificial lighting;
2. access to an appropriate number of changing rooms, wash basins and lavatories; there must be a sufficient number of wash basins close to the lavatories;
3. adequate equipment for washing tools, containers and equipment;
4. facilities for the supply and, where appropriate, storage of exclusively potable water or facilities for the supply of clean seawater. Facilities supplying non-potable water may be authorised. The water concerned may not come into direct contact with live shellfish or be used for cleaning or disinfecting containers, plant or equipment which come into contact with live shellfish. Pipes and outlets carrying non-potable water must be clearly distinguished from those carrying potable water;
5. equipment and instruments or their surfaces which are intended to come into contact with live shellfish must be made of corrosion-resistant material which is easy to wash and clean repeatedly.

Section 2

General hygiene requirements

A high degree of cleanliness and hygiene must be required of staff, premises, equipment and working conditions —

1. staff who treat or handle live shellfish must in particular wear clean working clothes and, where appropriate, gloves which are suitable for the work in which the person is engaged;
2. staff are obliged to refrain from personal behaviour, such as spitting, which could result in contamination of live shellfish; any person suffering from an illness which can be transmitted by live shellfish must be temporarily prohibited, until recovery, from working with or handling these products;
3. any rodents, insects or other vermin found must be destroyed and further infestation prevented; domestic animals must not enter the facilities;
4. premises, equipment and instruments used for handling live shellfish must be kept clean and in a good state of repair; equipment and instruments must be thoroughly cleaned at the end of the day's work and at such other times as may be appropriate;
5. premises, instruments and equipment must not be used for purposes other than the handling of live shellfish without authorization by the food authority;
6. waste products must be stored hygienically in a separate area and, where appropriate, in covered containers suitable for the purpose intended; waste material must be removed from the vicinity of the establishment at appropriate intervals;
7. the finished products must be stored under cover and must be kept away from the areas where animals other than live bivalve molluscs, echinoderms, tunicates or marine gastropods — such as crustaceans — are handled.

Section 3 Requirements for purification centres

In addition to the requirements under Sections 1 and 2, the following conditions must be met —

1. the floors and walls of the purification tanks and any water storage containers must have a smooth, hard and impermeable surface and be easy to clean by scrubbing or use of pressurised water. The base of the purification tanks must be sufficiently sloped and be equipped with drainage sufficient for the volume of work;
2. live bivalve molluscs must be washed free of mud with pressurised clean seawater or potable water before purification. The initial washing may also be carried out in the purification tanks before purification commences, the drainage pipes being kept open during the entire initial washing and sufficient time being allowed thereafter for the system to be flushed clean before the purification process begins;
3. the purification tanks must be supplied with a sufficient flow of seawater per hour and per tonne of live bivalve molluscs treated;
4. clean seawater or seawater cleaned by treatment must be used for purifying live bivalve molluscs; the distance between the seawater intake point and the waste water outlets must be sufficient to avoid contamination; if treatment of the seawater is necessary, the process shall be authorised once its effectiveness has been verified by the food authority; water used to prepare seawater from its major constituent chemicals must be potable water;
5. operation of the purification system must allow live bivalve molluscs to rapidly resume filter feeding activity, remove sewage contamination, not to become recontaminated and be able to remain alive in a suitable condition after purification for wrapping, storage and transport before being placed on the market;
6. the quantity of live bivalve molluscs to be purified must not exceed the capacity of the purification centre; the live bivalve molluscs must be continuously purified for a period sufficient to allow the microbiological standards laid down in Part 4 to be met. This period starts from the moment at which the live bivalve molluscs in the purification tanks are adequately covered by the water until the moment when they are removed. The purification centre must take account of the data relating to the raw materials (the type of bivalve mollusc, its area or origin, microbe content,

etc.) in case it is necessary to extend the purification period so as to ensure that the live bivalve molluscs meet the bacteriological requirements of Part 4;

7. should a purification tank contain several batches of molluscs, they must be of the same species and come from the same production area or different areas conforming to the same health conditions. The length of the treatment must be based on the time required by the batch needing the longest period of purification;

8. containers used to hold live bivalve molluscs in purification systems must have a construction which allows seawater to flow through; the depth of layers of live bivalve molluscs should not impede the opening of shells during purification;

9. no crustaceans, fish or other marine species must be kept in a purification tank in which live bivalve molluscs are undergoing purification;

10. after completion of purification, the shells of live bivalve molluscs must be washed thoroughly by hosing with potable water or clean seawater; this may take place in the purification tank if necessary; the washing water must not be recirculated;

11. purification centres must have their own laboratories or secure the services of a laboratory equipped with the necessary facilities for checking the efficiency of purification by use of microbiological specifications. Laboratory facilities outside the centres must be acceptable to the food authority;

12. purification centres must regularly keep a record of the following data —

- (a) results of microbiological tests on purification system water entering the purification tanks;
- (b) results of microbiological tests on unpurified live bivalve molluscs;
- (c) results of microbiological tests on purified live bivalve molluscs;
- (d) dates and quantities of live bivalve molluscs delivered to the purification centre and corresponding movement document numbers;
- (e) the times of filling and emptying of purification systems (purification times);
- (f) dispatch details of consignments after purification;

these records must be completed and accurate, legible and recorded in a permanent ledger book which must be available for inspection by the food authority or a person authorized by the Governor;

13. purification centres must accept only those batches of live bivalve molluscs which are accompanied by a movement document or permanent transport authorization; purification centres dispatching batches of live bivalve molluscs to dispatch centres must provide a movement document or permanent transport authorization;

14. every package containing purified live bivalve molluscs must be provided with a label certifying that all molluscs have been purified.

Section 4

Requirements for dispatch centres

1. In addition to the requirements under Sections 1 and 2, the following conditions must be met —

- (a) conditioning must not cause any contamination of the product, conditioning facilities must be used in accordance with procedures recognised by the food authority, with special regard to the bacteriological and chemical quality of the seawater used in those facilities;
- (b) equipment and containers in the conditioning facilities must not constitute a source of contamination;

(c) procedures for calibration of live shellfish must not result in additional contamination of the product or in any changes affecting the ability of the product to be transported and stored after wrapping;

(d) any washing or cleaning of live shellfish must be carried out using pressurised clean seawater or potable water; cleaning water may not be recycled.

2. Dispatch centres must accept only those batches of live shellfish which are accompanied by the movement document referred to in paragraph 6 of Part 1, and coming from a designated production area, relaying area or purification centre.

3. Dispatch centres must have their own laboratories or secure the services of a laboratory equipped with the necessary facilities for checking inter alia, whether the shellfish comply with the microbiological standards of Part 4; laboratory facilities outside the centre must be acceptable to the food authority; however, these requirements do not apply to dispatch centres obtaining molluscs exclusively and directly from a purification centre where they have been examined after purification.

4. Dispatch centres must keep the following data at the disposal of the food authority —

(a) results of microbiological tests on live bivalve molluscs from an approved production area or relaying area;

(b) dates and quantities of live shellfish delivered to the dispatch centre and corresponding movement document numbers;

(c) dispatch details.

These data must be classified chronologically and preserved for a period to be laid down by the food authority, but not less than 3 months.

5. Dispatch centres situated aboard vessels shall be subject to the conditions laid down in paragraphs 1(b), (c) and (d) and in paragraphs 3 and 4. The conditions laid down in Section 1 and 2 shall apply *mutatis mutandis* to such dispatch centres although special conditions may be laid down in accordance with the procedure laid down in article 12 of the Live Bivalve Molluscs Directive.

Part 4

Requirements concerning live shellfish

Live shellfish intended for immediate human consumption must comply with the following requirements —

1. the possession of visual characteristics associated with freshness and viability, including shells free of dirt, an adequate response to percussion, and normal amounts of intravalvular liquid;

2. they must contain less than 300 faecal coliforms or less than 230 *E. coli* per 100 grams of mollusc flesh and intravalvular liquid based on a five-tube, three-dilution MPN-test or any other bacteriological procedure shown to be of equivalent accuracy;

3. they must not contain salmonella in 25 grams of mollusc flesh;

4. they must not contain toxic or objectionable compounds occurring naturally or added to the environment such as those listed in the Annex to Directive 79/923/EEC in such quantities that the calculated dietary intake exceeds the permissible daily intake (PDI) or that the taste of the molluscs may be impaired;

5. the upper limits as regards the radionuclide contents must not be excessive;

6. the total Paralytic Shellfish Poison (PSP) content in the edible parts of molluscs that is the whole body or any part edible separately must not exceed 80 micrograms per 100 grams of mollusc flesh in accordance with the biological

testing method - in association if necessary with a chemical method for detection of Saxitoxin. If the results of such tests are challenged, the reference method shall be the biological method;

7. the customary biological testing methods must not give a positive result to the presence of Diarrhetic Shellfish Poison (DSP) in the edible parts of molluscs that is the whole body or any part edible separately;

8. in the absence of routine virus testing procedures and the establishment of virological standards, health checks must be based on faecal bacteria counts.

Any examination for checking compliance with the requirements of this Part must be carried out in accordance with methods which may from time to time be approved for the purpose of these Regulations by the Governor.

Part 5 **Public health control and monitoring of production**

1. The food authority shall undertake the periodic monitoring of bivalve mollusc relaying and production areas to determine —

(a) whether toxin producing plankton are present in production and relaying waters or biotoxins are present in live bivalve molluscs; and

(b) whether chemical or microbiological contaminants are present.

2. The food authority shall undertake periodic monitoring of live bivalve mollusc relaying and production areas in order to —

(a) preclude any malpractice with regard to the origin and destination of the live bivalve molluscs;

(b) determine the microbiological quality of the live bivalve molluscs in relation to the production and relaying areas.

3. (1) Sampling plans for the purposes of paragraphs 1 and 2 of this Part shall in particular take account of —

(a) likely variations in faecal contamination at each production and relaying area;

(b) possible variations in production and relaying areas in the presence of plankton containing marine biotoxins;

(c) possible contamination of the molluscs in the production and relaying area.

(2) Sampling plans referred to in sub-paragraph (1)(b) above shall be carried out as follows —

(a) in relation to monitoring, periodic sampling shall be organised to detect changes in the composition of the plankton containing toxins and the geographical distribution of the plankton;

(b) where periodic sampling leads to a suspicion of accumulation of toxins in mollusc flesh, intensive sampling shall be carried out and molluscs from the relevant area shall not be placed on the market until new sampling has provided satisfactory toxicity test results;

(c) where intensive sampling is to be carried out, it shall consist of -

(i) monitoring plankton in the growing and fishing waters by increasing the number of sampling points and the number of samples, and

(ii) the carrying out of toxicity tests using the molluscs from the affected area which are most susceptible to contamination.

4. (1) Laboratory tests shall be carried out by the food authority to check compliance with the requirements for the end product as laid down in Part 4.

(2) A control system shall be established by the food authority to verify that the level of marine biotoxins does not exceed safety limits.

5. (1) The food authority shall inspect establishments at regular intervals and those inspections shall include, in particular, checks —

- (a) to determine whether the approval conditions are still being complied with;
- (b) on the cleanliness of the premises, facilities, equipment and on staff hygiene;
- (c) to determine whether the live shellfish are handled and treated correctly;
- (d) on the correct application and functioning of purification or conditioning systems;
- (e) on the ledger books referred to in paragraph 12 of Section 3 of Part 3;
- (f) on the correct use of healthmarks.

(2) The checks referred to in paragraph (1) above may include the taking of samples for laboratory tests.

(3) The results of such tests must be notified to the persons responsible for the establishments.

6. The food authority shall check on the storage and transport conditions for consignments of live shellfish.

Part 6 Wrapping

1. (1) Live shellfish must be wrapped under satisfactory conditions of hygiene.

(2) The wrapping material or container of such molluscs or shellfish shall —

- (a) not impair the organoleptic characteristics of the live shellfish;
- (b) not be capable of transmitting substances harmful to human health to the live shellfish;
- (c) be strong enough to give adequate protection to the live shellfish.

2. Oysters must be wrapped with the concave shell downwards.

3. All wrappings of live shellfish must be sealed and remain sealed from the dispatch centre until delivery to the consumer or retailer, but wrappings may be unwrapped and repackaged provided that -

- (a) the person who unwraps the product keeps records of the origin of all live shellfish received and of the place of dispatch;
- (b) live shellfish from different dispatch centres are not mixed when repackaged; and
- (c) a healthmark is provided on the new packaging which is in accordance with Part 9.

Part 7
Preservation and storage

1. In any storing rooms, live shellfish must be kept at a temperature which does not adversely affect their quality and viability; the wrapping must not come into contact with the floor of the store room, but must be placed on a clean, raised surface.
2. Re-immersion in or spraying with water of live shellfish must not take place after they have been wrapped and have left the dispatch centre except in the case of a retail sale at the dispatch centre.

Part 8
Transport from the dispatch centre

1. Except where paragraph 3 of Part 6 applies, consignments of live shellfish intended for human consumption must be transported wrapped in sealed parcels from the dispatch centre until offered for sale to the consumer or retailer.
2. The means of transport used for consignments of live shellfish must have the following characteristics —
 - (a) their interior walls and any other parts which might come into contact with the live shellfish must be made of corrosion-resistant materials, and the walls must be smooth and easy to clean;
 - (b) they must be suitably equipped to provide efficient protection of the live shellfish against extremes of heat and cold, contamination with dirt or dust, and damage to the shells from vibration and abrasion;
 - (c) the live shellfish must not be transported with other products which might contaminate them.
3. Live shellfish must be transported and distributed using closed vehicles or containers which maintain the product at a temperature which does not adversely affect quality and viability.
4. The parcels containing live shellfish must not be transported in direct contact with the floor of the vehicle or container but must be supported on raised surfaces or by some other means which prevents such contact.
5. Where ice is used in transporting consignments of live shellfish, it must have been made from potable water or clean seawater.

Part 9
Marking of consignments

1. Without prejudice to any requirements relating to the labelling of food and subject to paragraph 4, all parcels in a consignment of live shellfish shall be provided with a healthmark so that the original dispatch centre may be identified at all times during transport and distribution until retail sale, and the healthmark shall be in the following form -

HEALTHMARK

LIVE SHELLFISH

Country of dispatch: Falkland Islands

Approval number of dispatch centre:
Species consigned (scientific name):

Species consigned (common name):

Day and month of wrapping:

[EITHER "WARNING: THESE ANIMALS MUST BE ALIVE WHEN SOLD" OR DATE OF DURABILITY]

2. (1) The healthmark may be —

- (a) printed on the wrapping material;
- (b) affixed as a separate label to the wrapping material;
- (c) put inside the wrapping; or
- (d) of a twist-tie or staple design.

(2) A self-adhesive healthmark must not be used, unless it is not detachable.

(3) All types of healthmark must be for single use only and are not transferable.

3. The healthmark must be durable and waterproof, and the information presented must be legible, indelible and in easily decipherable characters.

4. Where a person repackages any live shellfish in accordance with paragraph 3 of Part 6, the healthmark provided on the new wrapping shall be in the form set out in paragraph 1, except that it shall also contain —

- (a) the approval number of the original dispatch centre or (if none) the original dispatch details; and
- (b) if the consignment was unwrapped, the full name and address of the person repackaging the consignment.

SCHEDULE 2
PRODUCTION AND PLACING ON THE MARKET CONDITIONS FOR FISHERY PRODUCTS
(BASED ON ANNEX TO FISHERY PRODUCTS DIRECTIVE)

Part 1
Conditions applicable to factory vessels

Section 1
Conditions concerning design and equipment

1. The minimum requirements for factory vessels are as follows -

- (a) a reception area set aside for taking fishery products on board, designed and arranged into pounds or pens that are large enough to allow each successive catch to be separated; the reception area and its movable parts must be easy to clean. It must be designed in such a way as to protect the products from the sun or the elements and from any source of dirt or contamination;
- (b) a system for conveying fishery products from the reception area to the work area that conforms with rules of hygiene;
- (c) work areas that are large enough for the preparation and processing of fishery products in proper conditions of hygiene. They must be designed and arranged in such a way as to prevent any contamination of the products;
- (d) storage areas for the finished products that are large enough and designed so that they are easy to clean. If a waste processing unit operates on board, a separate hold must be designated for the storage of these by-products;
- (e) a place for storing packaging materials that is separate from the product preparation and processing areas;

(f) special equipment for pumping waste or fishery products that are unfit for human consumption either directly into the sea or, where circumstances so require, into a watertight tank reserved for that purpose. If waste is stored and processed on board with a view to cleaning, separate areas must be allocated for that purpose;

(g) equipment providing a supply of potable water or pressurised clean seawater. The seawater intake must be situated in a position where it is not possible for the water being taken in to be affected by discharges into the sea of waste water, waste and engine coolant outlets;

(h) a suitable number of changing rooms, wash basins and toilets, the latter not opening directly onto areas where fishery products are prepared, processed or stored. The wash basins must be equipped with appliances for washing and drying the hands that comply with hygiene requirements; the wash-basin taps must not be hand-operable.

2. Areas used for the preparation and processing or freezing/quick-freezing of fishery products must have —

(a) a non-slip floor that is also easy to clean and disinfect and equipped for easy drainage of water; structures and fixtures must have limber holes that are large enough not to be obstructed by fish waste and to allow water to drain freely;

(b) walls and ceilings that are easy to clean, particularly where there are pipes, chains or electricity conduits;

(c) the hydraulic circuits must be arranged or protected in such a way as to ensure that it is not possible for any leakage of oil to contaminate fishery products;

(d) adequate ventilation and, where necessary, proper vapour extraction;

(e) adequate lighting;

(f) appliances for cleaning and disinfecting tools, equipment and fittings;

(g) appliances for cleaning and disinfecting the hands with taps that are not hand-operable and with single use towels.

3. Equipment and tools such as cutting benches, containers, conveyors, gutting or filleting machines etc. must be resistant to seawater corrosion, easy to clean and disinfect and well-maintained.

4. Factory vessels which freeze fishery products must have —

(a) a refrigeration plant sufficiently powerful to lower the temperature rapidly so as to achieve a core temperature that complies with the specifications of these Regulations;

(b) refrigeration plants sufficiently powerful to keep fishery products in the storage holds at a temperature that complies with the specifications of these Regulations; the storage holds must be equipped with a temperature recording system placed so that it can easily be consulted.

Section 2

Conditions of hygiene relating to on-board handling and storage of fishery products

1. A qualified person on board the factory vessel must be responsible for applying good fishery products manufacturing practices. That person shall have the authority to ensure that the provisions of these Regulations are applied and shall make available to inspectors the programme for inspecting and checking critical points as applied on board, a register containing that person's comments and the temperature recordings that may be required.

2. The general conditions of hygiene applicable to areas and equipment shall be those laid down in Section 2A of Part 3.

3. The general conditions of hygiene applicable to staff shall be those laid down in Section 2B of Part 3.
4. Heading, gutting and filleting must be carried out under the conditions of hygiene laid down in paragraphs 2 to 4 of Section 1 of Part 4.
5. On-board processing of fishery products must be carried out under the conditions of hygiene laid down in paragraphs 2 and 3 of Section 2, Section 4 and Section 4 of Part 4.
6. Fishery products must be wrapped and packaged under the conditions of hygiene laid down in Part 6.
7. On-board storage of fishery products must be carried out under the conditions of hygiene laid down in paragraphs 1 and 2 of Part 8.
8. (1) Subject to sub-paragraph (2), any on-board processing (in particular any cooking) of shrimps or molluscs must be undertaken in accordance with such of —
 - (a) the approved treatments set out in Commission Decision 93/25/EEC approving certain treatments to inhibit the development of pathogenic micro-organisms in bivalve molluscs and marine gastropods; and
 - (b) the standards and other obligations set out in Commission Decision 93/51/EEC on the microbiological criteria applicable to the production of cooked crustaceans and molluscan shellfish,as are appropriate in the particular circumstances of the case.

(2) For the purposes of Commission Decision 93/51/EEC —

- (a) the reference in article 2 to a processing plant shall be treated as if it were a reference to a factory vessel;
- (b) the reference in article 3(1) to the requirements of article 6 of the Council Directive shall be treated as if it were a reference to regulation 7; and
- (c) the reference to competent authorities in the first indented paragraph of article 3(2) shall be treated as a reference to the food authority.

Part 2

Requirements during and after landing

1. Unloading and landing equipment must be constructed of material which is easy to clean and disinfect and must be kept in a good state of repair and cleanliness.
2. During unloading and landing, contamination of fishery products must be avoided. It must in particular be ensured that —
 - (a) unloading and landing operations proceed rapidly;
 - (b) fishery products are placed without unnecessary delay in a protected environment at the temperature required on the basis of the nature of the product and, where necessary, in ice in transport, storage or market facilities, or in an establishment;
 - (c) equipment and handling practices that cause unnecessary damage to the edible parts of the fishery products are not authorised.
3. Parts of auction or wholesale markets where fishery products are displayed for sale must —
 - (a) be covered and have walls which are easy to clean;

- (b) have waterproof flooring which is easy to wash and disinfect and laid in such a way as to facilitate the drainage of water and have a hygienic waste water disposal system;
- (c) be equipped with sanitary facilities with an appropriate number of wash basins and flush lavatories; wash basins shall be supplied with materials for cleaning the hands and single use hand towels;
- (d) be well lit to facilitate the inspection of fishery products provided for in Part 5;
- (e) when they are used for display or storage of fishery products, not be used for other purposes; vehicles emitting exhaust fumes which may impair the quality of the fishery products must not be admitted to markets; undesirable animals must not be admitted;
- (f) be cleaned regularly and at least after each sale, crates must, after each sale, be cleaned and rinsed inside and outside with potable water or clean seawater, where required, they must be disinfected;
- (g) have displayed in a prominent position signs prohibiting smoking, spitting, eating and drinking;
- (h) be closable and be kept closed when the food authority considers it necessary;
- (i) have facilities to provide adequate water supplies satisfying the conditions laid down in paragraph 7 of Section 1 of Part 3;
- (j) have special watertight receptacles made of corrosion-resistant materials for fishery products which are unfit for human consumption;
- (k) in so far as they do not have their own premises on-the-spot or in the immediate vicinity on the basis of the quantities displayed for sale, have, for the purposes of the food authority, an adequately equipped lockable room and the equipment necessary for carrying out inspections.

4. After landing or, where appropriate, after first sale, fishery products must be transported without delay under the conditions laid down in Part 8 to their place of destination.

5. However, if the conditions laid down in paragraph 4 are not fulfilled, the markets in which fishery products may be stored before being displayed for sale or after being sold and pending transport to their place of destination must have sufficiently large cold rooms which satisfy the conditions laid down in paragraph 3 of Section 1 of Part 3. In such cases, fishery products must be stored at a temperature approaching that of melting ice.

Part 3

General conditions for establishments on land

Section 1

General conditions relating to premises and equipment

Each establishment shall afford at least the following facilities —

1. working areas of sufficient size for work to be carried out under adequate hygienic conditions. Their design and layout shall be such as to preclude contamination of the product and keep quite separate the clean and contaminated parts of the building;
2. in areas where products are handled, prepared and processed —
 - (a) waterproof flooring which is easy to clean and disinfect and laid down in such a way as to facilitate the drainage of the water or provided with equipment to remove water;
 - (b) walls which have smooth surfaces and are easy to clean, durable and impermeable;

- (c) ceilings or roof linings which are easy to clean;
 - (d) doors in durable materials which are easy to clean;
 - (e) adequate ventilation and, where necessary, good steam and water-vapour extraction facilities;
 - (f) adequate natural or artificial lighting;
 - (g) an adequate number of facilities for cleaning and disinfecting hands. In work rooms and lavatories, taps must not be hand-operable; these facilities must be provided with single use hand towels;
 - (h) facilities for cleaning plant, equipment and utensils;
3. in cold rooms where fishery products are stored —
- (a) the provisions set out under paragraph 2(a), (b), (c), (d) and (f);
 - (b) where necessary, a sufficiently powerful refrigeration plant to keep products at temperatures prescribed in these Regulations;
4. appropriate facilities for protection against pests such as insects, rodents, birds etc.;
5. instruments and working equipment such as cutting tables, containers, conveyor belts and knives made of corrosion-resistant materials, easy to clean and disinfect;
6. special watertight, corrosion-resistant containers for fishery products not intended for human consumption and premises for the storage of such containers if they are not emptied at least at the end of each working day;
7. facilities to provide adequate supplies of potable water, or alternatively of clean seawater or seawater treated by an appropriate system, under pressure and in sufficient quantity; however, by way of exception, a supply of non-potable water is permissible for the production of steam, fire-fighting and the cooling of refrigeration equipment, provided that the pipes installed for the purpose preclude the use of such water for other purposes and present no risk of contamination of the products. Non-potable water pipes must be clearly distinguishable from those used for potable water or clean seawater;
8. hygienic waste water disposal system;
9. an adequate number of changing-rooms with smooth, water-proof, washable walls and floor, wash basins and flush lavatories; the latter may not open directly onto the work rooms; the wash basins must have materials for cleaning the hands and disposable towels; the wash basin taps must not be hand-operable;
10. if the volume of products treated requires regular or permanent presence an adequately equipped lockable room for the exclusive use of the inspection service;
11. adequate facilities for cleaning and disinfecting means of transport; however, such facilities are not compulsory if there is a requirement for the means of transport to be cleaned and disinfected at facilities officially authorised by the food authority;
12. establishments keeping live animals such as crustaceans and fish must have appropriate fittings ensuring the best survival conditions provided with water of a quality such that no harmful organisms or substances are transferred to the animals.

Section 2

General conditions of hygiene

A. General conditions of hygiene applicable to premises and equipment

1. Floors, walls and partitions, ceilings and roof linings, equipment and instruments used for working on fishery products must be kept in a satisfactory state of cleanliness and repair, so that they do not constitute a source of contamination for the products.

2. Rodents, insects and other vermin must be systematically exterminated in the premises or on the equipment; rodenticides, insecticides, disinfectants and any other potentially toxic substances must be stored in premises or cupboards which can be locked; their use must not present any risk of contamination of the products.

3. Working areas, instruments and working equipment must be used only for work on fishery products. However, following authorization by the food authority they may be used at the same time or other times for work on other foodstuffs.

4. Potable water or clean seawater must be used for all purposes. However, by way of an exception, non-potable water may be used for steam production, fire-fighting and the cooling of refrigeration equipment, provided that the pipes installed for the purpose preclude the use of such water for other purposes and present no risk of contamination of the products.

5. Detergents, disinfectants and similar substances must be acceptable to the food authority and used in such a way that they do not have adverse effects on the machinery, equipment and products.

B. General conditions of hygiene applicable to staff

1. The highest possible standard of cleanliness is required of staff. More specifically —

(a) staff must wear suitable clean working clothes and headgear which completely encloses the hair; this applies particularly to persons handling exposed fishery products;

(b) staff assigned to the handling and preparation of fishery products must be required to wash their hands at least each time work is resumed; wounds to the hands must be covered by a waterproof dressing;

(c) smoking, spitting, eating and drinking in work and storage premises of fishery products must be prohibited.

2. The employer shall take all the requisite measures to prevent persons liable to contaminate fishery products from working on and handling them, until there is evidence that such persons can do so without risk. When recruited, any person working on and handling fishery products shall be required to prove, by a medical certificate, that there is no impediment to such employment.

Part 4

Special conditions for handling fishery products on shore

Section 1

Conditions for fresh products

1. Where chilled, unpackaged products are not dispatched, prepared or processed immediately after reaching the establishment, they must be stored or displayed under ice in the establishment's cold room. Re-icing must be carried out as often as is necessary; the ice used, with or without salt, must be made from potable water or clean seawater and be stored under hygienic conditions in receptacles provided for the purpose; such receptacles must be kept clean and in a good state of repair. Pre-packed fresh products must be chilled with ice or mechanical refrigeration plant creating similar temperature conditions.

2. If they are not carried out on board, operations such as heading and gutting must be carried out hygienically. The products must be washed thoroughly with potable water or clean seawater immediately after such operations.

3. Operations such as filleting and slicing must be carried out in such a way as to avoid the contamination or spoilage of fillets and slices, and in a place other than that used for heading and gutting operations. Fillets and slices must not remain on work tables any longer than is necessary for their preparation and must be protected from

contamination by appropriate packaging. Fillets and slices to be sold fresh must be chilled as quickly as possible after preparation.

4. Guts and parts that may constitute a danger to public health must be separated from and removed from the vicinity of products intended for human consumption.

5. Containers used for the dispatch or storage of fresh fishery products must be designed in such a way as to ensure both their protection from contamination and their preservation under sufficiently hygienic conditions and, more particularly, they must provide adequate drainage of melt water.

6. Unless special facilities are provided for the continuous disposal of waste, the latter must be placed in leakproof, covered containers which are easy to clean and disinfect. Waste must not be allowed to accumulate in working areas. It must be removed either continuously or as soon as the containers are full and at least at the end of each working day in the containers or to the premises referred to in paragraph 6 of Section 1 of Part 3. The containers, receptacles and/or premises set aside for waste must always be thoroughly cleaned and, if appropriate, disinfected after use. Waste stored there must not constitute a source of contamination for the establishment or of pollution of its surroundings.

Section 2

Conditions for frozen products

1. Plants must have —

(a) freezing equipment sufficiently powerful to achieve a rapid reduction in the temperature so that the temperature laid down in these Regulations can be obtained in the product;

(b) freezing equipment sufficiently powerful to keep products in storage rooms at a temperature not exceeding those laid down in these Regulations, whatever the ambient temperature may be, however, for technical reasons related to the method of freezing and to the handling of such products, for whole fish frozen in brine and intended for canning, higher temperatures than those laid down in these Regulations are acceptable, although they may not exceed -9°C.

2. Fresh products to be frozen or quick-frozen must comply with the requirements of Section 1 of this Part.

3. (1) Storage rooms must have a temperature recording device in a place where it can easily be read. The temperature sensor of the recorder must be located in the area furthest away from the cold source, i.e. where the temperature in the storage room is the highest.

(2) Temperature charts must be available for inspection by the supervisory authorities at least during the period in which the products are stored.

Section 3

Conditions for thawing products

Establishments that carry out thawing operations must comply with the following requirements —

1. fishery products must be thawed under hygienic conditions; their contamination must be avoided and there must be adequate drainage for any melt water produced; during thawing, the temperature of the products must not increase excessively;

2. after thawing, fishery products must be handled in accordance with the requirements of these Regulations; when they are prepared or processed, these operations must be carried out without delay. If they are put directly onto the market, particulars as to the thawed state of the fish must be clearly marked on the packaging in accordance with any relevant food labelling requirements.

Section 4
Conditions for processed products

1. Fresh, frozen and thawed products used for processing must comply with the requirements set out in Section 1, 2 or 3 of this Part.

2. (1) Where the processing treatment is carried out to inhibit the development of pathogenic micro-organisms, or if it is a significant factor in the preservation of the product, the treatment must be a scientific process which produces safe food, or in the case of a treatment of live bivalve molluscs which have not been relayed or purified, such treatment must be a form of treatment mentioned in the Annex to Commission Decision 93/25/EEC approving certain treatments to inhibit the development of pathogenic micro-organisms in bivalve molluscs and marine gastropods.

(2) The person responsible for an establishment must keep a register of the processing carried out. Depending on the type of process employed, details such as heating time and temperature, salt content, pH, water content, etc. must be monitored and controlled. Records must be kept at least for the expected storage life of the products and be available to the food authority.

3. For products which are preserved for a limited period by a treatment such as salting, smoking, drying or marinading, the appropriate conditions for storage must be clearly marked on the packaging, in accordance with any relevant food labelling requirements.

Canning

4. In the case of fishery products which have been subjected to sterilisation in hermetically sealed containers —

(a) the water used for the preparation of cans must be potable water;

(b) the process used for the heat treatment must be appropriate, having regard to such major criteria as the heating time, temperature, filling, size of containers etc., a record of which must be kept; the heat treatment must be capable of destroying or inactivating pathogenic organisms and the spores of pathogenic micro-organisms; the heating equipment must be fitted with devices for verifying whether the containers have in fact undergone appropriate heat treatment; potable water must be used to cool containers after heat treatment, without prejudice to the presence of any chemical additives used in accordance with good technological practice to prevent corrosion of the equipment and containers;

(c) further checks must be carried out at random by the manufacturer to ensure that the processed products have undergone appropriate heat treatment, viz —

(i) incubation tests: incubation must be carried out at 37°C for seven days or at 35°C for ten days, or at any other equivalent combination;

(ii) microbiological examination of contents and containers in the establishment's laboratory or in a laboratory recognised by the food authority;

(d) samples must be taken of production each day at predetermined intervals, to ensure the efficacy of sealing or of any other method of hermetic closure; for that purpose, appropriate equipment must be available for the examination of cross-sections of the can-seams;

(e) checks are carried out in order to ensure that containers are not damaged;

(f) all containers which have undergone heat treatment under practically identical conditions must be given a batch identification mark.

Smoking

5. Smoking must be carried out in separate premises or a special place equipped, if necessary, with a ventilation system to prevent the smoke and heat from the combustion from affecting other premises or places where fishery products are prepared, processed or stored —

- (a) materials used to produce smoke for the smoking of fish must be stored away from the place of smoking and must be used in such a way that they do not contaminate the products;
- (b) materials used to produce smoke by burning wood that has been painted, varnished, glued or has undergone any chemical preservation treatment must be prohibited;
- (c) after smoking, products must be cooled rapidly to the temperature required for their preservation before being packaged.

Salting

6. As regards salting —

- (a) salting operations must take place in different premises and sufficiently removed from the premises where the other operations are carried out;
- (b) salt used in the treatment of fishery products must be clean and stored in such a way as to preclude contamination; it must not be re-used;
- (c) any container used for salting or brining must be constructed in such a way as to preclude contamination during the salting or brining process;
- (d) containers or areas used for salting or brining must be cleaned before use.

Cooked crustacean and molluscan shellfish

7. Crustaceans and molluscan shellfish must be cooked as follows —

- (a) any cooking must be followed by rapid cooling; water used for this purpose must be potable water or clean seawater; if no other method of preservation is used, cooling must continue until the temperature approaching that of melting ice is reached;
- (b) shelling or shucking must be carried out under hygienic conditions avoiding the contamination of the product; where such operations are done by hand, workers must pay particular attention to the washing of their hands and all working surfaces must be cleaned thoroughly; if machines are used, they must be cleaned at frequent intervals and disinfected after each working day; after shelling or shucking, cooked products must immediately be frozen or kept chilled at a temperature which will preclude the growth of pathogens, and be stored in appropriate premises;
- (c) every manufacturer must carry out microbiological checks at regular intervals, complying with the standards and other obligations set out in Commission Decision 93/51/EEC on the microbiological criteria applicable to the production of cooked crustaceans and molluscan shellfish, but for the purposes of that Commission Decision-
 - (i) the reference in article 3(1) to the requirements of article 6 of the Council Directive shall be treated as if it were a reference to regulation 7, and
 - (ii) the reference in the first indented paragraph of article 3(2) to competent authorities shall be treated as a reference to the food authority.

Mechanically recovered fish flesh

8. The mechanical recovery of fish flesh must be carried out under the following conditions —

- (a) mechanical recovery of gutted fish must take place without undue delay after filleting, using raw materials free of guts; where whole fish are used, they must be gutted and washed beforehand;
- (b) the machinery must be cleaned at frequent intervals and at least every two hours;
- (c) after recovery, mechanically recovered flesh must be frozen as quickly as possible or incorporated in a product intended for freezing or stabilising treatment.

Section 5

Conditions concerning parasites

1. (1) During production and before they are released for human consumption, fish and fish products must be subject to a visual inspection for the purpose of detecting and removing any parasites that are visible.

(2) Fish or parts of fish which are obviously infested with parasites, and which are removed, must not be placed on the market for human consumption.

(3) This inspection must be carried out in accordance with the rules set out in the Commission Decision 93/140/EEC laying down the detailed rules relating to the visual inspection for the purpose of detecting parasites in fishery products, but for the purposes of that Commission Decision —

- (a) the competent authority to which article 4 of that Decision refers is the food authority; and
- (b) the provisions referred to in that article (the provisions in accordance with which a sampling plan must be drawn up) are those specified in regulation 7(4).

2. The fish and fish products referred to in paragraph 1(1) of this Section which are to be consumed as they are must, in addition, be subjected to freezing at a temperature of not more than -20°C in all parts of the product for not less than 24 hours. Products subjected to this freezing process must be either raw or finished.

3. Fish and fish products which are subject to the conditions in paragraph 2 are —

- (a) fish to be consumed raw or almost raw, e.g. raw herring 'maatje';
- (b) the following species, if they are to undergo a cold smoking process at which the internal temperature of the fish is less than 60°C —

- (i) herring;
- (ii) mackerel;
- (iii) sprat;
- (iv) (wild) Atlantic and Pacific salmon;

(c) marinated and/or salted herring where this process is insufficient to kill the larvae of nematodes.

4. Manufacturers must ensure that fish and fish products listed in paragraph 3, or the raw materials for use in their manufacture, are subjected to the treatment described in paragraph 2 prior to their release for consumption.

5. The fishery products listed in paragraph 3 must, when they are placed on the market, be accompanied by a document from the manufacturer stating the type of process they have undergone.

Part 5
Health control and monitoring of production conditions

Section 1
General monitoring

The food authority shall establish the following arrangements in order to establish whether the requirements laid down in the Regulations are complied with, and such arrangements shall include, in particular —

1. a check on the fishing vessels, on the understanding that such a check may be carried out during the stay in port;
2. a check on the conditions of landing and first sale;
3. an inspection at regular intervals of establishments and factory vessels (wherever registered) to check in particular—
 - (a) whether the conditions for approval (where applicable) are still fulfilled;
 - (b) whether the fishery products are handled correctly;
 - (c) the cleanliness of the premises, facilities and instruments and staff hygiene;
 - (d) whether any necessary identification marks are put on correctly;
4. an inspection of the wholesale and auction markets;
5. a check on storage and transport conditions.

Section 2
Special checks

Organoleptic checks

1. (1) Without prejudice to the derogations provided for by Council Regulation (EEC) No. 103/76[2] laying down common marketing standards for certain fresh or chilled fish, as amended, each batch of fishery products must be submitted for inspection by the food authority at the time of landing or before first sale to check whether they are fit for human consumption. This inspection comprises an organoleptic check carried out by sampling.
- (2) Fishery products complying, as far as the freshness criteria are concerned, with the common marketing standards already laid down pursuant to article 2 of Council Regulation (EEC) No. 3759/92 on the common organisation of the market in fishery products, as amended, are considered to fulfil the organoleptic requirements necessary for compliance with the provisions of these Regulations.
- (3) The organoleptic examinations must be repeated after the first sale of fishery products, if it is found that the requirements of these Regulations have not been complied with or when considered necessary. After the first sale, fishery products must at least comply with the minimum freshness requirements of Regulation (EEC) No. 3687/91[6], as amended.
- (4) If the organoleptic examination reveals that the fishery products are not fit for human consumption, measures must be taken to withdraw them from the market and denature in such a way that they cannot be re-used for human consumption.
- (5) If the organoleptic examination reveals any doubt as to the freshness of the fishery products, use may be made of chemical checks or microbiological analysis.

Parasite checks

2. (1) Before they are released for human consumption, fish and fish products must be subject to a visual inspection on behalf of the food authority, by way of sample, for the purpose of detecting any parasites that are visible.

(2) Fish or parts of fish which are obviously infested with parasites must not be placed on the market for human consumption.

Chemical checks

3A. When the chemical checks are to be carried out by the food authority samples must be taken and subjected to laboratory analysis for the control of the following parameters -

(a) TVB-N (Total Volatile Basic-Nitrogen), in respect of which —

(i) the following TVB-N limits must not be exceeded —

25 milligrams of nitrogen per 100 grams of flesh for the following species:

Sebastes spp.;

Helicolenus dactylopterus;

Sebastichthys capensis;

30 milligrams of nitrogen per 100 grams of flesh for the following species:

all species belonging to the *Pleuronectidae* family (with the exception of halibut: *Hippoglossus* spp.);

35 milligrams of nitrogen per 100 grams of flesh for the following species:

Salmo salar;

species belonging to the *Merlucciidae* family;

species belonging to the *Gadidae* family;

(ii) the reference method to be used for checking the TVB-N limit is the method involving distillation of an extract deproteinized by perchloric acid as set out in Annexes II and III of Commission Decision 95/149/EC of 8th March 1995[7] ("the Decision") read together with article 3 of the Decision;

(iii) the routine methods which may be used to check the TVB-N limit are those specified in article 2(3) of the Decision;

(iv) the sample must consist of about 100 grams of flesh, taken from at least 3 different points and mixed together by grinding;

(b) TMA-N (Trimethylamine-Nitrogen);

(c) Histamine, in respect of which —

(i) nine samples must be taken from each batch; these must fulfil the following requirements -

the mean value must not exceed 100 parts per million ("ppm");

two samples may have a value of more than 100 ppm but less than 200 ppm;

no sample may have a value exceeding 200 ppm;

(ii) these limits apply only to fish species of the following families: Scombridae, Clupeidae, Engraulidae and Coryphaenidae; however, fish belonging to these families which have undergone enzyme ripening treatment in brine may have higher histamine levels but not more than twice the above values; examinations must be carried out in accordance with reliable, scientifically recognised methods, such as high-performance liquid chromatography (HPLC).

Contaminants present in the aquatic environment

3B. (1) Without prejudice to the Community rules concerning water protection and management, and in particular those concerning pollution of the aquatic environment, fishery products must not contain in their edible parts contaminants present in the aquatic environment such as heavy metals and organochlorinated substances at such a level that the calculated dietary intake exceeds the acceptable daily or weekly intake for humans.

(2) The Ministers shall establish a monitoring system to check the levels of such contamination of fishery products.

Microbiological analyses

4. (1) Subject to sub-paragraph (2), the microbiological standards applicable to the production of cooked crustaceans and molluscan shellfish are those set out in Commission Decision 93/51/EEC on the microbiological criteria applicable to the production of cooked crustaceans and molluscan shellfish.

(2) For the purposes of sub-paragraph (1), the reference in article 2 of Commission Decision 93/51/EEC to a processing plant shall be treated as if it were a reference to a designated fishery products establishment or factory vessel.

5. (1) The sampling programme to be established in accordance with article 3 of Commission Decision 93/51/EEC, as provided for in —

(a) paragraph 8(1)(b) of Section 2 of Part 1; and

(b) paragraph 7(c) of Section 4 of Part 1.

shall be monitored by the food authority.

(2) For the purposes of sub-paragraph (1) —

(a) the reference in article 3(1) of Commission Decision 93/51/EEC to the requirements of article 6 of the Fishery Products Directive shall be treated as if it were a reference to the requirements of regulation 7; and

(b) the reference in the first indented paragraph of article 3(2) of that Commission Decision of competent authorities shall be treated as if it were a reference to the food authority .

Part 6 Packaging

1. Packaging must be carried out under satisfactory conditions of hygiene, to preclude contamination of the fishery products.

2. Packaging materials and products liable to enter into contact with fishery products must comply with all the rules of hygiene, and in particular —

(a) they must not be such as to impair the organoleptic characteristics of the fishery product;

(b) they must not be capable of transmitting to the fishery products substances harmful to human health;

(c) they must be strong enough to protect the fishery products adequately.

3. With the exception of certain containers made of impervious, smooth and corrosion-resistant material which are easy to clean and disinfect, which may be re-used after cleaning and disinfecting, packaging materials may not be re-used. Packaging materials used for fresh fishery products which are held under ice must provide adequate drainage for melt water.

4. Unused packaging materials must be stored in places away from the production area and be protected from dust and contamination.

Part 7

Identification marks

A. Products prepared after commencement

1. The following paragraph applies to all products other than those which were prepared before these Regulations come into force and in respect of which the conditions set out in paragraph 4 below are satisfied.

2. (1) Without prejudice to any relevant food labelling requirements, it must be possible to trace for inspection purposes the establishment of dispatch of consignments of fishery products, by means either of the labelling or of the accompanying documents. For that purpose, the following information must appear on the packaging or, in the case of a non-packaged product, in the accompanying documents —

(a) the country of dispatch, written out in full;

(b) identification of the establishment or factory vessel by its official approval number,

(c) the abbreviation EC.

(2) All the letters and figures must be fully legible and grouped together on the packaging in a place where they are visible from the outside without any need to open the packaging.

B. Products prepared before commencement

3. Paragraph 4 applies to products which were prepared before these Regulations come into force and in respect of which the conditions set out paragraph 2 above are not satisfied.

4. Without prejudice to any relevant food labelling requirements, it must be possible to trace for inspection purposes the establishment of dispatch of consignments of fishery products, by means of either labelling or the accompanying documents. For that purpose, in respect of each consignment of fishery products the following information must appear on the packaging or in the accompanying documents —

(a) the country of dispatch;

(b) identification of the establishment or factory vessel of dispatch by its approval number.

Part 8

Storage and transport

1. Fishery products must, during storage and transport, be kept at the temperatures laid down in these Regulations, and in particular —

(a) fresh or thawed fishery products and cooked and chilled crustacean and molluscan shellfish products must be kept at a temperature approaching that of melting ice;

- (b) frozen fishery products, with the exception of frozen fish in brine intended for the manufacture of canned foods, must be kept at an even temperature of -18°C or less in all parts of the product, after temperature stabilisation, and allowing for the possibility of brief upward fluctuations of not more than 3°C , during transport.
2. Where frozen fishery products are transported from a cold storage plant to an approved establishment to be thawed on arrival for the purposes of either preparation or processing and where the distance to be covered does not exceed 50 km or, if the distance is greater, the anticipated duration of the journey is less than one hour, the food authority may grant a derogation from the conditions laid down in paragraph 1(b).
 3. Products may not be stored or transported with other products which may contaminate them or affect their hygiene, unless they are packaged in such a way as to provide satisfactory protection.
 4. Vehicles used for the transport of fishery products must be constructed and equipped in such a way that the temperatures laid down in these Regulations can be maintained throughout the period of transport. If ice is used to chill the fishery products, adequate drainage must be provided in order to ensure that water from melted ice does not stay in contact with the products. The inside surfaces of the means of transport must be finished in such a way that they do not adversely affect the fishery products. They must be smooth and easy to clean and disinfect.
 5. Means of transport used for fishery products may not be used for transporting other products likely to impair or contaminate fishery products, except where the fishery products can be safeguarded against contamination by such transport being thoroughly cleaned and disinfected immediately prior to each occasion it is used for fishery products.
 6. Fishery products may not be transported in a vehicle or container which is not clean or which should have been disinfected.
 7. The transport conditions of fishery products to be placed on the market alive must not adversely affect the fishery products.

SCHEDULE 3
HYGIENE CONDITIONS FOR FISHING VESSELS
(BASED ON ANNEXES TO FISHING VESSELS DIRECTIVE)

Part 1

General hygiene conditions applicable to fishery products on board fishing vessels

1. The sections of vessels or the containers reserved for the storage of fishery products must not contain objects or products liable to transmit harmful properties or abnormal characteristics to the foodstuffs. These sections or containers must be so designed as to allow them to be cleaned easily and to ensure that melt water cannot remain in contact with the fishery products.
2. When used, the sections of vessels or the containers reserved for the storage of fishery products must be completely clean and, in particular, must not be capable of being contaminated by the fuel used for the propulsion of the vessel or by bilge water.
3. As soon as they are taken on board, the fishery products must be protected from contamination and from the effects of the sun or any other source of heat. When they are washed, the water used must be either —
 - (a) fresh water complying with the parameters set out in regulations under section 13; or
 - (b) clean seawater,so as not to impair their quality or wholesomeness.

4. The fishery products shall be handled and stored in such a way as to prevent bruising. The use of spiked instruments shall be tolerated for the moving of large fish or fish which might injure the handler, provided the flesh of these products is not damaged.
5. Fishery products other than those kept alive must undergo cold treatment as soon as possible after loading. However, in the case of fishing vessels where cooling is not possible from a practicable point of view, the fishery products must not be kept on board for more than 8 hours.
6. Ice used for the chilling of products must be made from potable water or clean seawater. Before use, it must be stored under conditions which prevent its contamination.
7. After the fishery products have been unloaded, the containers, equipment and sections of vessels which are directly in contact with the fishery products must be cleaned with potable water or clean seawater.
8. Where fish is headed and/or gutted on board, such operations must be carried out hygienically and the products must be washed immediately and thoroughly with potable water or clean seawater. The viscera and parts which may pose a threat to public health must be removed and set apart from products intended for human consumption. Livers and roes intended for human consumption must be refrigerated or frozen.
9. Equipment used for gutting, heading and the removal of fins, and containers and equipment in contact with the fishery products, must be made of or coated with a material which is waterproof, resistant to decay, smooth and easy to clean and disinfect. When used they must be completely clean.
10. Staff assigned to the handling of fishery products shall be required to maintain a high standard of cleanliness for themselves and their clothes.

Part 2

Additional hygiene conditions applicable to article 1.2 fishing vessels

1. Fishing vessels must be equipped with holds, tanks or containers for the storage of refrigerated or frozen fishery products at the temperature laid down by these Regulations. These holds shall be separated from the machinery space and the quarters reserved for the crew by partitions which are sufficiently impervious to prevent any contamination of the stored fishery products.
2. The inside surface of the holds, tanks or containers shall be waterproof and easy to wash and disinfect. It shall consist of a smooth material or, failing that, smooth paint maintained in good condition, not being capable of transmitting to the fishery products substances harmful to human health.
3. The holds shall be designed to ensure that melt water cannot remain in contact with the fishery products.
4. Containers used for the storage of products must ensure their preservation under satisfactory conditions of hygiene and, in particular, allow drainage of melt water. When used they must be completely clean.
5. The working decks, the equipment and the holds, tanks and containers shall be cleaned each time they are used. Potable water or clean seawater shall be used for this purpose. Disinfection, the removal of insects or rat extermination shall be carried out whenever necessary.
6. Cleaning products, disinfectants, insecticides and all potentially toxic substances shall be stored in locked premises or cupboards. Their use must not present any risk of contamination of the fishery products.
7. If fishery products are frozen on board, this operation must be carried out in accordance with the conditions laid down in paragraphs 1 and 3 of Section 2 of Part 4 of Schedule 2. Where freezing in brine is used, the brine shall not be a source of contamination for the fish.
8. Vessels equipped for chilling of fishery products in cooled seawater, either chilled by ice (CSW) or refrigerated by mechanical means (RSW), shall comply with the following requirements —

- (a) tanks must be equipped with adequate seawater filling and drainage installations and must incorporate devices for achieving uniform temperature throughout the tanks;
- (b) tanks must have a means of recording temperature connected to a temperature sensor positioned in the section of the tank where temperatures are highest;
- (c) the operation of the tank or container system must secure a chilling rate which ensures the mix of fish and seawater reaches 3°C at the most 6 hours after loading and 0°C at the most after 16 hours;
- (d) after each unloading, the tanks, circulation systems and containers must be completely emptied and thoroughly cleaned using potable water or clean seawater; they should only be filled with clean seawater;
- (e) the date and the number of the tank must be clearly indicated on the temperature recordings which must be kept available for the food authority.

SUBSIDIARY LEGISLATION

FISHERY PRODUCTS

Fish Health Regulations 2006

S.R & O. No: of 2006

Made: 2006

Published: 2006

Coming into force: on publication

IN EXERCISE of my powers under sections 24 to 28, 32 and 37 of the Fishery Products Ordinance 2006(a) and of all other powers enabling me in that behalf, I make the following Regulations —

Introductory

1. Citation and commencement

These Regulations may be cited as the Fish Health Regulations 2006 and shall come into force on publication in the *Gazette*.

2. Interpretation

(1) In these Regulations —

“approved farm” means a farm in respect of which a marine farming licence is in force;

“Directive 91/67/EEC” means Council Directive of 28th January 1991 concerning the animal health conditions governing the placing on the market of aquaculture animals and products, as amended from time to time;

“marine farming licence” means a licence issued under section 3 of the Marine Farming Ordinance 2006(b); and

“the Ordinance” means the Fishery Products Ordinance 2006.

(2) Any reference in these Regulations to a movement document is to such a document duly completed and issued —

(a) No of 2006

(b) No of 2006

(a) in relation to anything moved within or out of the Falkland Islands, by a food authority, or

(b) in relation to anything moved into the Falkland Islands, by an authority in the country of origin which is designated by the Governor as competent to issue such a document;

and a reference to a form followed by a letter shall be construed in accordance with Schedule 1.

(3) References in these Regulations to a numbered section are to the section so numbered of the Ordinance.

Aquaculture animals and products

3. Placing on the market of aquaculture animals and products

(1) The prescribed requirements to be met by aquaculture animals for the purpose of section 24(1) (restrictions on placing aquaculture animals on the market) are as follows —

(a) where placing on the market involves the loading of aquaculture animals, they shall not show clinical signs of disease on the day of loading;

(b) they shall not be intended for destruction or slaughter under a scheme for the eradication of a disease referred to in Annex A of Directive 91/67/EEC;

(c) they shall not come from a farm which is subject to a prohibition which has been imposed for aquaculture animal health reasons; and

(d) they shall not have been in contact with aquaculture animals from a farm which is subject to a prohibition which has been imposed for aquaculture animal health reasons.

(2) The prescribed requirements to be met by aquaculture animals for breeding purposes for the purpose of section 24(2), are that they originate from aquaculture animals which meet the requirements set out in paragraph (1)(a) to (d).

(3) The prescribed requirements to be met by aquaculture products for human consumption are that they originate from aquaculture animals which meet the requirements set out in paragraph (1)(a).

4. Transportation of aquaculture animals

The prescribed requirements for the purpose of section 25 (restriction on transport of aquaculture animals) are as follows —

(a) the duration of the journey shall be as short as reasonably possible;

(b) the means of transport shall have been cleaned and disinfected prior to despatch;

(c) if the aquaculture animals are transported overland in water, they shall be transported in such a manner that the water cannot escape from the vehicle during transport;

(d) all reasonable steps shall be taken to safeguard the health of the aquaculture animals, including, if appropriate, changing the water in which they are transported; and

(e) water used in the transport of the aquaculture animals shall only be changed at an approved water station.

5. Identification of aquaculture animals and aquaculture products

(1) The prescribed information for the purpose of section 26 (information to be provided when aquaculture animals or aquaculture products are despatched) is information which —

(a) identifies the consignment;

(b) enables the farm of origin or the place of origin of the consignment to be traced; and

(c) enables the contents of the consignment to be linked to the movement document relating to the consignment, where a movement document is required by these Regulations.

(2) For the purpose of section 26, the information referred to in paragraph (1) is to be provided —

(a) on the container for the consignment.

(b) on a label fixed to the container, or

(c) on the movement document.

Export to European Community of live bivalve molluscs etc.

6. Export to European Community of live bivalve molluscs etc.

No person shall export from the Falkland Islands to any part of the European Community any live bivalve molluscs or other shellfish which are for human consumption unless each consignment is accompanied by a valid movement document.

Introduction of live fish, molluscs etc.

7. Introduction of live fish, eggs and gametes

(1) Subject to paragraph (2), no person shall introduce into the Falkland Islands, or subsequently move within the Falkland Islands, any live fish, eggs or gametes specified in column 1 of Schedule 2 unless they are accompanied by valid movement documents in the form specified in relation to them in column (2) of that Schedule confirming that —

(a) they come from an area free from the disease specified in relation to them and that document in column (3) of that Schedule; or

(b) where a movement document does not require that they come from an area free from such disease, they fulfil the conditions set out in that movement document.

(2) Paragraph (1) does not apply to tropical fish kept permanently in aquaria.

8. Introduction of live molluscs, eggs and gametes

(1) Subject to paragraph (3), no person shall introduce into the Falkland Islands, or subsequently move within the Falkland Islands, any live molluscs, eggs or gametes specified in column (1) of Schedule 3 with the intention of relaying them unless they are accompanied by valid movement documents in the form specified in relation to them in column (2) of that Schedule, confirming that —

(a) they come from an area free from the disease specified in relation to them and that document in column (3) of that Schedule; or

(b) where a movement document does not require that they come from an area free from such disease, they fulfil the conditions set out in that movement document.

(2) Subject to paragraph (3), no person shall relay in the Falkland Islands any live molluscs, eggs or gametes specified in column (1) of Schedule 3 from outside the Falkland Islands unless they are accompanied by valid movement documents in the form specified in relation to them in column (2) of that Schedule, confirming that —

(a) they come from an area free from the disease in relation to them and that document in column (3) of that Schedule; or

(b) where a movement document does not require that they come from an area free from such disease, they fulfil the conditions set out in that movement document.

(3) Paragraphs (1) and (2) do not apply to the relaying of live molluscs, eggs or gametes when they are re-laid in a purification centre designated under section 35(1).

Control of disease

9. Prescribed diseases

The following diseases are prescribed for the purpose of sections 30 (notification of disease) and 31 (powers of control) —

(a) infectious salmon anaemia (“ISA”);

(b) infectious haematopoietic necrosis (“IHN”);

(c) viral haemorrhagic septicaemia (“VHS”);

(d) bonamiosis;

- (e) haplosporidiosis;
- (f) iridovirosis;
- (g) marteiliosis;
- (h) mikrocytosis;
- (i) perkinsosis.

10. Designation of infected waters

- (1) If the Governor has reasonable grounds for suspecting that fish, shellfish or crustaceans in any inland waters or marine waters are or may become infected with a disease mentioned in regulation 9(a), (b) or (c), he may by order designate those waters, and any land or waters adjacent to them, for the purpose of these Regulations.
- (2) The Governor may by order revoke an order under paragraph (1), as respects either the whole or any part of the waters or land to which it applies, if it appears to him that the waters or land are not and are unlikely to become infected with the disease in question.
- (3) Before making an order under paragraph (1) or (2) the Governor shall consult the food authority.

11. Control measures when ISA is suspected on a farm

- (1) Where a farm is suspected of being infected with infectious salmon anaemia, as soon as possible after —
 - (a) a notice in respect of it has been served under section 31(1), or
 - (b) an order in respect of waters comprising or including the farm has been made under regulation 9(1),

the measures set out in paragraphs (2) and (3) shall come into force.

- (2) No person shall —
 - (a) bring on to or remove from the farm any fish whether alive or dead, eggs or gametes; or
 - (b) dispose of any dead fish or their offal except under the supervision of the food authority;
 - (c) bring on to or take from the farm any equipment, material or substances liable to transmit disease; or
 - (d) enter on to or exit from the farm; or
 - (e) bring a vehicle on to or take a vehicle from the farm; or

(f) remove any fish, whether alive or dead, eggs or gametes from a farm which is —

(i) in the same water catchment area or coastal area as the farm at which the outbreak of disease is suspected, and

(ii) whose occupier has been notified that his farm is under surveillance for disease;

without the authorisation in writing of the food authority to do so.

(3) The occupier of the farm shall —

(a) take such measures as may be specified by the food authority to disinfect the entrances and exits to the farm; and

(b) take all reasonable steps to ensure that effect is given to the requirements of paragraph (2).

(4) Any contravention of or failure to comply with paragraph (2) or (3) is an offence.

(5) The measures set out in paragraphs (2) and (3) shall remain in force until —

(a) the notice under section 31(1) or the order under regulation 10(1), as the case may be, is revoked, or

(b) the food authority by notice to the occupier of the farm declares that those measures shall cease to have effect.

(6) The food authority may by notice to the occupier of the farm relax any of the measures set out in paragraphs (2) and (3).

12. Control measures if presence of ISA is confirmed on a farm

(1) This regulation applies where, after carrying out such tests as are approved by the Governor for the purpose of this regulation, the food authority is satisfied that the fish on a farm are infected with infectious salmon anaemia.

(2) The food authority shall, by notice in writing served on the occupier of the farm, require—

(a) the immediate removal of all fish from the waters of the farm;

(b) the draining, cleaning and disinfection of all pools on inland farms;

(c) the destruction of all eggs, gametes, dead fish, and fish showing clinical signs of disease, under the supervision of the food authority and subject to such conditions as he may specify;

(d) either —

(i) the killing and destruction of all live fish, under the supervision of the food authority and subject to such conditions as he may specify; or

(ii) the slaughter of all live fish, for marketing or processing for human consumption, under the supervision of the food authority, but only if the fish have reached commercial size and show no clinical signs of disease;

(e) the cleaning and disinfection or destruction of equipment, material or substances liable to be contaminated with the disease pathogen, under the supervision of the food authority; and

(f) that the repopulation of the farm shall only take place when the food authority so authorises by notice.

(3) Any contravention of or failure to comply with a requirement of a notice under paragraph (2) is an offence.

13. Control measures to be taken when ISA, IHN or VHS is suspected or confirmed in waters other than a farm

(1) This regulation applies where fish from the wild, within waters designated under regulation 10(1), are suspected of being infected with, or are infected with, a disease mentioned in regulation 9(a), (b) or (c).

(2) No person shall —

(a) bring on to or take from the relevant area any equipment, material or substances liable to transmit disease; or

(b) enter on to or exit from the relevant area;

(c) bring a vehicle into or take a vehicle from the relevant area;

without the authorisation in writing of the food authority to do so.

(3) The occupier of any land or waters within the relevant area shall take such measures as may be specified by the food authority to disinfect the entrances and exits to the designated area.

(4) In this regulation “the relevant area” means the waters the subject of the order under regulation 10(1) (excluding any waters comprised in a farm).

SCHEDULE 1
MOVEMENT DOCUMENTS

Form	Description
A	A movement document for live fish, eggs and gametes in the form set out in Directive 91/67/EEC which is completed, in respect of live fish, eggs and gametes of the salmonid species, in accordance with the provisions of Commission Decision 96/490/EC
B	A movement document for live fish, eggs or gametes from an approved farm in the form set out in Directive 91/67/EEC which is completed, in respect of salmonid ova for breeding purposes, with a certification that the eggs have been disinfected in accordance with the requirements of Article 2 of Commission Decision 96/490/EC
C	A movement document for molluscs in the form set out in Directive 91/67/EEC
D	A movement document for molluscs from an approved farm in the form set out in Directive 91/67/EEC
E	A movement document for live farmed fish, molluscs and crustaceans, their eggs and gametes referred to in Article 14 paragraph 1 of Directive 91/67/EEC in the form set out in Commission Decision 93/22/EEC
F	A movement document for live wild fish, molluscs or crustaceans, their eggs or gametes referred to in Article 14 paragraph 2 of Directive 91/67/EEC in the form set out in Commission Decision 93/22/EEC
G	A movement document certifying that the consignment of molluscs originates from an area where there has been no history of bonamiosis or marteiliosis in the previous 2 years confirmed by tests as provided for in Commission Decision 93/55/EEC
H	A movement document certifying that the consignment of molluscs has been submitted at the place of despatch to a check ensuring that it does not contain species other than <i>Crassostrea gigas</i> , as required by Commission Decision 93/55/EEC

In the above table —

"Commission Decision 93/55/EEC" means Commission Decision of 21st December 1992 amending the guarantees of the introduction of molluscs into zones for which a programme for *Bonamia ostreae* and *Marteilia refringens* has been approved as amended by Commission Decision 93/169/EEC of 19th February 1993 amending Decision 93/55/EEC concerning the guarantees for certain molluscs;

"Commission Decision 96/490/EC" means Commission Decision of 18th July 1996 on certain protective measures with regard to *Gyrodactylus salaris* in salmonids.

SCHEDULE 2
CONTROLS ON MOVEMENT OF FISH

<i>Live fish, eggs and gametes(a)</i>	<i>Form of movement document</i>	<i>Diseases(b)</i>
1. Live farmed and wild fish and gametes of farmed and wild fish of the species <i>Salmonid sp.</i>	Form A	IHN, VHS and GS
2. Eggs of farmed fish of the species <i>Salmonid sp.</i>	Form A	IHN, VHS and GS
3. Eggs of wild fish of the species <i>Salmonid sp.</i>	Form B Form A	IHN, VHS and GS IHN, VHS and GS
4. Live farmed fish of the species — <i>Thymallus thymallus</i> <i>Coregonus sp.</i> <i>Scophthalmus maximus</i>	Form A Form E	VHS IHN
5. Live wild fish of the species — <i>Thymallus thymallus</i> <i>Coregonus sp.</i> <i>Scophthalmus maximus</i>	Form A Form F	VHS IHN
6. Eggs and gametes of farmed fish of the species — <i>Thymallus thymallus</i> <i>Coregonus sp.</i> <i>Scophthalmus maximus</i>	Form A or Form B Form E	VHS IHN
7. Eggs and gametes of wild fish of the species — <i>Thymallus thymallus</i> <i>Coregonus sp.</i> <i>Scophthalmus maximus</i>	Form A Form F	VHS IHN
8. Live farmed fish of the species <i>Esox lucius</i>	Form A Form E	VHS IHN
9. Live wild fish of the species <i>Esox lucius</i>	Form I Form A Form F	SVC VHS IHN
10. Eggs and gametes of farmed fish of the species <i>Esox lucius</i>	Form I Form A or Form B Form E	SVC VHS IHN
11. Eggs and gametes of wild fish of the species <i>Esox lucius</i>	Form I Form A Form F	SVC VHS IHN
12. Live farmed and wild fish of the species <i>Esox lucius</i> (fry only)	Form I Form A Form I	SVC IHN and VHS SVC

13. Live farmed fish, their eggs and gametes of the following species —	Form E	IHN and VHS
<i>Carassius auratus</i>	Form I	SVC
<i>Carassius carassius</i>		
<i>Cyprinus carpio</i>		
<i>Ctenopharyngodon idella</i>		
<i>Hypophthalmichthys molitrix</i>		
<i>Hypophthalmichthys nobilis</i>		
<i>Leuciscus idus</i>		
<i>Rutilus rutilus</i>		
<i>Scardinius erythrophthalmus</i>		
<i>Siluris glanis</i>		
<i>Tinca tinca</i>		
14. Live wild fish, their eggs and gametes of the following species —	Form F	IHN and VHS
<i>Carassius auratus</i>	Form I	SVC
<i>Carassius carassius</i>		
<i>Cyprinus carpio</i>		
<i>Ctenopharyngodon idella</i>		
<i>Hypophthalmichthys molitrix</i>		
<i>Hypophthalmichthys nobilis</i>		
<i>Leuciscus idus</i>		
<i>Rutilus rutilus</i>		
<i>Scardinius erythrophthalmus</i>		
<i>Siluris glanis</i>		
<i>Tinca tinca</i>		
15. Live farmed fish, their eggs and gametes other than —	Form E	IHN and VHS
(1) fish of the following species —		
<i>Salmonid sp.</i>		
<i>Thymallus thymallus</i>		
<i>Coregonus sp.</i>		
<i>Esox lucius</i> (including fry)		
<i>Scophthalmus maximus</i>		
<i>Carassius auratus</i>		
<i>Carassius carassius</i>		
<i>Cyprinus carpio</i>		
<i>Ctenopharyngodon idella</i>		
<i>Hypophthalmichthys molitrix</i>		
<i>Hypophthalmichthys nobilis</i>		
<i>Leuciscus idus</i>		
<i>Rutilus rutilus</i>		
<i>Scardinius erythrophthalmus</i>		
<i>Siluris glanis</i>		
<i>Tinca tinca</i>		
their eggs and gametes		
(2) ornamental tropical fish kept permanently in aquaria.		
16. Live wild fish, their eggs and gametes other than —	Form F	IHN and VHS
(1) fish of the following species —		
<i>Salmonid sp.</i>		
<i>Thymallus thymallus</i>		
<i>Coregonus sp.</i>		
<i>Esox lucius</i> (including fry)		
<i>Scophthalmus maximus</i>		

Carassius auratus
Carassius carassius
Cyprinus carpio
Ctenopharyngodon idella
Hypophthalmichthys molitrix
Hypophthalmichthys nobilis
Leuciscus idus
Rutilus rutilus
Scardinius erythrophthalmus
Siluris glanis
Tinca tinca
 their eggs and gametes
 (2) ornamental tropical fish kept permanently in aquaria.

NOTES:

(a) The common names of the fish referred to in column 1 above are as follows —

<i>Salmonid sp.</i>	Salmonids
<i>Thymallus thymallus</i>	Grayling
<i>Coregonus sp.</i>	Whitefishes
<i>Esox lucius</i>	Pike
<i>Scophthalmus maximus</i>	Turbot
<i>Carassius auratus</i>	Gold fish and all variants
<i>Carassius carassius</i>	Crucian Carp
<i>Cyprinus carpio</i>	Common carp and all variants such as mirror carp, leather carp, koi carp and hygoi carp
<i>Ctenopharyngodon idella</i>	Grass carp
<i>Hypophthalmichthys molitrix</i>	Silver carp
<i>Hypophthalmichthys nobilis</i>	Bighead carp
<i>Leuciscus idus</i>	Orfe
<i>Rutilus rutilus</i>	Roach
<i>Scardinius erythrophthalmus</i>	Rudd
<i>Siluris glanis</i>	Wels Catfish
<i>Tinca tinca</i>	Tench

(b) The full names of the diseases in column 3 above are —

GS	<i>Gyrodactylus salaris</i> an external parasite of salmonids which can cause the disease gyrodactylosis
IHN	Infectious haematopoietic necrosis
SVC	Spring viraemia of carp
VHS	Viral haemorrhagic septicaemia

SCHEDULE 3
CONTROLS ON MOVEMENT OF MOLLUSCS

<i>Live molluscs, eggs and gametes(a)</i>	<i>Form of movement document</i>	<i>Diseases</i>
Live farmed molluscs of the species <i>Ostrea edulis</i> , their eggs and gametes	Form C, Form D or Form G	<i>Bonamiosis Marteilirosis</i>
Live wild molluscs of the species <i>Ostrea edulis</i> , their eggs and gametes	Form C or Form G	<i>Bonamiosis Marteilirosis</i>
Live farmed molluscs of the species <i>Crassostrea gigas</i> , their eggs and gametes	Form E or Form G Form H	<i>Bonamiosis Marteilirosis</i>
Live wild molluscs of the species <i>Crassostrea gigas</i> , their eggs and gametes	Form F Form G Form H	<i>Bonamiosis Marteilirosis</i>
Live farmed molluscs, their eggs and gametes of species other than the species — <i>Ostrea edulis</i> <i>Crassostrea gigas</i>	Form E or Form G	<i>Bonamiosis Marteilirosis</i>
Live wild molluscs, their eggs and gametes of species other than the species - <i>Ostrea edulis</i> <i>Crassostrea gigas</i>	Form F or Form G	<i>Bonamiosis Marteilirosis</i>

NOTE (a):

The common name of *Ostrea edulis* is flat oyster.

The common name of *Crassostrea gigas* is Pacific oyster.

SUBSIDIARY LEGISLATION

FISHERY PRODUCTS

Water Quality (Shellfish) Regulations 2006

S. R. & O. No: of 2006

Made: 2006

Published: 2006

Coming into force: upon publication

IN EXERCISE of my powers under section 5 of the Fishery Products Ordinance 2006(a), after the consultations required by subsection (5) of that section and of all other powers enabling me in that behalf, I make the following Regulations —

1. Citation and commencement

These Regulations may be cited as the Water Quality (Shellfish) Regulations 2006 and shall come into force on publication in the Gazette.

2. Interpretation

Expressions used in these Regulations which are also used in Council Directive 79/923/EEC of 30 October 1979 on the quality required of shellfish waters have the same meaning as in that Directive.

3. Classification of waters

(1) These Regulations apply to the following controlled waters, namely waters which are designated pursuant to section 4(1) of the Fishery Products Ordinance 2006 on the ground that they need protection or improvement in order that they or any part of them may support bivalve or gastropod molluscs of any description.

(2) The quality of waters to which these Regulations apply shall be classified according to the criteria set out in the Schedule.

4. Compliance with relevant requirements

(1) Subject to paragraphs (2) and (3), any waters classified under these Regulations shall be treated in relation to any period of 12 months as complying with the requirements specified in the Schedule for any parameter if in that period in relation to those waters —

(a) in the case of the parameter for organohalogenated substances or metals, 100 per cent of the samples taken for that parameter in accordance with regulation 5 comply with the requirements;

(b) in the case of the parameter for salinity or dissolved oxygen, 95 per cent of the samples taken for that parameter in accordance with regulation 5 comply with the requirements;

(c) in the case of any other parameter, 75 per cent of the samples taken for that parameter in accordance with regulation 5 comply with the requirements.

(2) Where in accordance with regulation 5(5) the frequency of sampling is reduced for any parameter in relation to any waters classified under these Regulations, 100 per cent of samples taken for that parameter in accordance with regulation 5 in relation to those waters must comply with the requirements for that parameter specified in the Schedule.

(3) Non-compliant samples shall be ignored for the purposes of paragraphs (1) and (2) if they are the result of a disaster.

5. Sampling and analysis

(1) The Director shall ensure that waters classified under these Regulations are sampled and samples are analysed in accordance with the following provisions of this regulation.

(2) Samples in relation to any waters classified under these Regulations shall always be taken at the same sampling point.

(3) The Director shall fix the exact position of the sampling point, and the depth at which samples are to be taken, having regard in particular to —

(a) the distance of the sampling point to the nearest point where pollutants are discharged; and

(b) local environmental conditions.

(4) Subject to paragraphs (5) and (6), sampling for any parameter shall be carried out at least at the minimum frequency specified in the Schedule in relation to that parameter.

(5) Where the Director's records show that the quality of any waters classified under these Regulations is appreciably higher for any parameter than the minimum required by these Regulations, the Director may reduce the sampling frequency for that parameter or, if there is no pollution and no risk of deterioration of its quality, may dispense with sampling for that parameter altogether.

(6) Where sampling shows that the requirements of regulation 4 are not being met, the Director shall establish whether this is the result of chance, a natural phenomenon or pollution and shall adopt appropriate measures.

(7) Samples for any parameter shall be analysed using the reference methods of analysis specified in the Schedule in relation to that parameter or methods which are at least as reliable as the reference methods.

6. Derogations

The Director may derogate from the requirements of these Regulations in the event of exceptional weather or geographical conditions.

SCHEDULE CRITERIA FOR CLASSIFICATION OF WATERS AS SHELLFISH WATERS

<i>No. in Annex to Directive</i>	<i>Parameter</i>	<i>Units</i>	<i>Requirements to be satisfied</i>	<i>Reference methods of analysis</i>	<i>Minimum sampling and measuring frequency</i>
1	pH	pH unit	≥ 7 and ≤ 9	Electrometry Measured in situ at the time of sampling	Quarterly
3	Coloration (after filtration)	mg Pt/l	A discharge affecting shellfish waters must not cause the colour of the waters after filtration to deviate by more than 10 mg Pt/l from the colour of waters not so affected	Filter through a 0.45 μ m membrane Photometric method, using the platinum/cobalt scale	Quarterly
4	Suspended solids	mg/l	A discharge affecting shellfish waters must not cause the suspended solid content of the waters to exceed by more than 30% the content of waters not so affected	Filtration through a 0.45 μ m membrane, drying at 105°C and weighing Centrifuging (for at least five minutes, with mean acceleration 2,800 to 3,200g), drying at 105°C and weighing	Quarterly
5	Salinity	per thousand	≤ 40 per thousand A discharge affecting shellfish waters must not cause their salinity to exceed by more than 10% the salinity of waters not so affected	Conductimetry	Monthly
6	Dissolved oxygen	Saturation %	$\geq 70\%$ (average value) If an individual measurement indicates a value lower than 70%, measurements shall be repeated An individual measurement may not indicate a value lower than 60% unless there are no harmful consequences for the development of shellfish colonies	Winkler's method Electrochemical method	Monthly, with a minimum of one sample representative of low oxygen conditions on the day of sampling. However, where major daily variations are suspected, a minimum of two samples in one day shall be taken.

<i>No. in Annex to Directive</i>	<i>Parameter</i>	<i>Units</i>	<i>Requirements to be satisfied</i>	<i>Reference methods of analysis</i>	<i>Minimum sampling and measuring frequency</i>
7	Petroleum hydrocarbons		<p>Hydrocarbons must not be present in the shellfish waters in such quantities as to:</p> <ul style="list-style-type: none"> - produce a visible film on the surface of the waters and/or a deposit on the shellfish, - have harmful effects on the shellfish 	Visual examination	Quarterly
8	Organo-halogenated substances		The concentration of each substance in the shellfish waters or in shellfish flesh must not reach or exceed a level which has harmful effects on the shellfish and their larvae	Gas chromatography after extraction with suitable solvents and purification	Half-yearly
9	<p>Metals:</p> <p>Silver Ag Arsenic As Cadmium Cd Chromium Cr Copper Cu Mercury Hg Nickel Ni Lead Pb Zinc Zn</p>	mg/l	<p>The concentration of each substance in the shellfish waters or in the shellfish flesh must not reach or exceed a level which has harmful effects on the shellfish and their larvae</p> <p>The synergic effects of these metals must be taken into consideration</p>	Spectrometry of atomic absorption preceded, where appropriate, by concentration and/or extraction	Half-yearly
11	Substances affecting the taste of the shellfish		Concentration should be lower than that which is liable to impair the taste of the shellfish	Examination of the shellfish by tasting where the presence of one of these substances is presumed	

Printed by the Government Printer, Printing Office, Stanley, Falkland Islands.
Price: Sixteen Pounds and Twenty Pence.

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**THE
FALKLAND ISLANDS GAZETTE
Supplement**

PUBLISHED BY AUTHORITY

Vol. 17

30th May 2006

No. 8

The following are published in this Supplement -

Plant Importation (Amendment) Regulations 2006 (S. R. & O. No. 7 of 2006);

Air Navigation (Fees for Certificates and Services) Regulations 2006 (S. R. & O. No. 8 of 2006);

Capital Equalisation Fund (No 2) Order 2006 (S. R. & O. No. 9 of 2006);

Customs (Fees) Regulations 2006 (S. R. & O. No. 10 of 2006);

Post Office Order 2006 (S. R. & O. No. 11 of 2006);

Canache (Mooring of Water Craft) Development (Amendment) Regulations 2006 (S. R. & O. No. 12 of 2006);

Wearing of Seat Belts (Prescribed Roads)(Amendment) Regulations 2006 (S. R. & O. No. 13 of 2006); and

Road Traffic (Amendment) Ordinance 2006.

SUBSIDIARY LEGISLATION

AGRICULTURE

Plant Importation (Amendment) Regulations 2006

S. R. & O. No: 7 of 2006

Made: 26 May 2006

Published: 30 May 2006

Coming into force: upon publication

IN EXERCISE of my powers under section 3(a) and (g) of the Plant Disease Regulation Ordinance (Title 4.4) and of all other powers enabling me in that behalf, I make the following Regulations —

Citation

1. These Regulations may be cited as the Plant Import (Amendment) Regulations 2006.

Interpretation

2. In these Regulations, “the principal Regulations” means the Plant Importation Regulations (Title 4.4.1).

Amendment of principal Regulations

3. The principal Regulations are amended —

(a) by replacing regulation 7 with the following —

“Fees for permits

7.—(1) With the exception of the plants and seeds specified in the Second Schedule no plant, seed or soil may be imported without a permit from the prescribing authority.

(2) No permit may be issued by the prescribing authority until the applicant has paid such fees as is, by virtue of paragraph (3), the appropriate permit fee.

(3) The permit fees are as follows —

(a) permits for each import by private individuals for non-commercial purposes: £3 (regardless of quantity);

(b) permits for commercial imports: £100 a year (regardless of quantity or the number of occasions during the year that importations are made).”

(b) by inserting at the end of Schedule 1 —

“5. Fruit

6. Vegetables.”.

Made this 26th day of May 2006

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

EXPLANATORY NOTE
(not forming part of the above Order)

These Regulations amend the Plant Importation Regulations.

SUBSIDIARY LEGISLATION

CIVIL AVIATION

Air Navigation (Fees for Certificates and Services) Regulations 2006

S. R. & O. No: 8 of 2006

Made: 26 May 2006

Published: 30 May 2006

Coming into force: 1 July 2006

IN EXERCISE of my powers under article 129 of the Air Navigation (Overseas Territories) Order 2001(a) and of all other powers enabling me in that behalf, I make the following Regulations —

Citation and commencement

1. These Regulations may be cited as the Air Navigation (Fees for Certificates and Services) Regulations 2006 and shall come into force on 1st July 2006.

Interpretation

2. References to the weight of an aircraft are, for the purposes of these Regulations, references to the “maximum total weight authorised” as defined in article 130(1) of the Air Navigation (Overseas Territories) Order 2001.

Fees

3.—(1) Subject to paragraph (2), the fees set out in column 2 of the Schedule hereto shall be chargeable and payable in relation to the items specified in column 1 thereof.

(2) The Crown in right of the Falkland Islands is exempt from the payment of those fees.

General provisions

4.—(1) In connection with any thing done pursuant to any of the items set out in the Schedule to these Regulations, the Director of Civil Aviation may —

(a) require the payment of the whole or a portion of the fee or fees payable upon application or in advance of any licence, approval or other document being issued;

(b) withhold such fees as he may think fit to cover the cost of any services performed to the point of termination of any application through withdrawal, refusal or any other form of termination, and return to the applicant the remainder of any deposit which may have been made;

(c) charge any additional actual costs arising from services performed or investigation conducted in connection with any application, where the actual costs of such activities exceed the fees set out in the Schedule to these Regulations;

(d) Recharge the amount of any disbursements made, in connection with any application or investigation, to bodies outside the Department of Civil Aviation, including but not limited to communications charges and to add an administrative fee of ten per centum to all such charges.

(2) In this regulation, the expression "investigation" includes an inspection, examination, calculation, test or any other form of work expended in the consideration of any application.

SCHEDULE

PART 1

Licences for flight crew

(a) For a private pilot's licence:	
Initial Issue	£70
Renewal	£40
(b) For a commercial pilot's licence:	
Initial Issue	£130
Renewal	£70
(c) For an airline transport pilot's licence:	
Initial Issue	£130
Renewal	£70
(d) For a Flight Navigator's licence:	
Initial Issue	£100
Renewal	£60
(e) For a Flight Radiotelegraphy Operator's general licence:	
Initial Issue	£40
Renewal	£40
(f) For a Flight Radiotelegraphy Operator's restricted licence:	
Initial Issue	£40
Renewal	£40

- | | |
|-----------------------------------------------------------------------------------------------|------|
| (g) For a Flight Radiotelegraphy Operator's licence: | |
| Initial Issue | £40 |
| Renewal | £40 |
| (h) For a certificate of validity of foreign licence: | |
| Initial Issue | £70 |
| Renewal | £40 |
| Validation during period of validity | £40 |
| (i) For the appointment of authorised examiner for aircraft type rating or instrument rating: | |
| Initial Appointment or Re-appointment | £200 |

The fees set out in this Part shall be applied together with such additional costs of any examination, flight tests or other investigations as may be necessary.

PART II

Airworthiness

- | | |
|------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| (a) Initial Issue and each Renewal with maximum validity of 12 months: | |
| (i) For aircraft not exceeding 2,730kgs | £620 |
| (ii) For aircraft exceeding 2,730kgs but not exceeding 5,700kgs | £1,300 |
| (iii) For aircraft exceeding 5,700kgs but not exceeding 30,000kgs | £1,300 plus £95 per 500kgs or part thereof exceeding 5,700kgs up to a maximum of £6,000 |
| (b) For a permit to fly an aircraft without a certificate of airworthiness: | £200 |
| (c) For a certificate of airworthiness, change of category: | £200 |
| (d) For the approval of modifications, major repairs to aircraft, engines and equipment: | £200 per application |
| (e) For a certificate of approval of aircraft radio installation: | |
| Initial Issue | £120 |
| Renewal or amendment | £70 |
| (f) For the approval of maintenance organisations: | |
| Initial Issue | £1,500 for each site |

Variation of Approval:

(i)	For aircraft not exceeding 2,730kgs	£500
(ii)	For aircraft exceeding 2,730kgs	£600
(g)	For an aircraft maintenance engineer's licence (AMEL):	
	Initial Issue	£130
	Renewal or variation or inclusion of rating:	£70
(h)	For a certificate of validation of AMEL:	
	Initial Issue	£70
	Renewal or variation	£40
(i)	For the approval of aircraft maintenance schedules:	
	Initial Issue	£200
	Amendment or variation	£100
(j)	Noise Certificate:	£120

The fees set out in this Part shall be applied together with such additional costs of any examination, flight tests or other investigations as may be necessary.

PART III
Flight operations

(a) Application for the grant of an Air Operator's Certificate:

Upon making an application for the grant of an Air Operator's Certificate (AOC), the applicant shall pay for the investigations required by the Department of Civil Aviation (DCA) a charge of such amount as may be decided by the DCA. The level of charges shall be determined based upon the estimated man-days attributable to investigation, as specified in Column 2 of Table 1 and Part V(n) hereof.

TABLE 1

MAXIMUM TOTAL WEIGHT AUTHORISED	MAN DAYS
Not exceeding 2 tonnes	4 man days
Exceeding 2 tonnes but not exceeding 15 tonnes	45 man days
Exceeding 15 tonnes	60 man days

(b) For an Air Operator's Certificate:

- | | |
|------------------------------------------------------------------|--------|
| (i) For aircraft not exceeding 2 tonnes: | £2,650 |
| (ii) For aircraft exceeding 2 tonnes but not exceeding 15 tonnes | £4,120 |
| (iii) For aircraft exceeding 15 tonnes | £5,900 |

When an Air Operator's Certificate is granted, the applicant shall pay a charge of the amount specified in Column 2 hereto in addition to a charge of such amount as may be decided by the Department of Civil Aviation for the regulatory oversight and monitoring of the AOC operation for one year or part of the year. The level of charges shall be determined based upon the estimated man-days attributed to regulatory oversight as specified in Column 2 of Table 2 and Part V(n) hereof.

TABLE 2

MAXIMUM TOTAL WEIGHT AUTHORISED	MAN DAYS
Not exceeding 2 tonnes	Maximum 4 man days
Exceeding 2 tonnes but not exceeding 15 tonnes	Maximum 45 man days
Exceeding 15 tonnes	Maximum 60 man days

- (c) For the inclusion of additional aircraft types in the Air Operator's Certificate:

- | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| (i) For aircraft not exceeding 2 tonnes | £1,550 |
| (ii) For aircraft exceeding 2 tonnes but not exceeding 15 tonnes | £2,360 |
| (iii) For aircraft exceeding 15 tonnes | £2,650 |
| (iv) The fees specified in this paragraph shall be applied with such additional costs of examination flight tests or other investigation as may be necessary. | |

- (d) For an annual charge for an Air Operator's Certificate (for each aircraft type named on the certificate):

- | | |
|---------------------------------------------------------------------|--------|
| (i) For an aircraft not exceeding 2 tonnes | £1,300 |
| (ii) For an aircraft exceeding 2 tonnes but not exceeding 15 tonnes | £1,950 |
| (iii) For an aircraft exceeding 15 tonnes | £2,600 |

Upon application for renewal of an Air Operator's Certificate the applicant shall pay a charge of the amount specified in Column 2 hereto in addition to an annual charge of such amount as may be decided by the Department of Civil Aviation for the continuation of regulatory oversight and monitoring of the AOC Operation. The level of charges shall be determined based upon the estimated man-days attributed to regulatory oversight as specified in Column 2 of Table 2 and Part V(n) hereof.

(e) For a variation of an Air Operator's Certificate:

(i) For a variation in the Operating Region	£650
(ii) For a permission to operate on a specified route outside the Operating Region specified in the Certificate	£270
(iii) For a change in the Company of Trading name where the legal entity is unchanged	£70
(iv) For a change to any of the posts identified in an initial AOC application	£70

(f) Variable Charges:

On the last day of each period of three months during the whole or part of which an Air Operator's Certificate remains in force, the holder of the Certificate shall pay a charge according to the number of hours (rounded to the nearest whole hour, with half hours being rounded up) flown by each aircraft operated by him pursuant to the Certificate as follows:

In the case of passenger aircraft in which the number of passenger seats in the aircraft exceeds 20 but does not exceed 100	4 pence per hour per seat
-----------------------------------------------------------------------------------------------------------------------------	---------------------------------

Nothing in sub-paragraph (f) hereof shall apply to aircraft fitted with 20 or less seats or aircraft that do not exceed a MTWA of 10 tonnes or on non-revenue flights.

For the purposes of this sub-paragraph a flight hour shall be calculated from the time an aircraft becomes airborne to the time the aircraft touches down and shall coincide with the aircraft's Technical Log Time.

(g) Special Operations:

(i) Category II Low Visibility Operations (with or without autoland initial)	£1,300
(ii) Category III Low Visibility Operations (with autoland Initial)	£2,600

(iii)	Extended Range Twin Engine Operations or Extended Range Operations:	
	Initial Application	£3,250
	For each additional aircraft type	£1,550
(iv)	Minimum Navigation Performance Specifications Airspace or Reduced Vertical Separation Minima	£300
(h)	Operations under an AOC exemption:	£1,300
(i)	Route Licensing:	
	(i) Application for route	£330
	(ii) Vetting of business financial plans	£1,200
(j)	For the approval of a scheme to avoid excessive flight crew fatigue	£360

PART IV

Air traffic control and aerodromes

(a)	For an aerodrome licence:	
	Initial Issue	£900
	Annual Renewal (except Government or military aerodromes)	£600
(b)	For an assessment of hazards to air navigation, obstructions etc (except Government or military aerodromes)	£360 plus investigation costs
(c)	For the conversion of foreign air traffic control licences, ratings and aerodrome flight information service officer's licences.	£180

PART V

Matters not elsewhere specified

(a)	For a certificate of registration aircraft:	£240
(b)	For reservation of registration mark:	£60
(c)	For reservation of specific out of sequence registration mark:	£120
(d)	For an aircraft dealer's certificate:	£1,800

(e)	Enquiry regarding entries in register of aircraft:	£30
(f)	For the provision of summary copy of register of aircraft:	£20
(g)	For the issue of a copy of any document issued under the Order: (but not to exceed cost of original document)	£30
(h)	For the approval of documents, inspections, investigations, tests, experiments and flight trials conducted in connection with any part of the Order, but not elsewhere specified.	£90 minimum charge Actual costs plus investigation costs
(i)	For the grant of any permission, approval or exemption in respect of any part of the Order:	£150 plus investigation costs
(j)	Additional charge when services are performed abroad:	Actual costs incurred
(k)	For de-registration advice to foreign regulatory authority or removal from register upon export:	£60
(l)	For title search of the register in respect of an aircraft:	£90
(m)	Where an aircraft is temporarily transferred to the register and a certificate of airworthiness is issued in respect of that aircraft the fee payable:	
	(i) in respect of such temporary transfer to the register; and	
	(ii) in respect of that certificate of airworthiness,	
	Shall be one half of the amount specified in these Regulations for registration of an aircraft or for a certificate of airworthiness as the case may be.	
(n)	Investigation conducted in connection with any part of the Order:	£710 per man day or £90 per hour
	Plus actual costs incurred, including but not limited to, transportation, accommodation and subsistence:	Travel days shall be charged at £360 per man day

Made this 26th day of May 2006

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

EXPLANATORY NOTE
(not forming part of the above Order)

These Regulations prescribe fees payable in respect of certificates issued by and services provided by the Department of Civil Aviation.

SUBSIDIARY LEGISLATION

PUBLIC FUNDS ORDINANCE

Capital Equalisation Fund (No 2) Order 2006

S. R. & O. No: 9 of 2006

Made: 26 May 2006

Published: 30 May 2006

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 Fund (No 2) Order 2006 and comes into force upon publication.

Authorisation of expenditure out of Capital Equalisation Fund

2.—(1) The Financial Secretary is hereby authorised to withdraw from the Capital Equalisation Fund such sums not exceeding eight million one hundred and thirty-one thousand two hundred and ten pounds as are required to defray the expenditure approved in respect of the Capital Programme particulars of which are set out in the Schedule to this Order.

(2) Paragraph (1) shall have effect in addition to, and not in substitution for, the Financial Secretary's authority to expend —

(a) the unexpended balance of £1,558,230 at 30th June 2005 of sums authorised by Orders under section 11(1) of the Public Funds Ordinance (Title 42.1)(a) made prior to that date; and

(b) the unexpended balance, at the date hereof, of sums authorised to be expended by such Orders made after that date (that is to say, the Capital Equalisation Fund (No 2) Order 2005(b), the Capital Equalisation Fund (No 3) Order 2005(c), the Capital Equalisation Fund (No 4) Order 2005(d) and the Capital Equalisation Fund Order 2006(e).

(a) s.11 inserted by s.5 of the Finance Ordinance 2004 (No 10 of 2004)

(b) SR&O No 12 of 2005

(c) SR&O No 18 of 2005

(d) SR&O No 21 of 2005

(e) SR&O No 4 of 2006

SCHEDULE

Current Programme
2006/2007

SUMMARY OF EXPENDITURE

0951	General	15,000
0952	Loans & Investments	330,000
0953	Plant & Vehicles	440,000
0954	Roads	1,647,000
0956	Government Land & Buildings	735,000
0957	Municipal Services	4,494,500
0960	Departmental Assets	282,000
		<hr/>
		8,131,210

Made this 26th day of May 2006

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

EXPLANATORY NOTE

(not forming part of the above Order)

This Order authorises the Financial Secretary to withdraw additional sums not exceeding £8,131,210 out of the Capital Equalisation Fund to meet expenditure in the Government's approved Capital Programme, particulars of which additional sums are set out in the Schedule to the Order.

SUBSIDIARY LEGISLATION

CUSTOMS

Customs (Fees) Regulations 2006

S. R. & O. No: 10 of 2006

Made: 26 May 2006

Published: 30 May 2006

Coming into force: 1 July 2006

IN EXERCISE of my powers under section 162 of the Customs Ordinance 2003(a) and of all other powers enabling me in that behalf, I make the following Regulations —

Citation and commencement

1. These Regulations may be cited as the Customs (Fees) Regulations 2006 and shall come into force on 1st July 2006.

Interpretation

2. In these Regulations “normal hours of duty” means between the hours of eight in the morning and half past four in the afternoon on any day which is not a Saturday, Sunday or public holiday.

Customs services fees

3. Subject to regulation 5, any person requiring the services of a customs officer for any purpose under the customs laws shall pay fees as follows —

(a) where the whole of those services are provided during normal hours of duty, the greater of—

(i) £60.60; and

(ii) such fee as is generated by multiplying the number of hours engaged by £30.30 (and so that for the purposes of this subparagraph, any fraction of an hour above any whole number of hours shall be charged as a whole hour);

(b) where those services are provided partly during normal hours of duty and partly outside normal hours of duty —

(a) No 9 of 2003

(i) at the rate provided for by (a)(ii) in respect of the whole number of hours engaged during normal hours of duty; and

(ii) as to the remainder of the time engaged (including any fraction of an hour above a whole number of hours engaged during normal hours of duty) at the rate provided for by (c)(ii) (but so that the minimum fee payable by virtue of this subparagraph shall be £90.90);

(c) where the whole of those services are provided outside normal hours of duty, the greater of —

(i) £90.90; and

(ii) such fee as is generated by multiplying the number of hours by £45.45 (and so that for the purposes of this subparagraph, any fraction of an hour above any whole number of hours shall be charged as a whole hour); and

(d) where the services are provided without attendance upon the vessel concerned —

(i) within normal hours of duty, £60.60;

(ii) outside normal hours of duty, £90.90.

Entering and clearing

4.—(1) Subject to regulation 5 in respect of any vessel of 50 net registered tonnes or more —

(a) entering at a declared port a fee of £42 shall be paid,

(b) entering other than at a declared port a fee of £208 shall be paid,

(c) clearing at a declared port, a fee of £42 shall be paid,

(d) clearing other than at a declared port a fee of £208 shall be paid;

and where paragraph (b) or (d) applies the costs of travel of the customs officer to and from the vessel and accommodation shall be paid.

(2) For the purposes of paragraph (1) the reference to the port at which a vessel enters or clears, except in relation to private pleasure yachts, shall be construed as the port an or from which, for customs purposes, the vessel enters or clears the Falkland Islands and not as a reference to the place, wherever it may be, at which the customs officer concerned gives the permission required.

(3) In respect of any vessel of less than 50 net registered tonnes paragraph (1) shall apply with the substitution —

(a) in subparagraphs (a) and (c) of “£21” for “£42”; and

(b) in subparagraphs (b) and (d) of “£104” for “£208”.

(4) For the purposes of this regulation Berkeley Sound shall be deemed to be a declared port.

(5) Any fees and costs payable pursuant to the provisions of this regulation shall be payable in addition to any services fees payable pursuant to the provisions of regulation 3.

Pleasure yachts

5.—(1) Nothing in regulations 3 and 4 applies to private pleasure yachts entering and clearing at declared ports.

(2) In paragraph (1) “private pleasure yachts” has the same meaning as it has for the purposes of the Harbours Ordinance.

(3) For the purposes of this regulation a private pleasure yacht is a pleasure yacht which is not being operated for commercial purposes.

Payment in advance

6. Payment of fees under these regulations shall, unless otherwise agreed by the Collector of Customs, be made by the owner or charterer of the vessel to the Collector of Customs in advance of the provision of the services, entry or clearance of the vessel, as the case may be.

Revocation

7. The Customs (Fees) Regulations 1999(b) are revoked.

Made this 26th day of May 2006

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

EXPLANATORY NOTE *(not forming part of the above Regulations)*

These Regulations revoke and replace, with amendments, the Customs (Fees) Regulations 1999, as amended.

(b) SR&O No 10 of 1999 as amended by the Finance Ordinance 2002 (No 14 of 2002) and the Finance Ordinance 2004 (No 10 of 2004).

SUBSIDIARY LEGISLATION

POST OFFICE

Post Office Order 2006

S. R. & O. No: 11 of 2006

Made: 26 May 2006

Published: 30 May 2006

Commencing: 1 July 2006

IN EXERCISE of my powers under sections 3 and 4 of the Post Office Ordinance (Title 58.1), I make the following Order —

Citation and commencement

1. This Order may be cited as the Post Office Order 2006 and shall come into force on 1 July 2006.

Interpretation

2. In this Order —

“Aerogramme” means a letter written on a form consisting of a single sheet of paper suitably folded and gummed on all sides and sold by the post office for the purpose of being used to send messages by airmail;

“Christmas card” means a postal packet consisting solely of an envelope and a Christmas or Christmas seasonal greetings card —

(a) which together, do not exceed 40 grammes in weight;

(b) upon which any written personal message does not exceed 20 words; and

(c) which is posted at any time during the period 1 October to 31 December inclusive in each year;

“Inland” means the Falkland Islands, the British Antarctic Territory and South Georgia and the South Sandwich Islands;

“Printed Paper” means a newspaper or a document which is a reproduction on paper, cardboard or other materials commonly used in printing, not less than six copies of which, identical in all respects, are intended to be mailed ;

Postage Rates

3. The First, Second and Third Schedules to this Order shall have effect to prescribe rates of postage and other charges.

Weight Limitations

4. The maximum weight for the following postal articles, for any destination, shall be —

- (a) letters2 kg;
- (b) printed papers2 kg;
- (c) small packets2 kg;
- (d) literature for the blind7 kg;
- (e) postal parcels30 kg.

Aerogrammes

5.—(1) An aerogramme shall not be accepted for transmission by airmail —

- (a) if it has any enclosure; or
- (b) if it is not sufficiently stamped for transmission as an aerogramme by airmail.

(2) Where an aerogramme is not by virtue of paragraph (1) to be accepted for transmission by airmail it may, at the discretion of the Postmaster, be accepted for transmission by surface mail if it is sufficiently stamped for such transmission.

Small Packets

6.—(1) A class of postal packets called “small packets” is authorised with the object of affording facilities, in the international service, for the transmission of small articles of merchandise in the letter mails. The small packets service is limited to those countries which have agreed to participate in it.

(2) The same prohibitions as apply to letter post shall also apply to the small packet service. In addition, the following are excluded from transmission in small packets —

- (a) letters, notes or documents having the character of actual and personal correspondence including tapes, discs or wires bearing recordings of current and personal messages;
- (b) coins, bank notes and currency notes;
- (c) negotiable instruments payable to bearer;
- (d) platinum, gold or silver, manufactured or not;

(e) precious stones, jewels and other valuable articles; and

(f) postage stamps whether obliterated or not.

(3) Small packets addressed to a destination outside the Falkland Islands shall —

(a) have securely affixed to them an International Customs Declaration Form in a form approved by the Universal Postal Union (and obtainable from the Postmaster) which shall have been fully and properly completed by the sender; and

(b) be marked with the words “small packet” in the top left-hand corner of the obverse of the packet.

A small packet which does not comply with this paragraph shall not be accepted for transmission by mail.

(4) Small packets may be registered, but may not be insured.

Items exempted from affixing of postage stamps

7.—(1) The following postal articles may be accepted for transmission by mail without the prepayment of postage —

(a) as to both overseas and inland mail —

(i) postal articles originating in a department of the Government posted in the Falkland Islands and bearing —

(aa) the words “On Her Majesty’s Service” conspicuously marked at the top of the obverse of the item; and

(bb) in the lower left-hand or right-hand corner of the obverse of the item, the official departmental stamp; and

(i) postal articles sent on postal business by the postal authorities;

(b) as to inland mail only postal articles originating in a department of the Government posted in the Falkland Islands and bearing in the lower left-hand corner or right-hand corner of the obverse of the item, the official departmental stamp.

(2) Postage shall ordinarily be pre-paid by affixing adhesive postage stamps obtained from the postal authorities but, by arrangement between the sender and the Postmaster, may be pre-paid by use of a franking machine approved by him and subject to compliance with such conditions as he may specify.

Unpaid or Underpaid Postage

8.—(1) Where the postage payable on any postal packet has not been pre-paid or has not been fully pre-paid, the following surcharge is payable —

(a) in the case of an overseas postal packet, the surcharge calculated according to the Detailed Regulations of the Universal Postal Union; and

(b) in the case of an inland postal packet, double the postage or double the deficiency as the case may be.

(2) An airmail packet on which no part, or part only, of the postage payable thereon has been paid may be dealt with as if it were not an airmail packet.

Undelivered Parcels

9. Any parcel not collected within three months from the posting of a notification of arrival may be returned to the sender or otherwise disposed of as the Postmaster thinks fit.

Registration

10.—(1) The fees for registration are —

(a) Inland70p; and

(b) Overseas£2.50.

(2) The maximum limit of compensation for the loss of a registered postal packet is £25 where the overseas fee has been paid and £10 otherwise.

Cash on Delivery Parcels

11. For cash on delivery parcels a fee equivalent to the rates of poundage for the time being charged by the United Kingdom Post Office on British Postal Orders and calculated by reference to the trade charge in respect of the parcel or the sum of £300, whichever is the lower.

Postal Orders

12.—(1) The rates of poundage on British Postal Orders shall be those for the time being in force under the legislation relating to the United Kingdom Post Office with such additional charge by way of poundage as the Postmaster may determine.

(2) The value of a postal order may be increased by affixing such number of postage stamps of such type and to such aggregate value as is for the time being permitted by the United Kingdom Post Office.

Insurance

13.—(1) Insurance shall be available only in relation to letters and parcels addressed to an addressee in the United Kingdom or any other country for the time being notified by the Postmaster.

(2) The insurance charge shall be £3.50 with a maximum insured value of £300.

Customs Declarations: Overseas Parcels

14. Parcels addressed to a destination outside the Falkland Islands shall have securely affixed to them an International Customs Declaration Form in a form approved by the Universal Postal Union (and obtainable from the Postmaster) which shall have been fully and properly completed by the sender.

Inland Small Packets

15.—(1) Inland small packets shall be marked with the words “small packet” in the top left-hand corner of the obverse of the packet.

(2) Where an inland small packet is not marked as required by subparagraph (1) or exceeds 1kg in weight it shall if it does not exceed 2kg in weight attract postage at the rate applicable to letters and otherwise shall be treated as a parcel and be charged for and transmitted accordingly.

Weight Limitation

16. No item shall be accepted for transmission —

- (a) as an overseas airmail letter or as an overseas small packet if it exceeds 2kg in weight;
- (b) as an overseas airmail parcel if it exceeds 2kg in weight;
- (c) as an overseas surface mail letter, printed paper or small packet if it exceeds 2kg in weight;
- (d) as an overseas surface mail parcel if it exceeds 30kg in weight;
- (e) as an inland letter, printed paper or small packet, if it exceeds 2kg weight; or
- (f) as an inland parcel if it exceeds 10kg in weight.

Re-direction of postal articles

17. A fee of £50 per surname of persons then formerly living at the same address in the Falkland Islands shall be paid for the service of re-direction of postal articles to any place outside the Falkland Islands and that service may be provided for any period up to six months.

Postage Rates etc

18. The First, Second and Third Schedules shall have effect so as to set rates of postage for the various matters referred to therein.

Revocation

19. The Post Office Order 2002(a), the Post Office (Amendment) Order 2002(b) and the Post Office (Amendment) Order 2004(c).

FIRST SCHEDULEAirmail Rates to all CountriesAIRMAIL RATES

Letters	First 70gm each additional 10gm	60p 25p
Small Packets & Printed Papers	First 60gm each additional 10gm	£1.05 14p
Postcard		50p
Aerogramme		50p
“ (illustrated)		60p
Christmas Card		55p

SECOND SCHEDULESurface Mail RatesSURFACE RATES

Postcards		30p
Letters	First 20gm up to 100gm each additional 50gm	40p 85p 35p
Small packets & Printed Papers	First 100gm each additional 50 gm	75p 25p
Christmas Card		35p
Parcels to United Kingdom	First kg each additional kg Maximum weight 30 kg	£10 £4

(Rates to other countries, as notified from time to time).

-
- (a) SR&O No 9 of 2002
(b) SR&O No 24 of 2002
(c) SR&O No 14 of 2004

THIRD SCHEDULE

Inland Rates

INLAND RATES

Letters	First 20gm	25p
	each additional 50gm	15p
Small Packets & Printed Papers	First 70gm	21p
	each additional 50gm	7p
Postcard		18p
Christmas Card		20p

Literature for the blind shall not attract postage.

PARCELS - AIRMAIL (INTERNAL)

FIGAS freight rates and conditions shall apply with a minimum charge of £1.

Made this 26th day of May 2006

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

EXPLANATORY NOTE

(not forming part of the above Order)

This Order replaces the Post Office Order 2002.

SUBSIDIARY LEGISLATION

STANLEY COMMON

Canache (Mooring of Water Craft) Development (Amendment) Regulations 2006

S. R. & O. No: 12 of 2006

Made: 26 May 2006

Published: 30 May 2006

Coming into force: on publication

Approved by Resolution of the Legislative Council on 24th May 2006

IN EXERCISE of my powers under section 10 of the Stanley Common Ordinance(a) and of all other powers enabling me in that behalf, I make the following Regulations —

Citation and commencement

1. These Regulations may be cited as the Canache (Supply of Electricity) Development Regulations 2006 and shall come into force upon publication.

Interpretation

2. In these Regulations, unless the context otherwise requires —

“the principal Regulations” means the Canache (Mooring of Water Craft) Development Regulations 2000(b);

“mooring point” includes a jetty, pontoon landing and any other form of secure mooring for water craft; and

“water craft” includes every description of vessel used in navigation including those propelled by oars.

Amendment of regulation 4(2) of the principal Regulations

3. In regulation 4(2) of the principal Regulations there shall be added —

“(e) the installation of an electricity supply to a mooring point for use by water craft.”

(a) No 9 of 1999

(b) SR&O No 22 of 2000

Made this 26th day of May 2006

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

EXPLANATORY NOTE
(not forming part of the above Regulations)

These Regulations amend the Canache (Mooring of Water Craft) Development Regulations 2000 to permit the supply of electricity in that part of Stanley Common to the north west of the Canache for purposes associated with the mooring of water craft.

SUBSIDIARY LEGISLATION

ROAD TRAFFIC

Wearing of Seat Belts (Prescribed Roads)(Amendment) Regulations 2006

S. R. & O. No: 13 of 2006

Made: 26 May 2006

Published: 30 May 2006

Coming into force: 1 June 2006

Approved by Resolution of the Legislative Council on 25th May 2006.

IN EXERCISE of my powers under section 36 of the Road Traffic Ordinance (Title 63.1) and of all other powers enabling me in that behalf, I make the following Regulations —

Citation and commencement

1. These Regulations may be cited as the Wearing of Seat Belts (Prescribed Roads)(Amendment) Regulations 2006 and come into force on 1st June 2006.

Amendment of Wearing of Seat Belts (Prescribed Roads) Regulations 1996

2. The Wearing of Seat Belts (Prescribed Roads) Regulations 2006(a) are amended —

(a) by inserting the following regulation after regulation 2 —

“Application

2A. These regulations apply to all highways in the Falkland Islands(b).”

(b) by replacing the heading to Part III with “Part III CHILDREN”;

(c) by replacing the word “road” in regulation 6(1) with the word “highway”; and

(d) by deleting Schedule 1.

(a) SR&O No 2 of 1996, amended by SR&O No 13 of 2004

(b) “Highway” is defined in section 2 of Road Traffic Ordinance (Title 63.1)

Made this 26th day of May 2006

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

EXPLANATORY NOTE

(not forming part of the above Regulations)

These Regulations amend the Wearing of Seat Belts (Prescribed Roads) Regulations 1996 so as to apply them to all “highways” (as defined in section 2 of the Road Traffic Ordinance (Title 63.1). As a result, the requirements in relation to wearing of seat belts now apply to all highways, whether or not they are “roads” (as defined in section 2 of the Road Traffic Ordinance) and whether or not a speed limit applies.

ELIZABETH II



FALKLAND ISLANDS

HOWARD JOHN STREDDER PEARCE C.V.O.,
Governor.

Road Traffic (Amendment) Ordinance 2006

(No: 9 of 2006)

ARRANGEMENT OF PROVISIONS

Section

1. Short title and commencement
2. Amendment of Road Traffic Ordinance (Title 63.1)

Schedule

ELIZABETH II



FALKLAND ISLANDS

HOWARD JOHN STREDDER PEARCE C.V.O.,
Governor.

ROAD TRAFFIC (AMENDMENT) ORDINANCE 2006

(No: 9 of 2006)

(assented to: 26 May 2006)
(commencement: in accordance with s.1)
(published: 30 May 2006)

AN ORDINANCE

To amend the Road Traffic Ordinance (Title 63.1)

ENACTED by the Legislature of the Falkland Islands as follows —

Short title and commencement

1. This Ordinance may be cited as the Road Traffic (Amendment) Ordinance 2006 and comes into operation on 1st June 2006.

Amendment of Road Traffic Ordinance (Title 63.1)

2. The Road Traffic Ordinance (Title 63.1) is amended in the manner specified in the Schedule.

SCHEDULE

Amendment of the Road Traffic Ordinance (Title 63.1)

1. In this Schedule “the principal Ordinance” means the Road Traffic Ordinance (Title 63.1) appearing in the Revised Edition of the Laws of the Falkland Islands on 31st December 2005, but incorporating the amendments made to section 36 by the Road Traffic (Amendment) Ordinance 1995 (No 16 of 1995) which have, in error, been omitted from the Revised Edition.

2. Section 2 of the principal Ordinance is amended —

(a) by inserting the following definition after the definition of “fail” —

“ “highway” means any carriageway, street, thoroughfare, lane or access to a farm constructed by or at the expense of the Crown in right of the Falkland Islands with the intention that it shall be available for use by the public with motor vehicles as of right and regardless of whether —

(a) it is within Stanley or within four miles of the boundary thereof; or

(b) has been declared by the Governor by order to be a road for the purposes of this Ordinance;”

3. Section 36(1) of the principal Ordinance (wearing of seat belts) is amended by replacing the word “road” with the word “highway”.

Passed by the Legislature of the Falkland Islands this 25th day of May 2006.

A. LIVERMORE C.P.M.,
Acting 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.

A. LIVERMORE C.P.M.,
Acting Clerk of Councils.

Published by the Attorney General's Chambers, Cable Cottage, Stanley, Falkland Islands
Price: Six Pounds and Twenty Pence.

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