



# THE FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

Vol. CXV

30<sup>th</sup> June 2006

No. 10

## Appointments

Derek George MacDonald, Tyre Fitter, Public Works Department, 05.06.06.

Peter James Betts, Refueller/Handyman, Falkland Islands Government Air Service, 19.06.06.

Dawn Rose Summers, Recruitment Officer and Office Administrator, Falkland Islands Government Office London, 19.06.06.

## Completion of Contract

Damien Bartholomew O'Sullivan, Agriculture Advisor, Department of Agriculture, 11.06.06.

Douglas James Martin, Agriculture Advisor, Department of Agriculture, 30.06.06.

## Resignation

John McLeod (Jnr), Licensed Aircraft Engineer, Falkland Islands Government Air Service, 06.06.06.

Colin George Browning, Labourer, Public Works Department, 28.06.06.

## NOTICES

No. 31

30<sup>th</sup> May 2006

## APPOINTMENT OF ACTING ATTORNEY GENERAL

I HOWARD JOHN PEARCE Commander of the Royal Victorian Order Governor of the Falkland Islands HEREBY authorise MELANIE LOUISE BEST CHILTON to discharge the functions and duties of the post of Attorney

General of the Falkland Islands during the absence overseas of the substantive holder of the post of Attorney General DAVID GEOFFREY LANG from 30 May 2006 until his return to the Falkland Islands.

Given under my hand and the Public Seal at Stanley on this 30<sup>th</sup> day of May 2006

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

No. 32

1<sup>st</sup> June 2006

## APPLICATION FOR VESTING DEED Notice under section 11A of the Land Ordinance (Title 45.2 as amended)

TAKE NOTICE THAT Alison Anne Mackenzie Inglis, Crown Counsel, Attorney General's Chambers, Stanley, Falkland Islands has applied on behalf of the Crown and in accordance with section 11A of the Land Ordinance to have executed in favour of the Crown a Vesting Deed of All That piece of land situate in the southern suburbs of Stanley, East Falkland Island forming Crown Grant 91 and numbered 9 in Pensioners Special Allotments containing 10 acres which lot or parcel of land lies to the south of Slaughter House Paddock and to the east of the Rugby Pitch.

The Applicant's Statutory Declaration may be inspected by any person at the Registrar General's Office, Stanley during normal working hours.

NOTICE IS HEREBY GIVEN that unless any objection has been received within 30 days following the publication of this Notice the Registrar General under the terms of section 11A of the Land Ordinance will execute in favour of the said Alison Anne Mackenzie Inglis acting on behalf of the Crown a Vesting Deed of the said land.

Dated this 1<sup>st</sup> day of June 2006

J. C. ROWLAND,  
*Registrar General.*

No. 33

1<sup>st</sup> June 2006

**APPLICATION FOR VESTING DEED**  
**Notice under section 11A of the Land Ordinance**  
**(Title 45.2 as amended)**

TAKE NOTICE THAT Alison Anne Mackenzie Inglis, Crown Counsel, Attorney General's Chambers, Stanley, Falkland Islands has applied on behalf of the Crown and in accordance with section 11A of the Land Ordinance to have executed in favour of the Crown a Vesting Deed of All That piece of land situate in the suburbs of Stanley, East Falkland Island forming Crown Grant 93 and numbered 18 in the Pensioners Special Allotments containing 10 acres which lot or parcel of land lies to the south of Lookout Rocks and to the east of Eliza Cove Road.

The Applicant's Statutory Declaration may be inspected by any person at the Registrar General's Office, Stanley during normal working hours.

NOTICE IS HEREBY GIVEN that unless any objection has been received within 30 days following the publication of this Notice the Registrar General under the terms of section 11A of the Land Ordinance will execute in favour of the said Alison Anne Mackenzie Inglis acting on behalf of the Crown a Vesting Deed of the said land.

Dated this 1<sup>st</sup> day of June 2006

J. C. ROWLAND,  
*Registrar General.*

No. 34

2<sup>nd</sup> June 2006

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

TAKE NOTICE that Shirley Hirtle of Stanley, Falkland Islands died on the 18<sup>th</sup> day of May 2006 intestate.

WHEREAS Leonard Lloyd Hirtle has applied for Letters of Administration to administer the estate of the said deceased in the Falkland Islands.

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

Dated this 2<sup>nd</sup> day of June 2006

C. J. KING,  
*Registrar of the Supreme Court.*

No. 35

28<sup>th</sup> June 2006

**APPLICATION FOR PERMANENT RESIDENCE**

Notice is hereby given that Susan Jane STEVENS and Geoffrey Arnold STEVENS have applied through the Principal Immigration Officer to be granted a Permanent Residence Permit by the Governor.

Any person who knows of any reason why these 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 21<sup>st</sup> July 2006.

Dated this 28<sup>th</sup> day of June 2006

C. W. REEVES,  
*Immigration Officer.*

**APPOINTMENT OF**  
**TEMPORARY CUSTOMS OFFICERS**  
**Customs Ordinance 2003**

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

**Cpl Simon Paul Lonsdale - E8255459**

to be a temporary Customs Officer from 15 March 2006 to 17 July 2006;

**Cpl Gareth David Poyser - A8418279**

to be a temporary Customs Officer from 5 May 2006 to 6 September 2006; and

**Sgt Andrew Keith Downing - T8212366**

to be a temporary Customs Officer from 24 May 2006 to 25 September 2006.

Dated this 12<sup>th</sup> day of June 2006

R. J. KING,  
*Collector of Customs.*



# THE FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

*Vol. CXV*

*31<sup>st</sup> July 2006*

*No. 11*

## Appointments

Kimberley Joanna Steen, Customs and Immigration Officer, Customs and Immigration Department, 10.07.06.  
Peter Roi Johnson, Agricultural Advisor (Sheep and Wool Husbandry), Department of Agriculture, 15.07.06.

## Completion of Contract

Vladimir Laptikhovsky, Data Analyst, Fisheries Department, 30.04.06.  
Helen Otley, Fisheries Scientist, Fisheries Department, 07.07.06.  
Lianos Triantafillos, Stock Assessment Scientist, Fisheries Department, 21.07.06.  
Craig Copik, Fisheries Protection Officer, Fisheries Department, 26.07.06.

## Renewal of Contract

Vladimir Laptikhovsky, Data Analyst, Fisheries Department, 01.07.06.

## Resignation

Mara O'Bey, Auxiliary Nurse, Health Services Department, 06.07.06.  
Janet Eve Austin, Legal Secretary, Attorney General's Chambers, 28.07.06.  
Jeremy Sylwen Lloyd Henry, Assistant Foreman, Public Works Department, 28.07.06.

## Retirement

Ian McLeod (Snr), Power Station Operator, Electricity Supply Section, Public Works Department, 31.07.06.

## NOTICES

No. 36

6<sup>th</sup> July 2006

### Death in Service

It is with deep regret that His Excellency the Governor announces the death of Mr Michael Ford, Handyman/Storeman, Power and Electrical Section, Public Works Department, on 5<sup>th</sup> July 2006.

Dated this 6<sup>th</sup> day of July 2006

No. 37

13<sup>th</sup> July 2006

### GOLDEN FLEECE LIMITED Company Number: 10852

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 13<sup>th</sup> day of July 2006.

Dated this 13<sup>th</sup> day of July 2006

J. C. ROWLAND,  
*Registrar of Companies.*

### REGISTERED MEDICAL PRACTITIONERS, MIDWIVES AND DENTISTS

In accordance with section 4 of the Medical Practitioners, Midwives and Dentists Ordinance the names and qualifications of registered medical practitioners, midwives and dentists are hereby published:-

#### Doctors

Dr Ahmad Abel-Mageed MBBS, FRCS(Ed)  
 Dr Olufemi Akande MBBS  
 Dr Jacqueline Bennebroek MSC(UVA), MRCGP, DFFP  
 Dr Kanti Bhardway MBBS(Punjab), DA(Lon), FFARCSI  
 Mr Norman Binnie MBChB, BSc, MD, FRCS  
 Dr John Bolwell MBBS, FRCS, MRCS, LRCP  
 Dr Albertus Boshoff  
 Mr Alistair Campbell MBChB, FRCS  
 Dr Ahmad Cheema MBBS, FRCS  
 Dr Tristan Courtis MRCGP, DRCOGP, MBBS, BSc  
 Dr Richard Davies MBChB, BAO(Bel), MRCGP  
 Dr John Davison MBBS, MD, PhD MRCOG  
 Dr Roger Diggle MBChB(Wales), MFFP, DA  
 Dr Rebecca Edwards MBBS(Lon), DRCOGP, DFFP  
 Dr Hassan El-Hamalawy FFARCSI, DA, MBChB(Hon),  
 DA Anaë, DA Int Med  
 Dr Barry Elsby MBBS, BSc, DRCOG, MRCGP  
 Mr Paul Franks MBChB, FRCOG  
 Mr Ali Jamous MD, MSc(Oxon)  
 Dr Tariq Khan MBBS, FRCS Dip Lap Surg(France)  
 Dr Christopher Knight BSc, MBBS, FRCA  
 Dr Vladimir Kuric MUDr(Prague), DEAA  
 Mr Leo McClymont MBChB, FRCS  
 Dr Deidre McCormack  
 Mr William McKerrow MBChB, MRCGP, FRCS Ed &  
 Glas  
 Dr Robert Martin MBChB, FRCOG  
 Dr Tim McInerney MBBS, BS, MRCPsych  
 Dr David Morgan  
 Dr Bernadette Paver MBBS, MRCGP(Lon)  
 Dr Anthony Roche MBChB, MRCP(UK), FCA(SA),  
 FRCS(UK), FRCP(Ed)  
 Mr Paul Rosen BSc, MB, FRCS, FRCOph  
 Dr Wojciech Skorzynski MD(Warsaw)

#### Midwives

Miss Jacqueline Earnshaw SRN, SCM  
 Mrs Pamela Freer RGN, RM  
 Mrs Mandy Heathman SRN, SCM  
 Mr Vincent Tremayne Dip HE Nursing, BSC Hons  
 Midwifery

#### Dentists

Dr Moira Bhola MBS, BDB, Post Grad Dip Bus  
 Dr Julian Fisher BDS(B'ham), MSc(Stell)  
 Dr David Fyfe BSc, MSc, PhD, BDS  
 Dr Melt Van De Spuy Hanekom BSc. BChD  
 Dr Vima Kane BDS(Hons) QLD  
 Dr Jean-Jacques Khamis BDS(Lon), MFDS RCS(Edin) M  
 Clin Den Lond  
 Dr Sally Owen BChD(Leeds)  
 Dr Anthony Redfern BDS(Lon), LDS, RCS(Eng)

Dr Eshamsul Suliman BDS(Bel), MFD, RCSI(Ire),  
 MClintDent(Lon)  
 Dr Stephanie Torien B.CH.D  
 Dr Mark Vardon

Dated this 14<sup>th</sup> day of July 2006

R. J. DIGGLE,  
*Chief Medical Officer.*

No. 39

18<sup>th</sup> July 2006

### INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (RESTRICTIVE MEASURES) (OVERSEAS TERRITORIES) ORDER 2004 (SI 2004/3039)

Further to Council Decision 2006/484/CFSP of 11 July 2006, notice is hereby given that **Dragan Zelenovic** (Date of Birth: 12 February 1961, Place of Birth: Foca, Bosnia and Herzegovina, Nationality: Bosnia and Herzegovina) is no longer a listed person for the purposes of the International Criminal Tribunal for the former Yugoslavia (Restrictive Measures)(Overseas Territories) Order 2004.

A full updated list of names is available at the annex of Council Decision 2006/484/CFSP, published on the EU website at: [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l\\_189/l\\_18920060712en00250026.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_189/l_18920060712en00250026.pdf)

Dated this 18<sup>th</sup> day of July 2006

D.G. LANG QC,  
*Attorney General.*

No. 40

19<sup>th</sup> July 2006

### APPLICATION FOR NATURALISATION

Notice is hereby given that **Rosa Yesenia SENOCIAIN SHORT** 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 21<sup>st</sup> August 2006.

Dated this 19<sup>th</sup> day of July 2006

C. W. REEVES,  
*Immigration Officer.*



No. 41

19<sup>th</sup> July 2006

**INTERNATIONAL ORGANISATIONS  
ORDINANCE 1995**

**International Tribunal for the Law of the Sea  
(Immunities and Privileges) Order 1996**

**and**

**International Sea-Bed Authority (Immunities and  
Privileges) Order 1996**

Notice is hereby given further to the International Tribunal for the Law of the Sea (Immunities and Privileges) Order 1996 and the International Sea-Bed Authority (Immunities and Privileges) Order 1996 that the United Nations Convention on the Law of the Sea entered into force in respect of the Falkland Islands on 25 July 1997, such date being that upon which the above mentioned Order also came into force.

Dated this 19<sup>th</sup> day of July 2006

D.G. LANG QC,  
*Attorney General.*

No. 42

26<sup>th</sup> July 2006

**MATRIMONIAL PROCEEDINGS (DOMESTIC  
VIOLENCE) ORDINANCE 1994**

**Section 1**

**COMMENCEMENT NOTICE**

IN EXERCISE of my powers under section 1 of the Matrimonial Proceedings (Domestic Violence) Ordinance 1994, I hereby notify that the Ordinance shall come into force on 1<sup>st</sup> August 2006.

Dated this 26<sup>th</sup> day of July 2006

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

No. 43

26<sup>th</sup> July 2006

**BANKING (AMENDMENT) ORDINANCE 1996**

**Section 1**

**COMMENCEMENT NOTICE**

IN EXERCISE of my powers under section 1 of the Banking (Amendment) Ordinance 1996, I hereby notify

that the Ordinance shall come into force on 1<sup>st</sup> August 2006.

Dated this 26<sup>th</sup> day of July 2006

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

No. 44

26<sup>th</sup> July 2006

**OFFSHORE MINERALS ORDINANCE 1994**

**Offshore Minerals (Application of Employers' Liability  
(Compulsory Insurance) Act 1969) Regulations 1998  
Article 1**

**COMMENCEMENT NOTICE**

IN EXERCISE of my powers under article 1 of the Offshore Minerals (Application of Employers' Liability (Compulsory Insurance) Act 1969) Regulations 1998 and of all other powers enabling me in that behalf, I hereby notify that the Offshore Minerals (Application of Employers' Liability (Compulsory Insurance) Act 1969) Regulations 1998 shall come into force on 1<sup>st</sup> January 2007.

Dated this 26<sup>th</sup> day of July 2006

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

**APPOINTMENT OF  
TEMPORARY CUSTOMS OFFICERS**

**Customs Ordinance 2003**

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

**Cpl John Russell WOTHERSPOON - A8285858**

to be a temporary Customs Officer from 6 June 2006 to 20 October 2006.

Dated this 28<sup>th</sup> day of June 2006

R. J. KING,  
*Collector of Customs.*





# THE FALKLAND ISLANDS GAZETTE

## Extraordinary

PUBLISHED BY AUTHORITY

---

*Vol. CXV*

*18<sup>th</sup> August 2006*

*No. 12*

---

### NOTICE

No. 45

16<sup>th</sup> August 2006

IN THE SUPREME COURT OF THE FALKLAND ISLANDS

Case number: SC/CIV/9/06

**IN THE MATTER OF ISLAND SHIPPING LIMITED  
AND IN THE MATTER OF THE COMPANIES ACT 1948**

Notice is given that a petition for the winding up of Island Shipping Limited by the Supreme Court was presented to the Court on 16 August 2006 on behalf of the Petitioner, Keith Padgett, Deputy Financial Secretary, Falkland Islands Government, of the Secretariat, Stanley, Falkland Islands.

The petition is to be heard by the Court on 29 August 2006, at 10am. Any creditor or contributory who intends to oppose or support the making of an order on the petition may appear at the hearing, either in person, or by a legal representative. A copy of the petition will be supplied on request, by the legal practitioner named below, to any creditor or contributory of Island Shipping Limited, following payment of a charge of £5.00.

Petitioner's legal practitioner: Rosalind Cheek, Crown Counsel, Attorney General's Chambers, Cable Cottage, Stanley, Falkland Islands, e-mail [rcheek@sec.gov.fk](mailto:rcheek@sec.gov.fk).

Any person who intends to appear at the hearing of the petition must send a notice in writing of that intention to the Petitioner or to the legal practitioner named above. The notice must state the name and address of the person or firm giving it, and must be signed by that person or firm or by a legal practitioner on their behalf. Any notice must be received by the Petitioner or his legal practitioner no later than 6pm on 28 August 2006.

Dated this 16<sup>th</sup> day of August 2006

R. C. CHEEK,  
*Crown Counsel.*

---

Published by the Attorney General's Chambers, Cable Cottage, Stanley, Falkland Islands.  
Price: Fifty Pence.

© Crown Copyright 2006



# THE FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

*Vol. CXV*

*31<sup>st</sup> August 2006*

*No. 13*

## Appointments

Ian James McLeod, Plant Operator/Handyman, Public Works Department, 31.07.06.  
Margaret Orlanda Butler, Legal Secretary, Attorney General's Chambers, 01.08.06.  
Deborah Kay Davies, GIS Manager, Mineral Resources Department, 01.08.06.  
Maria Fernanda Tapia, Dental Nurse, Health Services Department, 01.08.06.  
Colin David Lang, Power Station Operator, Public Works Department, 15.08.06

## Completion of Contract

Mustafa Bahadir Onsoy, Fisheries Observer, Fisheries Department, 09.06.06.  
Rosemary Veronica Gulley, Theatre Staff Nurse, Health Services Department, 12.08.06.  
Michael William Austin, Maths/Science Teacher, Education Department, 31.08.06.  
Katherine Bryan, Teacher, Education Department, 31.08.06.  
Andrew John Hepworth, Maths/PE Teacher, Education Department, 31.08.06.  
Donna Maria Hepworth, Teacher, Education Department, 31.08.06.  
Laurence Stewart Hicks, History Teacher, Education Department, 31.08.06.  
Sandra Elizabeth McCreedy, English Teacher, Education Department, 31.08.06.

## Renewal of Contract

Mustafa Bahadir Onsoy, Fisheries Observer, Fisheries Department, 07.08.06.

## Resignation

Alan Purvis, Head Teacher, Education Department, 07.07.06.  
Peter James Roberts, Mechanic, Public Works Department, 31.07.06.  
Robert John MacAskill, Power Station Operator, Public Works Department, 10.08.06.  
Nicholas Charles Ellick, Cemetery Caretaker/Handyman, Public Works Department, 11.08.06.  
Daphne Arthur-Almond, Teacher, Education Department, 31.08.06.  
David Graham Clarke, Teacher, Education Department, 31.08.06.  
Ferne Patricia Clarke, Learning Support Assistant, Education Department, 31.08.06.  
Lindsay Olga May, Learning Support Assistant, Education Department, 31.08.06.

## Retirement

Ruth Eleanor Taylor, Learning Support Assistant, Education Department, 31.08.06.

### Transfer

St John Peter Payne, from Customs and Immigration Officer, Customs and Immigration Department to Fisheries Protection Officer, Fisheries Department, 31.07.06.

### NOTICES

No. 46

19<sup>th</sup> July 2006

#### Index of Retail Prices

The calculation of the Index for the quarter ended 30 June 2006 has now been completed. A summary of the Index for the last four quarters is shown below:-

Date	Index	Annual % Increase	Quarter % Increase
30.09.05	119.890	6.097	2.470
31.12.05	120.670	4.341	0.651
31.03.05	122.000	4.497	1.102
30.06.06	123.16	5.265	0.951

Dated this 19<sup>th</sup> day of July 2006

L. LYSE,  
*for Financial Secretary*

No. 47

1<sup>st</sup> August 2006

#### VESTING DEED section 11A of the Land Ordinance Title 45.2 (as amended)

Further to an application made by Alison Anne Mackenzie Inglis, Crown Counsel, Attorney General's Chambers, Stanley, Falkland Islands acting on behalf of the Crown pursuant to section 11A of the Land Ordinance (Notice of which application was published in the Gazette of 30<sup>th</sup> June 2006 Vol CXV No 10) I hereby give notice that I have this day executed a Vesting Deed in the form set out hereafter

"Whereas on application having been made to me John Christopher Rowland, Registrar General pursuant to section 11A of the Land Ordinance by Alison Anne Mackenzie Inglis, Crown Counsel, Attorney General's Chambers, Stanley, Falkland Islands acting on behalf of the Crown I am satisfied that the Crown is entitled to be registered as the owner of the property in fee simple absolute in possession of the land described in the Schedule to this Deed NOW THEREFORE by this Deed I do declare that the estate in fee simple absolute in possession of the said land is vested in the said Crown SUBJECT only to such matters as are mentioned in Crown Grant 91 and to such easements rights privileges and encumbrances as may have been created prior to the date of this Deed

#### Schedule (Description of land)

ALL THAT piece or parcel of land situate in the Southern Suburbs of Stanley, East Falkland containing 10 acres and numbered 9 in Pensioners Special Allotments which lot or parcel of land lies to the north by the Slaughter House

Paddock and on the west by the Rugby Pitch and forming part of Crown Grant 91"

Any person aggrieved by the decision of the Registrar General to execute a Vesting Deed in the form set out above may appeal to the Supreme Court within 30 days of the publication in the Gazette of this Notice in accordance with the provisions of section 11A of the Land Ordinance.

Dated this 1<sup>st</sup> day of August 2006

J. C. ROWLAND,  
*Registrar General.*

No. 48

1<sup>st</sup> August 2006

#### VESTING DEED section 11A of the Land Ordinance Title 45.2 (as amended)

Further to an application made by Alison Anne Mackenzie Inglis, Crown Counsel, Attorney General's Chambers, Stanley, Falkland Islands acting on behalf of the Crown pursuant to section 11A of the Land Ordinance (Notice of which application was published in the Gazette of 30<sup>th</sup> June 2006 Vol CXV No 10) I hereby give notice that I have this day executed a Vesting Deed in the form set out hereafter

"Whereas on application having been made to me John Christopher Rowland, Registrar General pursuant to section 11A of the Land Ordinance by Alison Anne Mackenzie Inglis, Crown Counsel, Attorney General's Chambers, Stanley, Falkland Islands acting on behalf of the Crown I am satisfied that the Crown is entitled to be registered as the owner of the property in fee simple absolute in possession of the land described in the Schedule to this Deed NOW THEREFORE by this Deed I do declare that the estate in fee simple absolute in possession of the said land is vested in the said Crown SUBJECT only to such matters as are mentioned in Crown Grant 93 and to such easements rights privileges and encumbrances as may have been created prior to the date of this Deed

#### Schedule (Description of land)

ALL THAT piece or parcel of land situate in the Southern Suburbs of Stanley, East Falkland containing 10 acres and numbered 18 in Pensioners Special Allotments which lot or parcel of land lies to the south of Lookout Rocks and to the east of Eliza Cove Road and forming part of Crown Grant 93"

Any person aggrieved by the decision of the Registrar General to execute a Vesting Deed in the form set out above may appeal to the Supreme Court within 30 days of the publication in the Gazette of this Notice in accordance with the provisions of section 11A of the Land Ordinance.

Dated this 1<sup>st</sup> day of August 2006

J. C. ROWLAND,  
*Registrar General.*

No. 49

9<sup>th</sup> August 2006

**SOUTH ATLANTIC RESOURCES (FI) LIMITED**  
Company Number: 11117

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 9<sup>th</sup> day of August 2006.

Dated this 9<sup>th</sup> day of August 2006

J. C. ROWLAND,  
*Registrar General.*

No. 50

21<sup>st</sup> August 2006

**SUPREME COURT OF THE FALKLAND ISLANDS**  
Notice under the Administration of Estates Ordinance  
(Title 68.1)

TAKE NOTICE THAT Eugene Williams of Stanley, Falkland Islands died on the 24<sup>th</sup> day of June 2006 intestate.

WHEREAS Marlene Rose Williams has applied for Letters of Administration to administer the estate of the said deceased in the Falkland Islands.

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

Dated this 21<sup>st</sup> day of August 2006

C. J. KING,  
*Registrar, Supreme Court.*

No. 51

22<sup>nd</sup> August 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, HARRIET HALL, Acting Governor of the Falkland Islands, APPOINT IAIN KENNETH BERNTSEN to be a member of the Planning and Building Committee for a period of three years such appointment deemed to have commenced upon 17<sup>th</sup> July 2006.

Dated this 22<sup>nd</sup> day of August 2006

H. HALL,  
*Acting Governor.*

No. 52

22<sup>nd</sup> August 2006

**TAXES (AMENDMENT) ORDINANCE 2006**  
(section 1(2))  
**COMMENCEMENT NOTICE**

In accordance with section 1(2) of the Taxes (Amendment) Ordinance 2006 it is hereby notified that Legislative Council on 28<sup>th</sup> July 2006 approved the coming into force of section 5, of the said Ordinance.

Therefore IN EXERCISE of my powers under section 1(2) of the Taxes (Amendment) Ordinance 2006, I hereby notify that the Ordinance came into force on 1<sup>st</sup> March 2006.

Dated this 22<sup>nd</sup> day of August 2006

H. HALL,  
*Acting Governor.*

No. 53

28<sup>th</sup> August 2006

**APPLICATION FOR NATURALISATION**

Notice is hereby given that **Victoria Jane WHITE** 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 21<sup>st</sup> September 2006.

Dated this 28<sup>th</sup> day of August 2006

C. W. REEVES,  
*Immigration Officer.*

No. 54

28<sup>th</sup> August 2006

**APPLICATION FOR PERMANENT RESIDENCE**

Notice is hereby given that **Ahmad Masood CHEEMA** and **Martin James BEATON** have applied through the Principal Immigration Officer to be granted Permanent Residence Permits by the Governor. Any person who knows of any reason why these 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 21<sup>st</sup> September 2006.

Dated this 28<sup>th</sup> day of August 2006

C. W. REEVES,  
*Immigration Officer.*

---

Published by the Attorney General's Chambers, Cable Cottage, Stanley, Falkland Islands.  
Price: One Pound and Fifty Pence.

© Crown Copyright 2006





# THE FALKLAND ISLANDS GAZETTE

## Extraordinary

PUBLISHED BY AUTHORITY

*Vol. CXV*

*15<sup>th</sup> September 2006*

*No. 14*

### NOTICES

No. 55

30<sup>th</sup> August 2006

#### **NOTIFICATION OF RENEWAL AND AMENDMENT OF UN SANCTIONS ON DEMOCRATIC REPUBLIC OF THE CONGO IN ACCORDANCE WITH THE DEMOCRATIC REPUBLIC OF THE CONGO (UN SANCTIONS) (OVERSEAS TERRITORIES) ORDER 2005**

United Nations Security Council Resolution 1596 (2005) imposed an arms embargo on the whole territory of the Democratic Republic of the Congo, with exemptions for the integrated police and armed forces of the Government of the Democratic Republic of the Congo, for the United Nations Mission in the Democratic Republic of the Congo and for the European Union force in the Democratic Republic of the Congo. United Nations Security Council Resolution 1698 (2006) extends this embargo for a further year, to expire on 31 July 2007. United Nations Security Council Resolution 1698 similarly extended the prohibition of all assistance, including financial and military assistance, to illegal armed groups operating in the Democratic Republic of the Congo.

United Nations Security Council Resolution 1596 provided for an asset freeze and travel ban to be imposed on those designated by the United Nations Sanctions Committee as acting in violation of the arms embargo. Sixteen parties have so far been designated in this way; they are listed at: [http://www.un.org/Docs/sc/committees/DRC/1533\\_list.pdf](http://www.un.org/Docs/sc/committees/DRC/1533_list.pdf). It is prohibited to make available to these parties any funds or economic resources. United Nations Security Council Resolution 1698 extended the application of these measures until 31 July 2007, while also adding further criteria under which the Sanctions Committee may designate individuals for such measures. Targeted sanctions will now be imposed against:

- a) persons or entities violating the arms embargo (as per United Nations Security Council Resolution 1596);
- b) political or military leaders of armed groups obstructing the reintegration of their combatants (as per United Nations Security Council Resolution 1649 of 21 December 2005);
- c) political or military leaders recruiting or using children, or individuals targeting children, in situations of armed conflict (as per United Nations Security Council Resolution 1698);

as designated by the United Nations Sanctions Committee. The names of any individuals or entities newly designated by the Committee will be published on the website referred to above.

United Nations Security Council Resolution 1698 reiterates that all states must co-operate with the Group of Experts appointed by the United Nations to monitor sanctions in the Democratic Republic of the Congo, including by granting immediate access to any persons, documents or sites that the Group deems relevant to the execution of its mandate. States must also ensure the co-operation with the Group of all individuals and entities within their jurisdiction or under their control.

All the measures referred to above were imposed under Chapter VII of the United Nations Charter and are binding on all United Nations Member States.

The full texts of the resolutions are available at: <http://www.un.org/Docs/sc/committees/DRC/DRCResEng.htm> .

Dated this 30<sup>th</sup> day of August 2006

A. E. Huckle,  
*Governor.*

---

No. 56

6<sup>th</sup> September 2006

#### Notice of Appointment of Provisional Liquidator

Companies (Winding-up) Rules 1949 – Rule 42(1)

Name of Company: Island Shipping Limited  
Address of Registered Office: 62 Davis Street, Stanley, Falkland Islands  
Court: Supreme Court of the Falkland Islands  
Number of Matter: SC/CIV/9/06  
Date of Order: 23 August 2006  
Date of Presentation of Petition: 16 August 2006  
Provisional Liquidator's name: Peter Copp  
Provisional Liquidator's address: Tullymet, Kincardine Road, Torphins, Aberdeenshire, Scotland

Dated this 6<sup>th</sup> day of September 2006

R. C. Cheek,  
*for Official Receiver.*

---

No. 57

6<sup>th</sup> September 2006

#### Notice of Winding-up Order

Companies (Winding-up) Rules 1949 – Rule 42(1)

Name of Company: Island Shipping Limited  
Address of Registered Office: 62 Davis Street, Stanley, Falkland Islands  
Court: Supreme Court of the Falkland Islands  
Number of Matter: SC/CIV/9/06  
Date of Order: 29 August 2006  
Date of Presentation of Petition: 16 August 2006

Dated this 6<sup>th</sup> day of September 2006

R. C. Cheek,  
*for Official Receiver.*

**Notice of time of First Meetings**

**Companies (Winding-up) Rules 1949 – Rule 122**

Name of Company: Island Shipping Limited  
Address of Registered Office: 62 Davis Street, Stanley, Falkland Islands  
Nature of business: Operators of a coastal shipping service in the Falkland Islands  
Court: Supreme Court of the Falkland Islands  
Number of matter: SC/CIV/9/06  
Meeting of Contributories:  
Date: 26 September 2006  
Hour: 2pm  
Place: Liberation Room, Secretariat, Thatcher Drive, Stanley, Falkland Islands  
Meeting of Creditors:  
Date: 26 September 2006  
Hour: 2.15pm  
Place: Liberation Room, Secretariat, Thatcher Drive, Stanley, Falkland Islands

Dated this 13<sup>th</sup> day of September 2006

R. C. Check,  
*for Official Receiver.*

---



# THE FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

*Vol. CXV*

*4<sup>th</sup> October 2006*

*No. 15*

## Appointments

Roger Barlow, Learning Support Assistant, Education Department, 01.09.06.  
 Andrew Byekwaso, Teacher, Education Department, 01.09.06.  
 Emma Edwards, Teacher, Education Department, 01.09.06.  
 Michael Marshall, Teacher, Education Department, 01.09.06.  
 Elizabeth Messer, Teacher, Education Department, 01.09.06.  
 Steven Waugh, Fisheries Protection Officer, Fisheries Department, 01.09.06.  
 Katherine Williams, Teacher, Education Department, 01.09.06.  
 Phillip Michael Wright, Teacher, Education Department, 01.09.06.  
 Timothy George, Plumber, Public Works Department, 04.09.06.  
 David John Higgins, Head Teacher, Education Department, 04.09.06.  
 Sarah Maskell-Bott, Learning Support Assistant, Education Department, 04.09.06.  
 Helen Otley, Environmental Officer, Secretariat, 11.09.06

## Completion of Contract

Melissa Suzanne Pritchard, Fisheries Observer, Fisheries Department, 17.08.06.  
 Carolyn Ann Montgomerie, Senior Personnel Officer, Secretariat, 21.08.06.  
 Raymond John Felstead, Teacher, Education Department, 31.08.06.

Mark Conor Lennon, Teacher, Education Department, 31.08.06.  
 Jill Maryon Milsome, Teacher, Education Department, 31.08.06.  
 Katherine Mary Nelson, Teacher, Education Department, 31.08.06.  
 Sandra Leigh Picone, Teacher, Education Department, 31.08.06.  
 Angela Mary Warner, Teacher, Education Department, 31.08.06.  
 Wendy Reynolds, Teacher, Education Department, 31.08.06.  
 Joanne Lisa Lane-Sansam, Staff Nurse, Health Services Department, 01.09.06.

## Renewal of Contract

Raymond John Felstead, Teacher, Education Department, 01.09.06.  
 Mark Conor Lennon, Teacher, Education Department, 01.09.06.  
 Jill Maryon Milsome, Teacher, Education Department, 01.09.06.  
 Katherine Mary Nelson, Teacher, Education Department, 01.09.06.  
 Sandra Leigh Picone, Teacher, Education Department, 01.09.06.  
 Wendy Reynolds, Teacher, Education Department, 01.09.06.  
 Angela Mary Warner, Teacher, Education Department, 16.09.06.  
 Carolyn Ann Montgomerie, Senior Personnel Officer, Secretariat, 25.09.06.

### Promotion

Leon John Mitchell, from Plant Operator/Handyman, Quarry Section to Assistant Foreman, Municipal Section, Public Works Department, 25.09.06.

### Resignation

Adrian Scollard, Design Engineer Manager, Public Works Department, 29.09.06.

Serena Samantha Sinclair, Check-In Clerk, Falkland Islands Government Air Service, 30.09.06.

### Transfer

Leann Caroline Ford, from Learning Support Assistant, Falkland Islands Community School to Learning Support Assistant, Infant and Junior School, Education Department, 01.09.06.

Robert McCrea, from Handyman to Cemetery Caretaker/Handyman, Public Works Department, 01.09.06.

Gabriel Eulogio Ceballos, from Skilled Handyman, Public Works Department to Fire Fighter, Fire and Rescue Service, 18.09.06.

Joan Patricia Clarke, from Social Work Assistant, Health Services Department to Learning Support Assistant, Education Department, 18.09.06.

### NOTICES

No. 59

8<sup>th</sup> September 2006

#### DESIGNATION OF THE FALKLAND ISLANDS CIVIL AVIATION DEPARTMENT AND AIR SAFETY SUPPORT INTERNATIONAL LTD BY THE GOVERNOR OF THE FALKLAND ISLANDS

These Designations are made by virtue of Article 130(1) and 136(1) of the Air Navigation (Overseas Territories) Order 2001 (as amended), Article 26 of the Air Navigation (Overseas Territories) (Environmental Standards) Order 2004 and in accordance with advice received on 31 August 2006 from Air Safety Support International Limited pursuant to Article 136(2) of the Air Navigation (Overseas Territories) Order 2001. The designations made reflect the requirements of paragraph 3a of the Directions issued by the Secretary of State of January 2003 pursuant to his powers under section 6(2), (b), (c) and (d) of the Civil Aviation Act 1982 and the obligation of the United Kingdom to ensure the implementation of the Standards and Recommended Practices issued by the International Civil Aviation Organisation in the Annexes to and pursuant to the Convention on International Civil Aviation ("the Convention") done in Chicago on 7 December 1944 in respect of the Overseas Territories. The designations made relate to the specific requirements of the said Annexes to the Convention as reflected in the Orders.

In respect of Annex 3 (Meteorological Service for International Air Navigation), Annex 4 (Aeronautical Charts), Annex 12 (Search and Rescue) and Annex 15 (Aeronautical Information Services) the Designation is made solely for the purposes of regulatory oversight of the services and not for the provision of the services themselves.

In respect of Annex 5 (Units of Measurement to be Used in Air and Ground Operations) to the Convention, for which there are no specific powers exercisable by me at present contained in the Air Navigation (Overseas Territories) Order 2001, a designation cannot be made. I therefore request Air Safety Support International Limited to advise me on the suitability of the arrangements for the fulfilment of the requirements of this Annex.

In respect of Annexes 9 (Facilitation) and 17 (Security: Safeguarding International Civil Aviation Against Acts of Unlawful Interference) to the Convention, the Department for Transport retains responsibility for determining the level of compliance with the requirements of these Annexes and there are no specific powers exercisable by me contained in the said Orders. Therefore, a designation cannot be made.

I hereby designate the **Falkland Islands Civil Aviation Department (FI CAD)** and **Air Safety Support International Ltd (ASSI)** for the purposes of the said Orders, and of any Order amending or replacing those Orders, (other than for the purpose of Articles 84(1) and 129 of the Air Navigation (Overseas Territories) Order 2001 or any Article amending or replacing said Articles), to exercise all functions for which I am responsible as shown in the table below.

This designation shall come into effect on 8<sup>th</sup> September 2006 and replaces any previous designation made by me or others in respect of these matters.

Dated this 8<sup>th</sup> day of September 2006

A. E. HUCKLE,  
Governor.

Functional Area, AN(OT)O Part, Article	Designation
<b>General</b> Arts 81, 117, 117A, 119, 121, 124, 126	Any party to be designated for any function shall also be designated for these general functions.
<b>Personnel Licensing</b> Part III, Art 13 Part IV, Arts 20 – 29 Part VII, Arts 78(3), 78(4), 83 Part IX, Arts 92 – 99	<b>Full Designation – FI CAD</b> FI CAD is to act as regulator.
<b>Rules of the Air</b> Part VIII, Arts 84(4), 85 - 87  This Designation excludes the power to make Rules of the Air as provided in article 84(1) of the AN(OT)O.	<b>Full Designation - ASSI</b> ASSI is to act as regulator.

<b>Meteorological Service for International Air Navigation</b> Part XI, Article 138 This Designation is made solely for the purposes of regulatory oversight of these services.	<b>Conditional Designation – FI CAD</b> FI CAD is to act as regulator subject to the following condition: Satisfactory completion by 31 <sup>st</sup> December 2007 of the Action Plan agreed with ASSI.
<b>Aeronautical Charts</b> Part XI, Article 138 This Designation is made solely for the purposes of regulatory oversight of these services.	<b>Conditional Designation – FI CAD</b> FI CAD is to act as regulator subject to the following condition: Satisfactory completion by 31 <sup>st</sup> December 2007 of the Action Plan agreed with ASSI.
<b>Operation of Aircraft (excludes Aircraft Maintenance)</b> Parts II, V (except for Art 60(1) designated below under Annex 18), VI, VII Part XI, Arts 115, 118	<b>Full Designation - ASSI</b> ASSI is to act as regulator.
<b>Aircraft Nationality and Registration Marks</b> Part I, Arts 3 – 5	<b>Full Designation – FI CAD</b> FI CAD is to act as regulator.
<b>Airworthiness of Aircraft (includes Aircraft Maintenance)</b> Part III, Arts 8 – 12, 14 – 19	<b>Full Designation - ASSI</b> ASSI is to act as regulator.
<b>Aeronautical Telecommunications</b> Part X, Arts 104, 105	<b>Full Designation - ASSI</b> ASSI is to act as regulator.
<b>Air Traffic Services</b> Part VII, Art 78A Part IX, Arts 88 – 91, 100	<b>Conditional Designation – FI CAD</b> FI CAD is to act as regulator subject to the following condition: Satisfactory completion by 31 <sup>st</sup> December 2007 of the Action Plan agreed with ASSI.
<b>Search and Rescue</b> Part XI, Article 138 This Designation is made solely for the purposes of regulatory oversight of these services.	<b>Conditional Designation – FI CAD</b> FI CAD is to act as regulator subject to the following condition: Satisfactory completion by 31 <sup>st</sup> December 2007 of the Action Plan agreed with ASSI.
<b>Occurrence Reporting</b> Part XI, Article 117	<b>Full Designation – FI CAD</b> FI CAD is to act as regulator.

<b>Aerodromes</b> Part X, Arts 101 – 103, 109, 109A, 110, 112 Part XI, Art 149	<b>Conditional Designation – FI CAD</b> FI CAD is to act as regulator subject to the following condition: Satisfactory completion by 31 <sup>st</sup> December 2007 of the Action Plan agreed with ASSI.
<b>Aeronautical Information Services</b> Part XI, Article 138 This Designation is made solely for the purposes of regulatory oversight of these services.	<b>Conditional Designation – FI CAD</b> FI CAD is to act as regulator subject to the following condition: Satisfactory completion by 31 <sup>st</sup> December 2007 of the Action Plan agreed with ASSI.
<b>Environmental Protection</b> AN(OT)(ES)O, Part II, Art 3 Part III, Art 10	<b>Full Designation - ASSI</b> ASSI is to act as regulator.
<b>Safe Transport of Dangerous Goods by Air</b> Part V, Art 60(1)	<b>Conditional Designation – FI CAD</b> FI CAD is to act as regulator subject to the following conditions: (1) Satisfactory completion by 31 <sup>st</sup> December 2007 of the Action Plan agreed with ASSI. (2) Prior to the next grant or renewal of a Dangerous Goods approval the following actions shall have been completed satisfactorily:  (a) FI CAD policies and procedures for the grant of Dangerous Goods approvals have been assessed by ASSI and found to be satisfactory.  (b) FI CAD staff carrying out Dangerous Goods audits have received appropriate training, including training in audit techniques.  (c) FI CAD to arrange for a Dangerous Goods audit of those FI operators who are currently operating with FI CAD-granted Dangerous Goods approvals/ permissions/ exemptions.

No. 60

21<sup>st</sup> August 2006

**SUPREME COURT OF THE FALKLAND ISLANDS**  
**Notice under the Administration of Estates Ordinance**  
**(Title 68.1)**

TAKE NOTICE THAT Betty Lois Miller of Stanley, Falkland Islands died on the 28<sup>th</sup> day of October 2004 intestate.

WHEREAS Timothy John Durose Miller has applied for Letters of Administration to administer the estate of the said deceased in the Falkland Islands.

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

Dated this 15<sup>th</sup> day of September 2006

C.J. KING,  
*Registrar, Supreme Court.*

No. 61

25<sup>th</sup> September 2006

**APPROVED IMMIGRATION APPLICATIONS**

It is hereby notified for general information that the following immigration application has been approved by the Governor:

Permanent Residence Permit on 21<sup>st</sup> September 2006 to Michael Bernard McPartland.

Dated this 25<sup>th</sup> day of September 2006

P. T. KING,  
*Principal Immigration Officer.*

No. 62

26<sup>th</sup> September 2006

**APPLICATION FOR NATURALISATION**

Notice is hereby given that **Pedro Francisco VILLEGAS FIGUEROA** 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 21<sup>st</sup> October 2006.

Dated this 26<sup>th</sup> day of September 2006

C. W. REEVES,  
*Immigration Officer.*

No. 63

26<sup>th</sup> September 2006

**APPLICATION FOR FALKLAND ISLANDS STATUS**

Notice is hereby given that **Charmaine Marie JOHN** and **David Carl JOHN** have applied through the Principal Immigration Officer to be granted Falkland Islands Status by the Governor. Any person who knows of any reason why this should not be granted, should send a written and signed statement of the facts, giving grounds for their objection, to the Immigration Officer, Customs and Immigration Department, Stanley by 21<sup>st</sup> October 2006.

Dated this 26<sup>th</sup> day of September 2006

C. W. REEVES,  
*Immigration Officer.*

No. 64

27<sup>th</sup> September 2006

**EDUCATION ORDINANCE**  
**Declaration of occasional holidays**

I, **Alan Edden Huckle**, Governor of the Falkland Islands hereby declare, pursuant to my powers under section 58 of the Education Ordinance and any other powers enabling me in that behalf, that the sixth and seventh days of November 2006 shall be occasional holidays for all pupils attending Stanley Infant and Junior School, Camp Education and the Falkland Islands Community School.

Dated this 27<sup>th</sup> day of September 2006

A. E. HUCKLE,  
*Governor.*



# THE FALKLAND ISLANDS GAZETTE

## Extraordinary

PUBLISHED BY AUTHORITY

*Vol. CXV*

*23<sup>rd</sup> October 2006*

*No. 16*

### NOTICES

No. 65

30<sup>th</sup> September 2006

#### **GOLDEN CROSS LIMITED** **Company Number: 10990**

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 30<sup>th</sup> day of September 2006

J.C. ROWLAND,  
*Registrar of Companies.*

No. 66

30<sup>th</sup> September 2006

#### **GOLDEN CHANCE LIMITED** **Company Number: 9861**

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 30<sup>th</sup> day of September 2006

J.C. ROWLAND,  
*Registrar of Companies.*

No. 67

16<sup>th</sup> October 2006

#### **FISHERIES (CONSERVATION AND MANAGEMENT) ORDINANCE 2005** *(section 19)*

#### **Notice of intention to grant Fishing Rights**

**Fishery:** Squid – *Loligo* **Period:** 25 February –  
*gahi* 15 April

**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 27 October 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 Ordinance). 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 16<sup>th</sup> day of October 2006

A. J. BARTON,  
*Director of Fisheries.*

No. 68

16<sup>th</sup> October 2006

#### APPLICATION FOR NATURALISATION

Notice is hereby given that **Bruce Allan WILKS** and **Susan Jean WILKS** 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 13<sup>th</sup> November 2006.

Dated this 16<sup>th</sup> day of October 2006

C. W. REEVES,  
*Immigration Officer.*

No. 69

9<sup>th</sup> October 2006

#### CUSTOMS ORDINANCE 2003

(section 7(3))

#### Appointment of temporary Customs Officers

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

Corporal Paul RANDLE – L8407641 to be a temporary Customs Officer from 14 July 2006 to 14 November 2006; and

Corporal Ian KILSTON-HYDE – D8283455 to be a temporary Customs Officer from 7 September 2006 to 8 January 2007.

Dated this 9<sup>th</sup> day of October 2006

R. J. KING,  
*Collector of Customs.*

No. 70

12<sup>th</sup> October 2006

#### CUSTOMS ORDINANCE 2003

(section 7(3))

#### Appointment of temporary Customs Officers

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

Warrant Officer Carl WATLING – H8174525 to be a temporary Customs Officer from 5 July 2006 to 5 July 2007; and

Sergeant Andy COLLINS – L8246946 to be a temporary Customs Officer from 22 September 2006 to 23 January 2007.

Dated this 12<sup>th</sup> day of October 2006

R. J. KING,  
*Collector of Customs.*



# THE FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

*Vol. CXV*

*2<sup>nd</sup> November 2006*

*No. 17*

## Appointments

Elaine Messer, Teacher, Education Department, 01.09.06.\*  
 Leslie Eileen Barrett, Learning Mentor, Education Department, 27.09.06.  
 Samantha Jane Davis, Part-time Kitchen Assistant, Health Services Department, 28.09.06.  
 Valerie Ann Clifton, Handyperson/Storeperson, Public Works Department, 03.10.06.  
 Sebastian Armando Socodo, General Handyperson, Public Works Department, 03.10.06.  
 Hugo Patricio Alvear Diaz, Handyperson, Public Works Department, 11.10.06.  
 Priscilla Violet Betts, Operations Officer/Observer, Falkland Islands Government Air Service, 16.10.06.  
 Celia Soledad Short, Licensing Clerk, Royal Falkland Islands Police, 16.10.06.

## Completion of Contract

Michelle Tonner, Chief Accountant, Treasury Department, 17.10.06.

## Renewal of Contract

Michelle Tonner, Chief Accountant, Treasury Department, 18.10.06.

## Promotion

Tanya Lee, from Deputy Taxation Officer to Tax Officer, Taxation Office, 01.09.06.  
 Helen Margaret Daws, from Staff Nurse to Senior Staff Nurse, Health Services Department, 01.10.06.  
 Gene Stanley Berntsen, from General Handyperson to Skilled Handyperson, Public Works Department, 02.10.06.

## Redundancy

Melanie Clausen, Assistant Printer, Printing Office, 27.10.06.

## Resignation

Valdamar Lars Berntsen, Driver/Handyman, Health Services Department, 31.10.06.  
 Kenneth Ian Jaffray, Plant Operator/Handyman, Public Works Department, 31.10.06.

## Retirement

David Geoffrey Lang C.B.E. Q.C., Attorney General, Attorney General's Chambers, 31.10.06.

## Transfer

Leann Caroline Ford, from Carer, Falkland Islands Community School to Learning Support Assistant, Infant and Junior School, Education Department, 01.09.06.\*  
 Debbi Louisa Robson, from Clerk, Public Service to Learning Support Assistant, Infant and Junior School, Education Department, 16.10.06.

\*Corrected notices from Vol CXV No 15 4<sup>th</sup> October 2006.

## NOTICES

No. 71

17<sup>th</sup> October 2006

## INDEX OF RETAIL PRICES

The calculation of the Index for the quarter ended 30<sup>th</sup> September 2006 has now been completed.

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

Date	Index	Annual % Increase	Quarter % Increase
31.12.05	120.67	4.341	0.651
31.03.06	122.00	4.497	1.102
30.06.06	123.16	5.265	0.951
30.09.06	124.32	3.695	0.942

Dated this 17<sup>th</sup> day of October 2006

L. LYSE,  
*for Financial Secretary.*

No. 72

24<sup>th</sup> October 2006

**VARIATION DIRECTION TO AIRCRAFT  
OPERATORS RELATING TO THE SECURITY OF  
CARGO, COURIER MATERIAL AND MAIL IN THE  
FALKLAND ISLANDS 2006**  
(FLK 1.1(a))

**Introduction**

The Governor, in exercise of his powers under sections 12(1), (5) and (7), 14(1A), (2) and (3), 15(1), (4) and (6), 17(1) and 38(6) of the Aviation Security Act 1982<sup>1</sup>, as extended to the Falkland Islands by the Aviation Security and Piracy (Overseas Territories) Order 2000<sup>2</sup> for the purposes to which Part II of that Act applies, hereby directs as follows any person who is the operator of any public transport aircraft registered or operating in the Falkland Islands (hereinafter referred to as the "aircraft operator").

**Commencement and Citation**

1. This direction may be cited as the Variation Direction to Aircraft Operators relating to the Security of Cargo, Courier Material and Mail in the Falkland Islands 2006 and shall come into force on 1<sup>st</sup> November 2006.

**Variation**

2. The Direction to Aircraft Operators relating to the Security of Cargo, Courier Material and Mail in the Falkland Islands 2006 is varied as follows.

3. The definition of cargo shall be replaced by the following definition:

"cargo" means all items (including courier material and mail), to be carried in the aircraft (but not including hold baggage, cabin baggage or goods intended for sale or use on the aircraft on which they are carried).

4. In Schedule 1, the entry for mail shall be replaced by the following:

Mail items of mail under ¼ inch thick (6mm) provided that they are forwarded in LETTER ONLY bags which are marked as such by the Post Office.

5. In Schedule 1, the following words shall be added at the end of paragraph 12:

"and the Government of South Georgia and the South Sandwich Islands".

Dated this 24<sup>th</sup> day of October 2006

A. E. HUCKLE,  
*Governor.*

<sup>1</sup>C.36, as amended by the Aviation and Maritime Security Act 1990 (c.31) and the Anti-terrorism Crime and Security Act 2001 (c.24).

<sup>2</sup>S.I. 2000/3059.

No. 73

25<sup>th</sup> October 2006

**APPLICATION FOR PERMANENT RESIDENCE**

Notice is hereby given that John Malcolm MASKELL-BOTT, Sarah MASKELL-BOTT and Carli SUDDER have applied through the Principal Immigration Officer to be granted Permanent Residence Permits by the Governor. Any person who knows of any reason why these 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 21<sup>st</sup> November 2006.

Dated this 25<sup>th</sup> day of October 2006

C. W. REEVES,  
*Immigration Officer.*

No. 74

31<sup>st</sup> October 2006

**NOTICE OF APPOINTMENT OF LIQUIDATOR**  
Companies (Winding-up) Rules 1949 – Rule 58(6)

Name of Company: Island Shipping Limited  
Address of Registered Office: 62 Davis Street, Stanley, Falkland Islands  
Court: Supreme Court of the Falkland Islands  
Number of Matter: SC/CIV/9/06  
Date of Order: 3 October 2006  
Date of Presentation of Petition: 16 August 2006  
Liquidator's name: Peter Copp  
Liquidator's address: Tullymet, Kincardine Road, Torphins, Aberdeenshire, Scotland

Dated this 31<sup>st</sup> day of October 2006

R. C. CHEEK,  
*for Liquidator.*



# THE FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

*Vol. CXV*

*30<sup>th</sup> November 2006*

*No. 18*

## **Appointments**

Peter John Bagley, Mechanic, Plant and Vehicle Section, Public Works Department, 23.10.06.  
Susan Jones, Staff Nurse, Health Services Department, 25.10.06.  
Katherine Law, Theatre Nurse, Health Services Department, 25.10.06.  
Rachel Ena Berntsen, Clerk, Post Office, 27.10.06.  
Melanie Louise Best Chilton, Attorney General, Attorney General's Chambers, 01.11.06.  
Victoria Jane Lee, Agricultural Assistant, Department of Agriculture, 14.11.06.

## **Completion of Contract**

Melanie Louise Best Chilton, Principal Crown Counsel, Attorney General's Chambers, 31.10.06.

## **Promotion**

Rosalind Catriona Check, from Crown Counsel to Principal Crown Counsel, Attorney General's Chambers, 01.11.06.

## **Resignation**

Jonathan Jeffers Butler, Detective Sergeant, Royal Falkland Islands Police, 13.11.06.

## **Retirement**

Ian Peter McGill, Plumber, Public Works Department, 24.11.06.

## **Transfer**

Craig Norman Leigh Besley-Clark, from HGV Driver/General Assistant, Plant and Vehicle Section to Plant Operator/Handyman, Quarry Section, Public Works Department, 20.11.06.

## **NOTICES**

No. 75

1<sup>st</sup> November 2006

### **APPOINTMENT OF ATTORNEY GENERAL**

IN EXERCISE of my powers under section 76 of the Falkland Islands Constitution Orders 1985 to 1997 and all other powers enabling me in that behalf I, ALAN EDDEN HUCKLE Governor of the Falkland Islands HEREBY appoint MELANIE LOUISE BEST CHILTON to be Attorney General for the Falkland Islands with effect from 1<sup>st</sup> November 2006.

Given under my hand and the Public Seal at Stanley on this 1<sup>st</sup> day of November 2006.

A. E. HUCKLE,  
*Governor.*

No. 76

1<sup>st</sup> November 2006

### **APPOINTMENT OF COMMISSIONER FOR THE REVISED EDITION OF LAWS**

In accordance with section 3 of the Revised Edition of the Laws Ordinance (Title 67.3) I, ALAN EDDEN HUCKLE Governor of the Falkland Islands HEREBY appoint MELANIE LOUISE BEST CHILTON with effect from 1<sup>st</sup> November 2006 Commissioner for the Revised Edition of Laws.

Dated this 1<sup>st</sup> day of November 2006.

A. E. HUCKLE,  
*Governor.*

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

**Notice of intention to grant Fishing Rights**

**Fishery: Skate**

**Period: 1 January – 31 December**

**Class of Right: Individual Transferable Quota (ITQ); Provisional Quota (PQ)**

**Date of opening of Eligibility Register: 1 January 2006**

**A. Applications:**

Applications are now invited for the grant of Quota 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 7 December 2006. Applications will only be considered from companies whose names appear on the Eligibility Register for this fishery.

**B. Procedure for the grant of Quota:**

Quota may only be granted to applicants whose names appear on the relevant Eligibility Register. The division of Quota amongst such applicants will be in accordance with the proportion of catch each company (and including its associate companies) caught calculated as the average of the catches taken over two periods of three years duration; 2000 – 2002 and 2001 - 2003. In the event that this procedure fails to account for all the Quota available in the fishery, the remaining balance of Quota will be distributed to the successful applicants in proportion to their Quota holdings in the fishery, subject to the prevailing aggregation limits.

**C. Period:**

The Quota so granted will be in force for 24½ 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 Quota, may apply to the Disputes Commission to have the decision reviewed. (See Section 108 of the Fisheries Ordinance). 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 21<sup>st</sup> day of November 2006.

A. J. BARTON,  
*Director of Fisheries.*

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

**Notice of intention to grant Fishing Rights**

**Fishery: Restricted Finfish**

**Period: 1 January – 31 December**

**Class of Right: Individual Transferable Quota (ITQ); Provisional Quota (PQ)**

**Date of opening of Eligibility Register: 1 January 2006**

**A. Applications:**

Applications are now invited for the grant of Quota 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 7 December 2006. Applications will only be considered from companies whose names appear on the Eligibility Register for this fishery.

**B. Procedure for the grant of Quota:**

Quota may only be granted to applicants whose names appear on the relevant Eligibility Register. The division of Quota amongst such applicants will be in accordance with the proportion of catch each company (and including its associate companies) caught during the three years; 2000 – 2002. In the event that this procedure fails to account for all the Quota available in the fishery, the remaining balance of Quota will be distributed to the successful applicants in proportion to their Quota holdings in the fishery, subject to the prevailing aggregation limits.

**C. Period:**

The Quota so granted will be in force for 24½ 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 Quota, may apply to the Disputes Commission to have the decision reviewed. (See section 108 of the Fisheries Ordinance). 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 21<sup>st</sup> day of November 2006.

A. J. BARTON,  
*Director of Fisheries.*

**Fisheries (Conservation and Management) Ordinance 2005  
section 19****Notice of intention to grant Fishing Rights****Fishery: Finfish****Period: 1 January – 31 December****Class of Right: Individual Transferable Quota (ITQ); Provisional Quota (PQ)****Date of opening of Eligibility Register: 1 January 2006****A. Applications:**

Applications are now invited for the grant of Quota 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 7 December 2006. Applications will only be considered from companies whose names appear on the Eligibility Register for this fishery.

**B. Procedure for the grant of Quota:**

Quota may only be granted to applicants whose names appear on the relevant Eligibility Register. The division of Quota amongst such applicants will be in accordance with the proportion of catch each company (and including its associate companies) caught during the three years; 2000 – 2002. In the event that this procedure fails to account for all the Quota available in the fishery, the remaining balance of Quota will be distributed to the successful applicants in proportion to their Quota holdings in the fishery, subject to the prevailing aggregation limits.

**C. Period:**

The Quota so granted will be in force for 24½ 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 Quota, may apply to the Disputes Commission to have the decision reviewed. (See section 108 of the Fisheries Ordinance). 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 21<sup>st</sup> day of November 2006.

A. J. BARTON,  
*Director of Fisheries.*

**Fisheries (Conservation and Management) Ordinance 2005  
section 19****Notice of intention to grant Fishing Rights****Fishery: Restricted Finfish – Pelagic****Period: 1 January – 30 June****1 October – 31 December****Class of Right: Individual Transferable Quota (ITQ); Provisional Quota (PQ)****Date of opening of Eligibility Register: 1 January 2006****A. Applications:**

Applications are now invited for the grant of Quota 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 7 December 2006. Applications will only be considered from companies whose names appear on the Eligibility Register for this fishery.

**B. Procedure for the grant of Quota:**

Quota may only be granted to applicants whose names appear on the relevant Eligibility Register. The division of Quota amongst such applicants will be in accordance with the proportion of catch each company (and including its associate companies) caught during the three years; 2000 – 2002. In the event that this procedure fails to account for all the Quota available in the fishery, the remaining balance of Quota will be distributed to the successful applicants in proportion to their Quota holdings in the fishery, subject to the prevailing aggregation limits.

**C. Period:**

The Quota so granted will be in force for 24½ 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 Quota, may apply to the Disputes Commission to have the decision reviewed. (See section 108 of the Fisheries Ordinance). 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 21<sup>st</sup> day of November 2006.

A. J. BARTON,  
*Director of Fisheries.*

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

**Notice of intention to grant Fishing Rights**

**Fishery: Squid and Restricted Finfish**

**Period: 1 March – 31 May**

**Class of Right: Individual Transferable Quota (ITQ); Provisional Quota (PQ)**

**Date of opening of Eligibility Register: 1 January 2006**

**A. Applications:**

Applications are now invited for the grant of Quota 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 7 December 2006. Applications will only be considered from companies whose names appear on the Eligibility Register for this fishery.

**B. Procedure for the grant of Quota:**

Quota may only be granted to applicants whose names appear on the relevant Eligibility Register. The division of Quota amongst such applicants will be in accordance with the proportion of catch each company (and including its associate companies) caught during the three years; 2000 – 2002. In the event that this procedure fails to account for all the Quota available in the fishery, the remaining balance of Quota will be distributed to the successful applicants in proportion to their Quota holdings in the fishery, subject to the prevailing aggregation limits.

**C. Period:**

The Quota so granted will be in force for 24½ 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 Quota, may apply to the Disputes Commission to have the decision reviewed. (See section 108 of the Fisheries Ordinance). 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 21<sup>st</sup> day of November 2006.

A. J. BARTON,  
*Director of Fisheries.*

**Fisheries (Conservation and Management) Ordinance 2005  
section 20**

**Notice of grant of Fishing Rights – squid fishery**

1. Notice is hereby given that Individual Transferable Quota (ITQ) in the squid (*Loligo gahi*) fishery which operates during the period 25 February – 15 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%
<b>TOTAL</b>	<b>100.00%</b>

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 21<sup>st</sup> day of November 2006.

A. J. BARTON,  
*Director of Fisheries.*

**APPLICATION FOR PERMANENT RESIDENCE**

Notice is hereby given that Susan Elizabeth GYFORD, Brenda Rose CLIFTON, Rodrigo CORDEIRO GARCIA, Jose Antonio CORDEIRO OTERO, and Daisy GAPOL have applied through the Principal Immigration Officer to be granted Permanent Residence Permits by the Governor. Any person who knows of any reason why these 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 21<sup>st</sup> December 2006.

Dated this 24<sup>th</sup> day of November 2006

C. W. REEVES,  
*Immigration Officer.*

**APPLICATION FOR NATURALISATION**

Notice is hereby given that **Marcelo Rodrigo OLMEDO APABLAZA** and **Jessica Beatriz EREBITIS MARILICAN** 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 21<sup>st</sup> December 2006.

Dated this 24<sup>th</sup> day of November 2006

**C. W. REEVES,**  
*Immigration Officer.*





# THE FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

*Vol. CXV*

*22<sup>nd</sup> December 2006*

*No. 19*

## Appointments

Mayin Chan, Dental Officer, Health Services Department, 25.11.06.

David John Gale Norton, Licensed Aircraft Engineer, Falkland Islands Government Air Service, 27.11.06.

Juan Carlos Ramirez, HGV Driver/General Assistant, Plant and Vehicle Section, Public Works Department, 27.11.06.

## Completion of Contract

Michael Hattersley, Fisheries Observer, Fisheries Department, 15.12.06.

## Promotion

Katherine Law, from Theatre Nurse to Theatre Sister, Health Services Department, 01.12.06.

## Resignation

Joanne Watson, Clerk, Health Services Department, 30.11.06.

Anthony Stephen Webster, Driver/Handyman, Health Services Department, 08.12.06.

## Retirement

Jose Hector Tellez, Labourer, Quarry Section, Public Works Department, 22.12.06.

## NOTICES

No. 85

17 November 2006

### School Term Dates for Academic Year 2007-2008

#### *Stanley Schools*

**Term One:** Starts: Tuesday 4 September 2007. Half term from Monday 22 to Friday 26 October 2007 (inclusive). Ends: Friday 14 December 2007.

**Term Two:** Starts: Tuesday 22 January 2008. Half term from Monday 25 to Friday 29 February 2008 (inclusive). Ends: Friday 18 April 2008.

**Term Three:** Starts: Tuesday 5 May 2008. Half term from Monday 16 to Friday 20 June 2008 (inclusive). Ends: Friday 8 August 2008.

#### *Recognised Camp Schools*

Term dates for recognised Camp Schools may be modified to suit the convenience of farms, provided that the days worked are not fewer than those in Stanley Schools and that the Education Office is notified of the altered dates.

#### *Travelling Teachers*

Tuition takes place throughout the school year except for Public Holidays, Camp Sports Week and three professional development days to be taken by arrangement with the Camp Education Supervisor.

**Public Holidays**

Monday 1 October 2007 - Peat Cutting Monday (school closed); Monday 10 December 2007 - Battle Day (school closed); Friday 21 March 2008 - Good Friday (school closed); Monday 21 April 2008 - Queen's Birthday; and Monday 16 June 2008 - Liberation Day.

**Professional Development Training Days for Teaching and Non-Teaching Staff**

Monday 3 September 2007 - Preparation for the new academic year;  
Monday 21 January 2008 - School initiated training to support the school improvement plan;  
Thursday 1 May 2008 - Education Department initiated training;  
Friday 2 May 2008 - Education Department initiated training; and  
Professional Development Day - to be organised at the discretion of Head teacher.

Dated this 17<sup>th</sup> day of November 2006.

B. BOOTH,  
*Director of Education.*

No. 86 30<sup>th</sup> November 2006

**Southern Fisheries (Falkland Islands) Limited  
Company Number: 8677**

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 30<sup>th</sup> day of November 2006.

J. C. ROWLAND,  
*Registrar General.*

No. 87 7<sup>th</sup> December 2006

**Falkland Islands Mineral Development Limited  
Company Number: 11526**

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 7<sup>th</sup> December 2006.

J. C. ROWLAND,  
*Registrar General.*

No. 88

12<sup>th</sup> December 2006

**Notice under the Administration of Estates Ordinance  
(Title 68.1)**

Take notice that **Harold Theodore Rowlands** of Stanley, Falkland Islands died on the 17<sup>th</sup> day of April 2004 intestate.

Whereas **Betty Josephine Biggs** has applied for Letters of Administration to administer the estate of the said deceased in the Falkland Islands.

Notice is hereby given pursuant to section 4 of the Administration of Estates Ordinance to all persons resident in the Falkland Islands who may have prior claim to such grant that the prayer of the Petitioner will be granted provided no caveat be entered in the Supreme Court within 21 days of the publication hereof.

Dated this 12<sup>th</sup> day of December 2006.

C. J. KING,  
*Registrar of Supreme Court.*

No. 89 14<sup>th</sup> December 2006

**Appointment of Acting Attorney General**

I, Alan Edden Huckle Governor of the Falkland Islands hereby authorise **Rosalind Catriona Cheek** to discharge the functions and duties of the post of Attorney General of the Falkland Islands during the absence due to illness of the substantive holder of the post of Attorney General Melanie Louise Best Chilton from 14 December 2006 for fourteen days or until her return to Attorney General's Chambers.

Given under my hand and the Public Seal at Stanley on this 14<sup>th</sup> day of December 2006.

A. E. HUCKLE,  
*Governor.*

No. 90 14<sup>th</sup> December 2006

**Notice of approved immigration applications**

It is notified for general information that the following immigration applications have been approved by the Governor:

**Permanent Residence Permits**

Ahmad Masood Cheema - 26 October 2006;  
Martin James Beaton - 14 December 2006;  
John Malcolm Maskell-Bott - 14 December 2006;  
Sarah Maskell-Bott - 14 December 2006; and  
Carli Sudder - 14 December 2006.

**Falkland Islands Status**

David Carol John - 16 November 2006; and  
Charmaine Marie John - 16 November.

Dated this 14<sup>th</sup> day of December 2006.

P. T. KING,  
*Principal Immigration Officer.*

**Application For Permanent Residence**

Notice is hereby given that **Barbara Brigitt NANNIG REYES** 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 12<sup>th</sup> January 2007.

Dated this 18<sup>th</sup> day of December 2006

C. W. REEVES,  
*Immigration Officer.*

**Fisheries (Conservation and Management) Ordinance 2005  
section 37****Notice of Total Allowable Effort set – Squid**

Notice is hereby given of the Total Allowable Effort set in respect of the following fishery:

Fishery:	Squid ( <i>Loligo gahi</i> )
Species:	<i>Loligo gahi</i>
Period:	25 February – 15 April 2007
Total Allowable Effort (Vessel Units):	30.76

Dated this 22<sup>nd</sup> day of December 2006.

A. J. BARTON,  
*Director of Fisheries.*

**Fisheries (Conservation and Management) Ordinance 2005  
section 38****Notice of Total Allowable Effort set – Toothfish**

Notice is hereby given of the Total Allowable Effort set in respect of the following fishery:

Fishery:	Toothfish – Longline
Species:	Toothfish ( <i>Dissostichus eleginoides</i> )
Period:	1 January – 31 December 2007
Total Allowable Effort (Metric Tonnes):	1500

Dated this 22<sup>nd</sup> day of December 2006.

A. J. BARTON,  
*Director of Fisheries.*

**Fisheries (Conservation and Management) Ordinance 2005  
section 20****Notice of grant of Fishing Right – Skate fishery**

1. Notice is hereby given that Individual Transferable Quota (ITQ) or Provisional Quota (PQ) in the Skate fishery which operates throughout the year, shall be granted to the following companies and in the fractions as set out:

Company	Fraction of Quota	Class of Property Right
J. K. (Marine) Limited	36.8%	Provisional Quota
Seafish (Falklands) Limited	29.2%	Individual Transferable Quota
Sullivan Shipping Services Limited	34.0%	Provisional Quota
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 or PQ 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 22<sup>nd</sup> day of December 2006.

A. J. BARTON,  
*Director of Fisheries.*

---

Published by the Attorney General's Chambers, Cable Cottage, Stanley, Falkland Islands.  
Price: Two Pounds.

© Crown Copyright 2006



**THE  
FALKLAND ISLANDS GAZETTE  
Supplement**

**PUBLISHED BY AUTHORITY**

---

*Vol. 17*

*5<sup>th</sup> June 2006*

*No. 9*

---

The following are published in this Supplement -

**Appropriation Ordinance 2006;**

**Supplementary Appropriation (2005-2006)(No 2) Ordinance 2006;**

**Finance Ordinance 2006;**

**Medicines Ordinance 2006;**

**Currency (Amendment) Ordinance 2006; and**

**Revised Edition of the Laws (Amendment) Ordinance 2006.**

**ELIZABETH II**



**FALKLAND ISLANDS**

---

HOWARD JOHN STREDDER PEARCE C.V.O.,  
*Governor.*

**Appropriation Ordinance 2006**

(No: 10 of 2006)

**ARRANGEMENT OF PROVISIONS**

Section

1. Short title
2. Appropriation of £40,773,880 for the service of the year 2006/07

Schedule

# ELIZABETH II



## FALKLAND ISLANDS

HOWARD JOHN STREDDER PEARCE C.V.O.,  
*Governor.*

### APPROPRIATION ORDINANCE 2006

(No: 10 of 2006)

(assented to: 30 May 2006)

(commencement: upon publication)

(published: 5 June 2006)

#### AN ORDINANCE

To provide for the service of the Financial Year commencing on 1 July 2006 and ending on 30 June 2007.

ENACTED by the Legislature of the Falkland Islands as follows —

#### Short title

1. This Ordinance may be cited as the Appropriation Ordinance 2006.

#### Appropriation of £40,773,880 for the service of the year 2006/2007

2. The Financial Secretary may cause to be issued out of the Consolidated Fund and applied to the service of the year commencing on 1 July 2006 and ending on 30 June 2007 ("the financial year"), sums not exceeding in aggregate the sum of forty million, seven hundred and seventy three thousand, eight hundred and eighty pounds (£40,773,880) which sum is granted and shall be appropriated for the purposes and to defray the charges of the several services expressed and particularly mentioned in the Schedule hereto and which will come in course of payment during the financial year.

## SCHEDULE

NUMBER	HEAD OF SERVICE	Total Operating Budget	Less Internal Charges	Less Capital Charges	Net Operating Budget
		£	£	£	£
<b>OPERATING BUDGET</b>					
100	Aviation	2,399,230	33,020	297,990	2,068,220
150	Posts and Telecommunications	451,940	15,650	1,140	435,150
200	Health and Social Services	5,937,840	122,700	491,580	5,323,560
250	Education and Training	5,139,220	131,260	435,320	4,572,640
300	Customs and Immigration	268,940	1,560	17,540	249,840
320	Fisheries	5,074,840	403,350	70,080	4,601,410
350	Public Works Department	8,593,480	244,060	1,835,700	6,513,720
390	Fox Bay Village	153,050	400	19,550	133,100
400	Agriculture	998,350	17,860	52,410	928,080
451	AG's Chambers	545,490	1,520	2,770	541,200
452	Registry	72,570	1,700	1,000	69,870
453	Court Services	266,620	-	860	265,760
500	Falkland Islands Defence Force	409,930	8,450	82,600	318,880
551	Police & Prisons	593,300	10,900	7,870	574,530
552	Fire & Rescue Service	355,820	14,260	56,110	285,450
600	Central Administration	3,538,200	28,490	154,360	3,355,350
603	Investment Income & Public Debt	217,980	-	-	217,980
609	Taxation	262,220	3,380	2,800	256,040
620	Department of Mineral Resources	389,660	3,300	3,880	382,480
750	The Governor	210,620	6,170	5,800	198,650
800	Legislature	326,100	4,710	-	321,390
850	Falkland Islands Government Office - London	522,290	-	30,060	492,230
<b>TOTAL OPERATING BUDGET</b>		<b>36,727,690</b>	<b>1,052,740</b>	<b>3,569,420</b>	<b>32,105,530</b>
<b>FUND TRANSFERS</b>					
998	Programmed Expenditure for 2006/07	4,405,000	-	-	4,405,000
<b>TRANSFER PAYMENTS</b>					
999	Programmed Expenditure for 2006/07	4,263,350	-	-	4,263,350
<b>TOTAL EXPENDITURE</b>		<b>45,396,040</b>	<b>1,052,740</b>	<b>3,569,420</b>	<b>40,773,880</b>

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.



**ELIZABETH II**



**FALKLAND ISLANDS**

---

HOWARD JOHN STREDDER PEARCE C.V.O.,  
*Governor.*

**Supplementary Appropriation (2005-2006)(No 2) Ordinance 2006**

(No: 11 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)(No 2) ORDINANCE 2006**

(No: 11 of 2006)

*(assented to: 30 May 2006)*

*(commencement: upon publication)*

*(published: 5 June 2006)*

**AN ORDINANCE**

To appropriate and authorise the withdrawal from the Consolidated Fund of the additional sum of £869,970 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)(No 2) 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 £869,970 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 6 - 8 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> £
<b>OPERATING BUDGET</b>		
0102	Falkland Islands Government Air Service	125,500
0200	Health and Social Services	396,630
0320	Fisheries	105,000
0453	Court Services	11,600
<b>TOTAL OPERATING BUDGET</b>		<hr/> 638,730
<b>FUND TRANSFERS/TRANSFER PAYMENTS</b>		
0999	Transfer Payments	231,240
<b>TOTAL SUPPLEMENTARY EXPENDITURE</b>		<hr/> 869,970

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.*

**ELIZABETH II**



**FALKLAND ISLANDS**

---

HOWARD JOHN STREDDER PEARCE C.V.O.,  
*Governor.*

**Finance Ordinance 2006**

(No: 12 of 2006)

**ARRANGEMENT OF PROVISIONS**

**Section**

1. Short title
2. Amendment of Cruise Ships Ordinance 1998
3. Amendment of Taxes and Duties (Special Exemptions) Ordinance (Title 69.2)
4. Amendment of section 4 of the Road Traffic Ordinance (Title 63.1)
5. Amendment of Retirement Pensions (Prescribed Rates) Regulations 1996
6. Amendment of Harbour Regulations (Title 57.3.1)

ELIZABETH II



FALKLAND ISLANDS

HOWARD JOHN STREDDER PEARCE C.V.O.,  
*Governor.*

**FINANCE ORDINANCE 2006**

(No: 12 of 2006)

*(assented to: 30 May 2006)*  
*(commencement: in accordance with sections)*  
*(published: 5 June 2006)*

**AN ORDINANCE**

To increase fees, charges, contributions and benefits payable under various laws of the Falkland Islands.

ENACTED by the Legislature of the Falkland Islands as follows —

**Short title and commencement**

1. This Ordinance may be cited as the Finance Ordinance 2006.

**Amendment of Cruise Ships Ordinance 1998**

2.—(1) Section 3 (passenger tax) of the Cruise Ships Ordinance 1998(a) is amended —

(a) in subsection (1), by replacing “£15.00” with “£16.50”; and

(b) in subsection (2), by replacing “£5.00” with “£5.50”.

(2) This section shall come into force on 1<sup>st</sup> July 2007.

---

(a) No 23 of 1998 (as amended by No 19 of 2000 and No 10 of 2004)

### **Amendment of Taxes and Duties (Special Exemptions) Ordinance (Title 69.2)**

**3.—**(1) Section 9A(2) of the Taxes and Duties (Special Exemptions) Ordinance (Title 69.2) which was inserted by section 2 of the Taxes and Duties (Special Exemptions)(Amendment) Ordinance 1995(b) is amended by the addition of the following paragraph after paragraph (b) —

“(c) was resident outside the Falkland Islands at the time he was engaged for relevant employment and is not a person who, under the provisions of the Constitution or of the immigration law of the Falkland Islands, has a right to permanently remain in the Falkland Islands.”

(2) This section shall come into force on 1<sup>st</sup> January 2007.

### **Amendment of section 4 of the Road Traffic Ordinance (Title 63.1)**

**4.—**(1) Section 4(1) of the Road Traffic Ordinance (Title 63.1) is replaced by —

“(1) Subject to subsection (3) there shall be charged, levied and paid in respect of every motor vehicle used on a road, duty at the following annual rates —

(a) motor vehicles not exceeding 500 kilograms - £41.50;

(b) motor vehicles exceeding 500 kilograms but not exceeding 3400 kilograms, and motor vehicles of whatever weight, designed and constructed as agricultural tractors - £96.00;

(c) motor vehicles other than those designed and constructed as agricultural tractors exceeding 3400 kilograms in weight - £151.00; and

(d) trailers drawn by motor vehicles described in (c) - £35.00.”

(2) This section shall come into force on 1<sup>st</sup> July 2006.

### **Amendment of Retirement Pensions (Prescribed Rates) Regulations 1996**

**5.—**(1) The Retirement Pensions (Prescribed Rates) Regulations 1996(c) are amended —

(a) in regulation 3 —

(i) in paragraph (a) by replacing “£105” (standard rate of weekly pension) with “£110”; and

(ii) in paragraph (b) by replacing “£59” (standard rate of weekly married couple’s supplement) with “£62”,

(b) in regulation 5 —

---

(b) No 8 of 1995

(c) SR&O No 39 of 1996 (as amended by way of increase of contributions and retirement pensions most latterly by section 11 of the Finance Ordinance 2005 No 3 of 2005)

(i) in paragraph (1)(a) by replacing “£10” (employee’s weekly rate of contribution) with “£10.50”;

(ii) in paragraph (1)(b) by replacing “£20” (self-employed or retired person’s weekly rate of contribution) with “£21”;

(iii) in paragraph (2) by replacing “£10” (employer’s weekly rate of contribution) with “£10.50”;

(iv) in paragraph (3)(a) by replacing “£20” (ordinary resident’s weekly rate of voluntary contribution) with “£21”;

(v) in paragraph (3)(b) by replacing “£23.50” (voluntary rate of weekly contribution for non-resident) with “£24.70”; and

(vi) in paragraph (4) by replacing “£20” (assisted rate of weekly contribution by the Government) with “£21”;

(c) in regulation 6 by replacing “£165” (minimum weekly earnings) with “£170”.

(2) This section shall come into force on 1<sup>st</sup> January 2007.

#### **Amendment of Harbour Regulations (Title 57.3.1)**

6.—(1) Paragraph 1 of Schedule III of the Harbours Regulations (Title 57.3.1) is amended by replacing the table of dues appearing therein with the following table —

“Yachts -	£50
Vessels - under 15 tons	£57
(other over 15 tons and under 30 tons	£104
than over 30 tons and under 50 tons	£193
yachts) over 50 tons and under 800 tons	£292
over 800 tons and under 1,000 tons	£375
over 1,000 tons and under 1,500 tons	£430
over 1,500 tons and under 2,000 tons	£520
over 2,000 tons and under 5,000 tons	£635
over 5,000 tons and under 7,000 tons	£770
over 7,000 tons and under 10,000 tons	£1,140
over 10,000 tons and under 15,000 tons	£1,430
over 15,000 tons and under 20,000 tons	£1,660
Vessels of 20,000 tons and more	£1,930”.

(2) This section shall come into force on 1<sup>st</sup> July 2006.

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.*



ELIZABETH II



FALKLAND ISLANDS

---

HOWARD JOHN STREDDER PEARCE C.V.O.,  
*Governor.*

**Medicines Ordinance 2006**

(No: 13 of 2006)

ARRANGEMENT OF PROVISIONS

PART 1  
PRELIMINARY  
*Introductory*

Section

1. Short title, commencement and application
2. Interpretation: general
3. "Retail sale" and related expressions
4. Regulations: general

PART 2  
DEALINGS WITH MEDICINAL PRODUCTS

5. Principles
6. Restrictions on dealing with medicinal products
7. Exemptions
8. General sale of medicinal products
9. Medicinal products on prescription only
10. Regulations under Part 2

11. Application to veterinary medicinal products

### PART 3 CONSUMER PROTECTION

12. Adulteration of medicinal products
13. Protection of purchasers of medicinal products
14. Compliance with published standards
15. Misleading descriptions etc
16. Display of information on automatic machines
17. Offences
18. Application to veterinary medicinal products

### PART 4 PHARMACIES

19. Register of pharmacies
20. Regulations as to premises
21. Restrictions on use of titles, descriptions and emblems
22. Modification etc of restrictions under section 21

### PART 5 POISONS

23. Poisons list
24. Regulation of sale of poisons
25. Exclusion of sales by wholesale and certain other sales
26. Official list of persons entitled to sell certain poisons
27. Supplementary provisions as to official list
28. Poisons rules
29. Offences

### PART 6 ENFORCEMENT

30. Enforcement etc
31. Rights of entry
32. Power to inspect, take samples and seize goods and records
33. Application of sampling procedure to substance or article seized under section 32
34. Obstruction etc
35. Analysis of samples in other cases
36. Liability to forfeiture
37. Restrictions on disclosure of information
38. Contravention due to default of other person

- 39. Warrant as defence
- 40. Offences in relation to warranties and certificates of analysis
- 41. Offences by bodies corporate
- 42. Presumptions
- 43. Veterinary medicinal products and animal feeding stuffs

PART 7  
SUPPLEMENTAL

- 44. Registration of health professions
- 45. Medicated animal feeding stuffs
- 46. Extension of application of Ordinance
- 47. References to specified publications

Schedule 1     Analysis of samples

Schedule 2     Amendment of Health Professions Ordinance

**ELIZABETH II**



**FALKLAND ISLANDS**

---

HOWARD JOHN STREDDER PEARCE C.V.O.,  
*Governor.*

**MEDICINES ORDINANCE 2006**

(No: 13 of 2006)

*(assented to: 30 May 2006)*  
*(commencement: in accordance with section 1)*  
*(published: 5 June 2006)*

**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.

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; and

“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 sub-paragraph (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 13 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."

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.*

ELIZABETH II



FALKLAND ISLANDS

---

HOWARD JOHN STREDDER PEARCE C.V.O.,  
*Governor.*

**Currency (Amendment) Ordinance 2006**

(No: 14 of 2006)

ARRANGEMENT OF PROVISIONS

Section

1. Short title
2. Amendment of the Currency Ordinance



ELIZABETH II



FALKLAND ISLANDS

HOWARD JOHN STREDDER PEARCE C.V.O.,  
*Governor.*

**CURRENCY (AMENDMENT) ORDINANCE 2006**

(No: 14 of 2006)

*(assented to: 30 May 2006)*  
*(commencement: on publication)*  
*(published: 5 June 2006)*

**AN ORDINANCE**

To amend the Currency Ordinance (Title 25.1).

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".

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.*

ELIZABETH II



FALKLAND ISLANDS

---

HOWARD JOHN STREDDER PEARCE C.V.O.,  
*Governor*

**Revised Edition of the Laws (Amendment) Ordinance 2006**

(No: 15 of 2006)

ARRANGEMENT OF PROVISIONS

Section

1. Short title
2. Amendment of Title 67.3

Schedule

ELIZABETH II



FALKLAND ISLANDS

---

HOWARD JOHN STREDDER PEARCE C.V.O.,  
*Governor*

**REVISED EDITION OF THE LAWS (AMENDMENT) ORDINANCE 2006**

(No: 15 of 2006)

*(assented to: 30 May 2006)*  
*(commencement: upon publication)*  
*(published: 5 June 2006)*

**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.

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.

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: Nine Pounds and Seventy Pence.

© **CrownCopyright** 2006



**THE  
FALKLAND ISLANDS GAZETTE  
Supplement**

**PUBLISHED BY AUTHORITY**

---

*Vol. 17*

*21<sup>st</sup> June 2006*

*No. 10*

---

The following are published in this Supplement -

**Customs (Fees) (Amendment) Regulations 2006 (S.R.&O. No. 14 of 2006); and**

**Coins (Amendment) Order 2006 (S.R.&O. No. 15 of 2006).**



---

## SUBSIDIARY LEGISLATION

---

### CUSTOMS

#### Customs (Fees) (Amendment) Regulations 2006

S. R. & O. No: 14 of 2006

*Made: ..... 13 June 2006*

*Published: ..... 21 June 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) (Amendment) Regulations 2006 and shall come into force on 1st July 2006.

#### Amendment of Customs (Fees) Regulations 2006

2. Regulation 3 of the Customs (Fees) Regulations 2006(b) is amended as follows —

- (a) in paragraph (a)(i) by replacing the figure “£60.60” with the figure “£62.40”;
- (b) in paragraph (a)(ii) by replacing the figure “£30.30” with the figure “£31.20”;
- (c) in paragraph (b)(ii) by replacing the figure “£90.90” with the figure “£93.60”;
- (d) in paragraph (c)(i) by replacing the figure “£90.90” with the figure “£93.60”;
- (e) in paragraph (c)(ii) by replacing the figure “£45.45” with the figure “£46.80”;
- (f) in paragraph (d)(i) by replacing the figure “£60.60” with the figure “£62.40”; and
- (g) in paragraph (d)(ii) by replacing the figure “£90.90” with the figure “£93.60”.

---

(a) No 9 of 2003

(b) SR&O No 10 of 2006

Made this thirteenth day of June 2006

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

---

EXPLANATORY NOTE  
*(not forming part of the above Regulations)*

These Regulations amend the Customs (Fees) Regulations 2006.

---

## SUBSIDIARY LEGISLATION

---

### CURRENCY

#### Coins (Amendment) Order 2006

S. R. & O. No. 15 of 2006

*Made: ..... 13 June 2006*

*Published: ..... 21 June 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 (Amendment) Order 2006 and shall come into force upon publication in the *Gazette*.

#### Amendment of the Coins Order 2006

2. Schedule 1 of the Coins Order 2006(a) is replaced with the following —

#### "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 <sup>th</sup> Crown	1/25 <sup>th</sup> 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

---

(a) SR&O No 3 of 2006

Quality	Brilliant Uncirculated	Proof	Proof	Proof
Shape	Round	Round	Round	Round
Edge	Milled	Milled	Milled	Milled
Edition Limit	Unlimited	20,000	2,000	20,000
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	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.  The denomination is inscribed at the bottom of the reverse design."			

Made this thirteenth day of June 2006

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

---

Published by the Attorney General's Chambers, Cable Cottage, Stanley, Falkland Islands  
Price: Two Pounds and Seventy-Five Pence.

© **CrownCopyright** 2006



# THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

---

*Vol. 17*

*12<sup>th</sup> July 2006*

*No. 11*

---

The following are published in this Supplement -

**Post Office Order 2006 (Correction) Order 2006 (S.R.&O. No. 16 of 2006);**

**Murrell River Fishing Regulations 2006 (S.R.&O. No. 17 of 2006);**

**Bribery and Corruption Overseas Bill 2006; and**

**Stanley Common (Amendment) Bill 2006.**

---

## SUBSIDIARY LEGISLATION

---

### POST OFFICE

#### Post Office Order 2006 (Correction) Order 2006

S. R. & O. No. 16 of 2006

*Made: ..... 5 July 2006*

*Published: ..... 12 July 2006*

*Coming into force: in accordance with article 1*

IN EXERCISE of my powers under section 93 of the Interpretation and General Clauses Ordinance(a), and of all other powers enabling me in that behalf, I make the following Order —

#### Citation and commencement

1. This Order may be cited as the Post Office Order 2006 (Correction) Order 2006 and shall be deemed to have come into force on the same date as the Post Office Order 2006.

#### Correction of Post Office Order 2006

2. The First Schedule of the Post Office Order 2006(b) is rectified in “Airmail Rates to all Countries” —

(a) in “Letters” by deleting the figure “70” and replacing it with the figure “20”; and

(b) in “Small Packets & Printed Papers” by deleting the figure “60” and replacing it with the figure “70”.

Made this 5<sup>th</sup> day of July 2006

M. L. B. Chilton,  
*Acting Attorney General*

---

(a) Title 67.2

(b) No 11 of 2006

---

## SUBSIDIARY LEGISLATION

---

### WILDLIFE

#### Murrell River Fishing Regulations 2006

S. R. & O. No: 17 of 2006

*Made: ..... 6 July 2006*

*Published: ..... 12 July 2006*

*Coming into force: on publication*

IN EXERCISE of my powers under section 16 of the Conservation of Wildlife and Nature 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 Murrell River Fishing Regulations 2006 and shall come into force upon publication.

#### **Interpretation**

2. In these Regulations —

“trout” means the fish *Salmo trutta*; and

“river crossing” means that section of the road which crosses the Murrell River.

#### **Prohibition upon fishing on or near the river crossing**

3. No person shall kill, capture or attempt to capture any species of fish by any means on the river crossing or within 100 metres of the river crossing.

#### **Prohibition upon fishing above Drunken Rock Pass**

4. No person shall kill, capture or attempt to capture any species of fish by any means from the Murrell River west of Drunken Rock Pass.

#### **Restriction upon the number of trout retained**

5. No person shall capture and retain more than three trout from the Murrell River on any one day. Any trout caught in excess of this number shall be returned alive immediately to the water from which it was taken.

---

(a) No 10 of 1999



**Restriction upon the size of trout retained**

6. Any trout weighing less than 1.5 pounds which is captured from the Murrell River shall be returned alive immediately to the water from which it was taken.

**Offences**

7. Any contravention of paragraphs 3 to 6 of these Regulations shall constitute an offence. A person convicted of such an offence shall be liable to a fine not exceeding the maximum of level 5 on the standard scale.

Made this sixth day of July 2006

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

---

**EXPLANATORY NOTE**

*(not forming part of the above Regulations)*

These Regulations ban fishing for any species on or within 100 metres of the road crossing the Murrell River and above Drunken Rock Pass, and also impose restrictions on the number and size of trout which may be taken from the Murrell River.

## **Bribery and Corruption Overseas Bill 2006**

(No:    of 2006)

### **ARRANGEMENT OF PROVISIONS**

#### **Clause**

1.     Short title
2.     Bribery and corruption of person overseas
3.     Bribery and corruption committed outside the Falkland Islands
4.     Presumption of corruption not to apply

## **BRIBERY AND CORRUPTION OVERSEAS BILL 2006**

(No:    of 2006)

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

### **A BILL**

for

### **AN ORDINANCE**

To make provision in relation to the bribery and corruption of overseas officials and bribery and corruption committed outside the Falkland Islands.

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

#### **Short title**

1. This Ordinance may be cited as the Bribery and Corruption Overseas Ordinance 2006.

#### **Bribery and corruption of person overseas**

2. For the purposes of the common law offence of bribery it is immaterial if the functions of the person who receives or is offered a reward have no connection with the Falkland Islands and are carried out in a country or territory outside the Falkland Islands.

#### **Bribery and corruption committed outside the Falkland Islands**

- 3.—(1) This section applies if —

- (a) a person resident in the Falkland Islands who is a national of the United Kingdom or a body incorporated in the Falkland Islands does anything in a country or territory outside the Falkland Islands; and
  - (b) the act would, if done in the Falkland Islands constitute a corruption offence (as defined in subsection (3)).
- (2) In such a case —
- (a) the act constitutes the offence concerned; and
  - (b) proceedings for the offence may be taken in the Falkland Islands.
- (3) These are corruption offences —
- (a) any common law offence of bribery;
  - (b) the offences under section 1 of the Public Bodies Corrupt Practices Act 1889 (c.69) (corruption in office);
  - (c) the first two offences under section 1 of the Prevention of Corruption Act 1906 (c.34) (bribes obtained by or given to agents).
- (4) A national of the United Kingdom is an individual who is —
- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
  - (b) a person who under the British Nationality Act 1981 (c.61) is a British subject, or
  - (c) a British protected person within the meaning of that Act.

**Presumption of corruption not to apply**

4. Section 2 of the Prevention of Corruption Act 1916 (c.64) (presumption of corruption in certain cases) is not to apply in relation to anything which would not be an offence apart from section 2 or section 3.

---

**OBJECTS AND REASONS**

This Bill will enable the Falkland Islands to meet obligations under article 8 paragraph 2 of the United Nations Convention against Transnational Organised Crime.

**Stanley Common (Amendment) Bill 2006**

(No:            of 2006)

**ARRANGEMENT OF PROVISIONS**

Clause

1. Short title and commencement
2. Interpretation
3. Amendment of section 8
4. Amendment of section 10
5. Amendment of Part I of Second Schedule
6. Amendment of Part II of Second Schedule

**STANLEY COMMON (AMENDMENT) BILL 2006**

(No:            of 2006)

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

A BILL

for

AN ORDINANCE

To amend the Stanley Common Ordinance 1999

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

**Short title and commencement**

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

**Interpretation**

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

“the Common” has the same meaning as it has under section 2 of the principal Ordinance; and

“the principal Ordinance” means the Stanley Common Ordinance 1999(a).

#### **Amendment of section 8**

3. The following subsections shall be added to section 8 of the principal Ordinance —

“(5) Nothing in this Ordinance or in any regulations made hereunder shall operate so as to inhibit or make unlawful the use for firearms training by the Falkland Islands Defence Force and the Royal Falkland Islands Police of any range situate on the Common so approved for the purpose by the Governor.

(6) Nothing in this Ordinance or in any regulations made hereunder shall operate so as to inhibit or make unlawful the use for training by the Falkland Islands Defence Force and the Fire and Rescue Service of any part of the Common so approved for the purpose by the Governor.”

#### **Amendment of section 10**

4. Section 10 of the principal Ordinance is amended by replacing section 10(c)(iv) with the following —

“(iv) the purpose of supplying electricity pursuant to the Electricity Supply Ordinance (Title 3.31.1) and Regulations made thereunder including the installation of electricity wind turbines and associated equipment; or”

#### **Amendment of Part I of Second Schedule**

5. The following is added at the end of Part I of the Second Schedule to the principal Ordinance—

“No 1004	18 acres at Moody Valley	Barry Elsby and Bernadette Marguerite Paver
No 1021	2,550 square metres adjacent to The Brook, Moody Brook	Douglas Graham Fiddes”

#### **Amendment of Part II of Second Schedule**

5.—(1) The entry relating to Crown Lease 158 to Neil Watson is deleted from Part II of the Second Schedule to the principal Ordinance.

(2) The following is added at the end of Part II of the Second Schedule to the principal Ordinance —

"Crown Lease No 356	4.4 acres at Moody Brook	Douglas Graham Fiddes and Julia Bertrand Fiddes	11 December 2001 to 10 December 2021
Crown Lease 357	4.4 acres at Moody Brook	Douglas Graham Fiddes and Julia Bertrand Fiddes	2 years from 11 December 2001 (continuing in occupation)
Crown Lease No 379	3,950 acres known as Mount Longdon Camp	Neil Watson	1 January 2006 to 31 December 2015
Crown Lease No 401	15.8 acres south of Airport Road	Maurice Davis and Nicholas Davis	1 April 2006 to 31 May 2010
Crown Lease No 403	17.1 acres south of Airport Road	Maurice Davis and Nicholas Davis	29 April 2006 to 31 May 2010
Right of Access contained in Crown Lease No 417	Track from Moody Brook east to Fairy Cove	Neil Rowlands and Dorinda Roberta Rowlands	999 years"

---

#### OBJECTS AND REASONS

To permit further lawful uses of land forming part of Stanley Common.

---

Published by the Attorney General's Chambers, Cable Cottage, Stanley, Falkland Islands  
Price: Three Pounds and Seventy-Five Pence.

© CrownCopyright 2006



# THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

---

---

*Vol. 17*

*11<sup>th</sup> August 2006*

*No. 12*

---

---

The following are published in this Supplement -

Sexual Offences Ordinance 2005 (Correction) Order 2006 (S.R.&O. No. 18 of 2006);

Census Order 2006 (S.R.&O. No. 19 of 2006);

Census (Forms) Regulations 2006 (S.R.&O. No 20 of 2006);

Census (Forms) Regulation Order 2006 (S.R.&O. No 21 of 2006);

Charging Orders Ordinance 1997, Commencement Notice;

Court of Appeal Ordinance 1998, Commencement Notice;

Fisheries (Conservation and Management) Ordinance 2005, Notice of Total Allowable Catch, Toothfish Fishery; and

Fisheries (Conservation and Management) Ordinance 2005, Notice of Total Allowable Effort, Squid Fishery.



---

## SUBSIDIARY LEGISLATION

---

### CRIMINAL

#### **Sexual Offences Ordinance 2005 (Correction) Order 2006**

S. R. & O. No. 18 of 2006

*Made: ..... 21 July 2006*

*Published: ..... 11 August 2006*

*Coming into force: on publication*

IN EXERCISE of my powers under section 93 of the Interpretation and General Clauses Ordinance(a), and of all other powers enabling me in that behalf, I make the following Order —

#### **Citation and commencement**

1. This Order may be cited as the Sexual Offences Ordinance 2005 (Correction) Order 2006 and shall be deemed to have come into force on the same date as the Sexual Offences Ordinance 2005(b).

#### **Correction of Sexual Offences Ordinance 2005**

2. The Schedule to the Sexual Offences Ordinance 2005(b) is rectified in paragraph 8(a) of “Modifications of Part I of the Act” by replacing the second appearance therein of the word “indictment” with the word “conviction”.

Made this 21<sup>st</sup> day of July 2006

D. G. Lang C.B.E. Q.C.,  
*Attorney General*

---

(a) Title 67.2

(b) No 12 of 2005 (commencement: 10 June 2005)

---

## SUBSIDIARY LEGISLATION

---

### CENSUS

#### Census Order 2006

(S. R. & O. No. 19 of 2006)

*Made:* 31<sup>st</sup> July 2006

*Published:* 11<sup>th</sup> August 2006

*Coming into force:* on publication

IN EXERCISE of my powers under section 2 of the Census Ordinance 1990 (Title 62.1) I make the following Order —

#### **Citation and commencement**

1. This Order may be cited as the Census Order 2006 and shall come into force upon publication in the *Gazette*.

#### **Interpretation**

2.—(1) In this Order, unless the context otherwise requires —

“census day” means 8<sup>th</sup> October 2006;

“household” means either one person living alone or a group of two or more people (who may or may not be related to one another) with common housekeeping, living, or staying temporarily, at the same address in the Falkland Islands; and

“householder” means a person aged sixteen years or over who is head, joint head or acting head of a household and who is resident in the Falkland Islands on census day.

(2) Whenever in respect of a household there is no person falling within the definition of “householder” in subparagraph (1) resident at that address on census day, the census return in respect of that household shall be made by such person as the Registrar General may direct, and that person for the purpose of these Regulations shall be deemed to be the householder.

#### **Census to be held**

3. A census shall be held in respect of the Falkland Islands on census day, and shall be so held in accordance with the provisions of the Census Ordinance 1990.

**Returns to be made**

4. Returns shall be made by all householders upon (and shall relate to) the topics raised by the form prescribed by the Census (Forms) Regulations 2006(a).

Made this 31<sup>st</sup> day of July 2006

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

---

EXPLANATORY NOTE  
*(not forming part of the above Order)*

This Order appoints 8<sup>th</sup> October 2006 as the date upon which a census shall be taken in the Falkland Islands in conformity with the provisions of the Census Ordinance 1990.

---

## SUBSIDIARY LEGISLATION

---

### CENSUS

#### Census (Forms) Regulations 2006

(S. R. & O. No. 20 of 2006)

*Made:* 31<sup>st</sup> July 2006

*Published:* 11<sup>th</sup> August 2006

*Coming into force:* on publication

IN EXERCISE of my powers under section 4(e) of the Census Ordinance 1990 (Title 62.1) and of all other powers enabling me, I make the following Regulations —

#### **Citation and commencement**

1. These Regulations may be cited as the Census (Forms) Regulations 2006 and shall come into force upon publication in the *Gazette*.

#### **Interpretation**

2. In these Regulations, the expressions “census day”, “household” and “householder” have the same meanings as they have under article 2 of the Census Order 2006(a).

#### **Forms to be furnished to households**

3.—(1) The Registrar General shall supply each householder in the Falkland Islands before census day with a copy of Part 1 of the form set out in the Schedule to these Regulations and, without prejudice to paragraph (2) of this regulation, three copies of Part 2 of that form.

(2) If the Registrar General believes or is informed by the householder that the number of persons forming part of that household on census day will or may exceed three, or the householder requests him to do so, the Registrar General shall supply to the householder such additional number of copies of Part 2 of that form as may be required in all the circumstances of the case.

#### **Forms to be used in taking of census**

4.—(1) Every householder shall complete Part 1 of the form set out in the Schedule to these Regulations and shall complete in respect of himself Part 2 of that form.

(2) Every householder shall also complete a copy of Part 2 of the form in respect of all persons forming part of the household in question on census day, except that obligation shall be satisfied in respect of such persons aged 16 years or over if any one of their number completes such a copy of Part 2 of the form on the householder's behalf.

(3) The householder shall return to the Registrar General all parts of the form completed in respect of his household in accordance with the requirements of the foregoing paragraphs of this regulation.

#### **The Schedule**

5. The Schedule to these Regulations shall have effect for the purpose of prescribing the form of census return.

#### **Revocation**

6. The Census (Forms) Regulations 1996(b) are hereby revoked.

Made this 31<sup>st</sup> day of July 2006

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

---

#### **EXPLANATORY NOTE** *(not forming part of the above Regulations)*

These Regulations require the Registrar General to supply each householder with a sufficient supply of census returns, prescribe the form of census returns and require those forms to be completed and returned to the Registrar General.

## The Schedule

# Falkland Islands Census 2006

Falkland Islands  
Government



This is the official form for all the people at this address. It is quick and easy, and your answers are protected by law. Complete the Census and assist Government in planning the long-term development of the Islands.

## Essential Information

CENSUS FORM NUMBER

H/

HOUSEHOLD ADDRESS

Your answers should relate to the date of the Census, i.e. Sunday 8th October 2006

Completion of a census form is compulsory.

If a person refuses to complete a census form, or deliberately gives false information, a criminal offence is committed and the person is liable to a fine of £100.

All of the information you supply in this form will be treated confidentially.

The address of the household and your names will not be published in any census report.

Only official enumerators will have access to completed census forms.

When the census information has been processed the census returns will be sealed and retained in the Government Archives for at least 100 years, after which time they may be made available for public inspection.

Answers are required of every person who forms part of the household.

*Include:*

Persons who are staying temporarily with the household except members of HM armed forces and their dependents living with them in the Falkland Islands.

Persons who normally form part of the household but are temporarily absent (for example Camp children staying at Stanley House or persons absent from the Islands on holiday or attending school or training).

Any newly born baby, even if still in hospital (in the Islands or overseas).

If you require any further information or assistance to complete your form please telephone: 27272, 27123 or 27124 between 8.15 - 11.45 and 13.15- 16.15 Monday to Friday

**Remember, answers should relate to Census night - i.e. Sunday 8th October 2006**  
Census forms will be collected between the 10th and 13th of October 2006

## Household Questions

There are 14 household questions each starting with the letter 'H' which relate to the household to which the form is sent. A household means either one person living alone or a group of two or more persons (who may or may not be related to each other) living, or staying temporarily, at the same address sharing or participating in common housekeeping.

**The Householder** - A householder means a person aged 16 years or over who is head, joint head, or acting head of a household who is resident in the Falkland Islands on census day. Whenever there is no person falling within the definition of "householder" resident at the address on census day, the census return shall be made by whoever the Registrar General directs.

**Completion of the form** - Every householder must complete Part 1 of the form and also Part 2 of the form in respect of himself. Every householder must also complete Part 2 of the form in respect of all persons forming part of the household on census day, unless any person aged 16 or over in the household completes the form in respect of themselves.

**Why are these questions asked?** - The kind of place a person calls home, the number of vehicles a person owns, and the number of household appliances they have is very closely related to that person's standard of living. The answers to these questions provide an indication of the size of homes, the cost of housing and the extent of overcrowding. This information will help Government to assess housing need and plan for the future.

## Personal Questions

There are 16 personal questions which should be answered for every person who forms part of the household.

**Why are these questions asked?**

**Name, Address, Date of Birth and Relationship** - these details are required so that enumerators can check that all relevant persons have been included in the Census. The Census report will not publish anybody's name. Knowing how many men, women and children of different ages are located in different parts of the Falkland Islands helps in working out the need for education and health services.

Questions on **time spent in the Falkland Islands and immigration categories** seek to find out the permanence of the population in the Falkland Islands. This helps in the long term planning of resources and services.

**Country of birth, citizenship and ancestry** - an understanding of the origins of all the people who call the Falklands home is essential in developing policies and services which reflect the needs of society. The questions about arrival in the Falkland Islands within 6 months of birth and normal residence of the person's mother prior to their birth provide information about the number of people born outside the Islands whilst their mothers were temporarily overseas (for example for medical reasons).

**Language spoken at home** - knowing which other languages are spoken and how well English is spoken helps in planning for education resources for teaching English.

**Jobs and work** - information on how many people are working or looking for work tells us a lot about what is happening in society and the economy. Information on unpaid work helps to measure the contribution of such activities to society and the economy.

**Income** - this provides an indication of living standards, and, along with information on the cost of housing, helps to determine the affordability of housing in the Islands.

# Part 1- Household

Information on housing  
helps Government  
to assess  
housing need



This part of the form should be filled in by the householder i.e. the head, joint head or acting head of a household in the Falkland Islands on census day. If an accommodation is unoccupied, the owner must complete this first section entitled 'household'.

Please write answers in BLOCK CAPITALS using BLUE or BLACK pen.

Please mark boxes with a cross (X)

## H Mark the space that best describes the type of accommodation your household occupies

A HOUSE that is:

- ☐ Detached ☐ Semi Detached  
☐ Terraced

A FLAT, MAISONETTE or APARTMENT that is:

- ☐ In a purpose built block of flats  
☐ Part of a converted or shared house  
☐ A converted outbuilding  
☐ In a commercial building (for example in an office building, or hotel, or over a shop)

In a MOBILE or TEMPORARY STRUCTURE that is:

- ☐ A mobile home or portacabin adapted for permanent use  
☐ A caravan  
☐ In any other mobile or temporary structure

Other, such as yacht etc. (please state)

If you are civilian support personnel at MPA or other military sites in the Falklands you do not need to complete the remaining household questions. Please read the information on Page 6 and then answer the personal questions for Person 1.

## H1 How many bedrooms are there in your accommodation? That is, if you were to put your household up for sale, how many bedrooms would you say there were?

## H2 How old is your accommodation?

If you do not know the exact age of your accommodation then you should estimate the age and put a cross in the appropriate box. The Brewster Houses were built in 1983-84; the Jersey Estate Houses in 1989; and the East Stanley Development began in 1998

- ☐ 0-5 years ☐ 6-10 years ☐ 11-30 years  
☐ Greater than 30 years

The following questions relating to the cost of accommodation and utilities seek to find out to what extent housing is affordable. The Islands Plan target relating to affordable housing is that '75% of households pay less than 30% of their income for housing.'

## H3 a) Do you or someone in your household own or rent your accommodation?

- ☐ Own outright (free and clear of any mortgage or loan) Go to question H4  
☐ Own with a mortgage Go to question H3 part b  
☐ Rent Go to question H3 part c  
☐ Live here rent free Go to question H4

b) If paying a mortgage in respect of the property your household occupies, how much is paid ANNUALLY in respect of mortgage repayments on this property?

- ☐ Less than £1000 ☐ £1000-£3000  
☐ £3001-£5000 ☐ £5001-£7000  
☐ £7001-£9000 ☐ £9001-£11000  
☐ £11001 or more

If paying a mortgage, go to Question H4 now.

c) If paying rent, how much does the household pay to the owner (or to their agent) for this dwelling ANNUALLY?

- ☐ Less than £1000 ☐ £1000-£3000  
☐ £3001-£5000 ☐ £5001-£7000  
☐ £7001-£9000 ☐ £9001-£11000  
☐ £11001 or more

If paying rent please answer H3 Part d

d) Does the rent include any meals?

- ☐ Yes ☐ No



**H4** What is the main fuel used for heating in your accommodation?

- |   |                                     |
|---|-------------------------------------|
| <input type="checkbox"/> Kerosene               | <input type="checkbox"/> Diesel Oil |
| <input type="checkbox"/> Electricity            | <input type="checkbox"/> Gas        |
| <input type="checkbox"/> Peat                   |                                     |
| <input type="checkbox"/> Other (please specify) |                                     |

**H5** What is the main fuel used for cooking in your accommodation?

- |   |                                     |
|---|-------------------------------------|
| <input type="checkbox"/> Kerosene               | <input type="checkbox"/> Diesel Oil |
| <input type="checkbox"/> Electricity            | <input type="checkbox"/> Gas        |
| <input type="checkbox"/> Peat                   |                                     |
| <input type="checkbox"/> Other (please specify) |                                     |

**H6** What is the MAIN source of electrical power for your household's accommodation?

- ☐ Stanley Power Station  
☐ Diesel oil (i.e. private generator)  
☐ Settlement generator  
☐ Wind  
☐ Water

**H7** What is the ANNUAL cost of electricity and fuel (for heating and cooking) for your household's accommodation? *If you have lived here less than a year, please estimate the annual cost.*

**a) Electricity**

- |  |   |
|--|---|
| <input type="checkbox"/> Less than £1000 | <input type="checkbox"/> £1000-£3000      |
| <input type="checkbox"/> £3001-£5000     | <input type="checkbox"/> £5001-£7000      |
| <input type="checkbox"/> £7001-£9000     | <input type="checkbox"/> £9001-£11000     |
| <input type="checkbox"/> £11001 or more  | <input type="checkbox"/> Included in rent |

**b) Kerosene, Oil, Peat, Coal, Wood etc.**

- |  |   |
|--|---|
| <input type="checkbox"/> Less than £1000                   | <input type="checkbox"/> £1000-£3000      |
| <input type="checkbox"/> £3001-£5000                       | <input type="checkbox"/> £5001-£7000      |
| <input type="checkbox"/> £7001-£9000                       | <input type="checkbox"/> £9001-£11000     |
| <input type="checkbox"/> £11001 or more                    | <input type="checkbox"/> Included in rent |
| <input type="checkbox"/> No charge or these fuels not used |   |

**c) Gas**

- |  |   |
|--|---|
| <input type="checkbox"/> Less than £100            | <input type="checkbox"/> £100-£300        |
| <input type="checkbox"/> £301-£500                 | <input type="checkbox"/> £501-£700        |
| <input type="checkbox"/> £701-£900                 | <input type="checkbox"/> £901-£1100       |
| <input type="checkbox"/> £1101 or more             | <input type="checkbox"/> Included in rent |
| <input type="checkbox"/> No charge or gas not used |   |

**H8** Is your accommodation wholly or partially provided with central heating?

*Central heating is defined as a system for heating a room or rooms by radiators or air vents connected by pipes or ducts to a central source of heat, such as a boiler. It includes; gas, oil or solid fuel central heating, night storage heaters, warm air heating and underfloor heating. If you have central heating available indicate this WHETHER OR NOT you use it.*

- ☐ NONE of the accommodation has central heating  
☐ SOME of the accommodation (ie. some living areas) has central heating  
☐ ALL of the accommodation (ie. all living areas) has central heating

**H9** In your opinion is the standard of your accommodation:

- ☐ Good      ☐ Fairly Good      ☐ Not Good

**H10** In your opinion is the accommodation suitable for the basic needs of the household?

- ☐ Yes      ☐ No

**H11** How is your property drained?

- ☐ By connection to main drainage system  
☐ By septic tank  
☐ Other (please specify)

**H12** Do you or another person in this household (excluding temporary visitors) own or rent/lease a second home in the Falkland Islands?

*Please mark all the boxes that apply to this second home. If more than one second home is owned or rented, please place a number in the box to represent how many homes are owned or rented in each category.*

☐ No, or only property outside the Falkland Islands -  
Go to question H13

☐ Yes, and it is:

- ☐ In Stanley and  
☐ Owned  
☐ Owned and rented out  
☐ Rented/leased by you as a tenant

- ☐ In Camp and  
☐ Owned  
☐ Owned and rented out  
☐ Rented/leased by you as a tenant

**H13** How many motor vehicles are owned or available for use by members of your household?

*Do not count any vehicle that is not currently in working order, vehicles that belong to visitors, vehicles that this household borrows occasionally from another household, vehicles that can be used ONLY for work. Company cars that are available for personal use should be counted.*

- ☐ None - Go to question H14  
☐ One or more - Please answer parts b,c and d

**b) Place a number in the box to represent how many vehicles are available for use in each category**

- ☐ Car or van or other 2 wheel drive vehicle  
☐ Four wheel drive  
☐ Motorcycle or quad bike  
☐ Other (Please state number and type of vehicle)

**c) Place a number in the box to show how many vehicles you have in each engine size.**

- |                                       |                                       |
|---------------------------------------|---------------------------------------|
| <input type="checkbox"/> Below 2000cc | <input type="checkbox"/> Below 2500cc |
| <input type="checkbox"/> Below 3000cc | <input type="checkbox"/> Above 3000cc |

**d) Place a number in the box to say how many vehicles you have in each fuel type**

- ☐ Petrol ☐ Diesel

**H14** Please indicate which of the appliances listed below are available in your household's accommodation

*Do not include anything that is disconnected or broken. Place a number in the box to represent how many of each of the appliances below are available for use in your household.*

- ☐ Computer  
☐ Internet access  
☐ Fax Machine  
☐ Telephone  
☐ Mobile telephone  
☐ Satellite telephone  
☐ 2 metre radio  
☐ Fridge  
☐ Deep Freeze  
☐ Fridge/Freezer  
☐ Washing machine  
☐ Dishwasher  
☐ Television  
☐ Cable/satellite television  
☐ Videocassette recorder  
☐ DVD player  
☐ Smoke alarm  
☐ Carbon monoxide detector  
☐ Fire extinguisher

# Person

# 1



**Your answers  
are important!  
Every person in the  
Census counts.**

## Part 2 - Personal Questions

Answers are required of every person who forms part of the household.

### Include:

Persons who are staying temporarily with the household **except** members of HM armed forces and their dependants living with them in the Falkland Islands.

Persons who normally form part of the household but are temporarily absent (for example Camp children staying at Stanley House or persons absent from the Islands on holiday or attending school or training).

Any newly born baby, even if still in hospital (in the Islands or overseas).

The householder or joint householder should first complete the personal questions headed Person 1. They should then complete the details for Person 2, Person 3 etc. until details have been completed for all members of the household (unless any person aged 16 years or over in the household completes Part 2 of the form in respect of themselves).

### P1 What is the person's full name?

Last Name/Family Name

Forenames (Include all names, do not use initials)

What is this person's sex?

☐ Male ☐ Female

What is this person's date of birth?

Print numbers in boxes

Day

Month

Year of birth

### P2 Present Marital Status

For the avoidance of doubt, even if the person is living apart from their spouse he or she is "married" unless there has been a formal end to the marriage by Decree Absolute or Annulment.

- ☐ Never Married
- ☐ Married
- ☐ Married but permanently separated
- ☐ Cohabiting as man and wife
- ☐ Divorced and not now married
- ☐ Widow or Widower
- ☐ Other (please state)

### P3 Where was this person on Census night?

- ☐ At the address on the front of this form
- ☐ Elsewhere in the Falkland Islands
- ☐ Outside the Falkland Islands

### P4 What is this person's usual address?

For children and students who live away from home during term time (i.e. Camp children living at Stanley House), the address on the front of the census form should be regarded as their usual address.

- ☐ The Address on the front of this form
- ☐ Elsewhere - Please write full address below -  
DO NOT use PO Box number

### P5 Where was this person normally resident TEN YEARS AGO?

- ☐ Stanley (Go to Question P6)
- ☐ Camp (Go to Question P6)
- ☐ Overseas (Please answer P5 part b)
- ☐ Person less than 10 years old (Go to Question P6)

b) Have you returned to the Falkland Islands after an absence of more than ten years?

Do not count any times during your absence in which you may have returned temporarily for holidays etc.

- ☐ No (Go to question P6)
- ☐ Yes - If Yes please state how long you were away from the Islands

**P6** Country of Birth

a) Was this person born in the Falkland Islands?

- ☐ Yes (Go to Question P7)  
☐ No (Answer Parts b and c)

b) Where was the person born?

*If the person was born in a country other than those stated below, please state the person's country of birth. If the name of the country has changed since the person was born there, the most modern or present name should be given.*

- ☐ United Kingdom (the UK consists of the countries of England, Wales, Scotland and Northern Ireland but does not include the Channel Islands, the Isle of Man or the Republic of Ireland (Eire).

- ☐ St Helena ☐ Chile

Other country (please state)

c) Did the person arrive in the Falkland Islands within 6 months of birth?

- ☐ Yes (Go to part d)  
☐ No (Go to Question P7)

d) Was the person's mother normally resident in the Falkland Islands prior to the person's birth?

- ☐ Yes  
☐ No

**P7** How long has the person been resident in the Falkland Islands?

*Periods of temporary absence (such as overseas trips for medical treatment, holidays or business) should be ignored when calculating the duration of a person's residence.*

- ☐ 2 years or less  
☐ 3 to 5 years  
☐ 6 to 10 years  
☐ More than 10 years

**P8** Which of the following immigration categories applies to this person?

- ☐ Falkland Islands Status  
☐ Naturalised  
☐ Permanent Residence Permit  
☐ Work Permit  
☐ Visitor's Permit  
☐ Spouse/Dependent of Falkland Islands Status Holder  
☐ Spouse/Dependent of Permanent Residence Permit Holder  
☐ Spouse/Dependent of Work Permit Holder  
☐ Other (Please Specify)

**P9** What is the person's Citizenship?

*If this person holds more than one citizenship, please state the one which they consider to be their MAIN citizenship*

- ☐ British Citizenship  
☐ British Overseas Territories Citizenship  
☐ Citizen of another country - Please state below

**P10** Ancestry or Ethnic origin

*Ancestry or Ethnic Origin is not necessarily related to the place a person was born but is more the cultural group they most closely identify with. For example, a person may have been born in the UK but have Italian ancestry*

What is this person's ancestry or ethnic origin?

- |  |   |
|--|---|
| <input type="checkbox"/> Falkland Islander | <input type="checkbox"/> American                   |
| <input type="checkbox"/> United Kingdom    | <input type="checkbox"/> Polish                     |
| <input type="checkbox"/> European          | <input type="checkbox"/> Taiwanese                  |
| <input type="checkbox"/> St Helenian       | <input type="checkbox"/> Chinese                    |
| <input type="checkbox"/> Chilean           | <input type="checkbox"/> Japanese                   |
| <input type="checkbox"/> Filipino          | <input type="checkbox"/> Georgian                   |
| <input type="checkbox"/> New Zealander     | <input type="checkbox"/> Ukrainian                  |
| <input type="checkbox"/> Australian        | <input type="checkbox"/> Other (please state below) |

*If you are of mixed ethnic background or ancestry please state - for example, British Chilean*

**P11** Does this person speak a language other than English at home? *If the person is too young to talk answer no*

- ☐ No (Go to Question P12)  
☐ Yes (Please state which language)

b) How well does this person speak English?

- ☐ Very well                      ☐ Well  
☐ Not well                      ☐ Not at all

**P12** Religion  
*Answering this question is voluntary*

What is this person's religion?

- ☐ None                      ☐ Christian                      ☐ Jewish  
☐ Buddhist                      ☐ Hindu                      ☐ Muslim  
☐ Sikh  
☐ Any other religion (please state below)

**P13** Employment

a) What is this person's employment status?

- ☐ Employed (Go to part b)  
☐ Unemployed (Go to question P14)  
☐ Not working for other reasons (Go to question P14)  
☐ Retired (Go to question P15)

b) Does this person work as an employee or are they self-employed?

*Please answer the following question about your MAIN job (your MAIN job is the job in which you usually work the most hours).*

- ☐ Employed  
☐ Self Employed with employees  
☐ Self employed without employees

c) In this job, what is the person's main occupation?

*For example, administrative manager, clerk, book-keeper, restaurant/hotel manager or worker, cleaner, farm manager, farmer, agriculture worker, fisherman, computer operator, cook, waitress, barperson, shop assistant, tour guide, plumber, carpenter, builder, journalist etc.*

*If in doubt please state person's job title or main role and type of work undertaken*

*FIG employees need only write job title*

Please state this person's main occupation

d) In terms of the job above, which economic activity is the person working in?

*FIG employees please state Department/Section*

- ☐ Agriculture  
☐ Fishing  
☐ Construction  
☐ Mining and Quarrying  
☐ Electricity, Water and Gas  
☐ Wholesale and Retail Trade  
☐ Hospitality (hotels, restaurants, pubs etc.)  
☐ Transport and Storage  
☐ Communication  
☐ Financing  
☐ Insurance  
☐ Real Estate  
☐ Business Services  
☐ Community, Social and Personal Services  
☐ Other please state below

e) Does the person have a secondary or part-time occupation in addition to their main occupation?

- ☐ No (go to part h) ☐ Yes

If you answered Yes, please answer the following questions:

In their secondary employment is this person:

- ☐ An employee?  
☐ Self Employed with employees?  
☐ Self employed without employees?

f) In this person's secondary job, what is their occupation?

For example, administrative manager, clerk, book-keeper, restaurant/hotel manager or worker, cleaner, farm manager, farmer, agriculture worker, fisherman, computer operator, cook, waitress, barperson, shop assistant, tour guide, plumber, carpenter, builder, journalist etc.

If in doubt please state person's job title or main role and type of work undertaken

FIG employees need only write job title

Please state this person's secondary occupation

d) In terms of the job above, which economic activity is the person working in?

FIG employees please state Department/Section

- ☐ Agriculture  
☐ Fishing  
☐ Construction  
☐ Mining and Quarrying  
☐ Electricity, Water and Gas  
☐ Wholesale and Retail Trade  
☐ Hospitality (hotels, restaurants, pubs etc.)  
☐ Transport and Storage  
☐ Communication  
☐ Financing

Economic Activity continued.

- ☐ Insurance  
☐ Real Estate  
☐ Business Services  
☐ Community, Social and Personal Services  
☐ Other please state below

h) Please state the total number of paid hours the person normally works per week

Complete if employed or self-employed

Number of hours worked per week

Please go to question P15.

**P14** Not employed

If the person is not employed, please answer the following questions

a) Is the person actively seeking any kind of paid work?

For example by looking at job advertisements, writing, phoning or applying in person to an employer, in contact with the FIG Training Unit to look for a job or advice in finding a job, contacting friends or relatives for help in finding a job, placing an advertisement about a job, taking steps to set up own business.

- ☐ Yes (Please answer Part b)  
☐ No (Go to Part c)

b) If a job was available, would the person be able to start straight away?

- ☐ Yes  
☐ No

Please continue with Part c

c) Is the person doing any of the following?  
Mark a cross in all boxes that apply to this person

- ☐ Household work, cooking, repairs, gardening etc. for their own household
- ☐ Looking after a child who is a member of their household
- ☐ Looking after a member of their household who is ill or has a disability
- ☐ Looking after a child (who does NOT live in their household)
- ☐ Helping someone who is ill or has a disability (who does NOT live in their household)
- ☐ Other helping or voluntary work for or through any organisation or group
- ☐ Attending or studying for 20 hours or more per week at school or any other place
- ☐ Attending or studying for less than 20 hours per week at school or any other place
- ☐ None of these

**P15** Income

What is this person's total ANNUAL income?  
Include all income that this person themselves got before tax or before anything was taken out of it. Include wages, salaries, commissions, bonuses etc., paid by employer, income from self employment or a business the person owns or works in, interest, dividends, rent, other investments, pensions, student grant payments, social welfare payments, child allowance, child support payments, or any other sources of income.

THIS INFORMATION WILL REMAIN CONFIDENTIAL. INFORMATION IN THE CENSUS REPORT RELATING TO INCOME WILL REFER TO THE NUMBER OF PEOPLE IN EACH INCOME BRACKET AND THE AVERAGE INCOME.

- |   |  |
|---|--|
| <input type="checkbox"/> £1 - £2000     | <input type="checkbox"/> £2001-£4000   |
| <input type="checkbox"/> £4001-£6000    | <input type="checkbox"/> £6001-£8000   |
| <input type="checkbox"/> £8001-£10000   | <input type="checkbox"/> £10001-£12000 |
| <input type="checkbox"/> £12001-£14000  | <input type="checkbox"/> £14001-£16000 |
| <input type="checkbox"/> £16001-£18000  | <input type="checkbox"/> £18001-£20000 |
| <input type="checkbox"/> £20001-£22000  | <input type="checkbox"/> £22001-£24000 |
| <input type="checkbox"/> £24001-£26000  | <input type="checkbox"/> £26001-£28000 |
| <input type="checkbox"/> £28001-£30000  | <input type="checkbox"/> £30001-£32000 |
| <input type="checkbox"/> £32001-£34000  | <input type="checkbox"/> £34001-£36000 |
| <input type="checkbox"/> £36001-£38000  | <input type="checkbox"/> £38001-£40000 |
| <input type="checkbox"/> £40001-£42000  | <input type="checkbox"/> £42001-£44000 |
| <input type="checkbox"/> £44000 or more |  |

**P16** Education

Has the person obtained any of the following qualifications?

Please mark a cross in the box next to all qualifications the person has obtained. If the qualification is not specified, please mark its nearest equivalent. If you are unsure of its nearest equivalent, please state the name of the qualification in the 'Other qualifications' space provided below. Do not include any qualifications not yet awarded.

- ☐ No qualifications
- ☐ Vocational qualifications
- ☐ NVQ Level 1
- ☐ NVQ Level 2
- ☐ NVQ Level 3
- ☐ NVQ Levels 4-5
- ☐ GNVQ Foundation
- ☐ GNVQ Intermediate
- ☐ GNVQ Advanced
- ☐ O'Level(s)
- ☐ CSE(s)
- ☐ GCSE(s)
- ☐ School Certificate
- ☐ AS Level(s)
- ☐ A Level(s)
- ☐ S Level(s)
- ☐ High School Certificate
- ☐ High School Diploma
- ☐ International Baccalaureate
- ☐ Ordinary National Certificate
- ☐ Ordinary National Diploma
- ☐ Higher National Certificate
- ☐ Higher National Diploma
- ☐ First Degree (eg. BA, BSc)
- ☐ Advanced Degree (eg MA, PhD, PGCE, post-graduate certificate diplomas)
- ☐ Professional Qualifications (eg doctor, lawyer etc.)
- ☐ Other qualifications (eg City and Guilds, RSA/OCR, BTEC/Edexcel)
- ☐ Other qualifications (please specify)

Are there more people living here? If yes, please continue with person 2.

# Person

# 2



Census information helps the Government ensure that there are enough healthcare resources to serve our community

## P1 What is the person's full name?

Last Name/Family Name

Forenames (Include all names, do not use initials)

What is this person's sex?

☐ Male ☐ Female

What is this person's date of birth?

Print numbers in boxes

Day

Month

Year of birth

How is this person related to person 1?

For example, husband, wife, son, daughter (including adopted or step children) brother, sister, father, mother (including adoptive or step-parent), grandchild, parent-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, nephew, niece

Or

Unmarried partner, housemate/room-mate, lodger, foster child, joint head, domestic servant (living in), other non-relative

Please print relationship below

## P2 Present Marital Status

For the avoidance of doubt, even if the person is living apart from their spouse he or she is "married" unless there has been a formal end to the marriage by Decree Absolute or Annulment.

- ☐ Never Married
- ☐ Married
- ☐ Married but permanently separated
- ☐ Cohabiting as man and wife
- ☐ Divorced and not now married
- ☐ Widow or Widower
- ☐ Other (please state)

## P3 Where was this person on Census night?

- ☐ At the address on the front of this form
- ☐ Elsewhere in the Falkland Islands
- ☐ Outside the Falkland Islands

## P4 What is this person's usual address?

For children and students who live away from home during term time (i.e. Camp children living at Stanley House), the address on the front of the census form should be regarded as their usual address.

- ☐ The Address on the front of this form
- ☐ Elsewhere - Please write full address below - DO NOT use PO Box number

## P5 Where was this person normally resident TEN YEARS AGO?

- ☐ Stanley (Go to Question P6)
- ☐ Camp (Go to Question P6)
- ☐ Overseas (Please answer P5 part b)
- ☐ Person less than 10 years old (Go to Question P6)

b) Have you returned to the Falkland Islands after an absence of more than ten years?

Do not count any times during your absence in which you may have returned temporarily for holidays etc.

- ☐ No (Go to question P6)
- ☐ Yes - If Yes please state how long you were away from the Islands



**P6** Country of Birth

a) Was this person born in the Falkland Islands?

- ☐ Yes (Go to Question P7)  
☐ No (Answer Parts b and c)

b) Where was the person born?

*If the person was born in a country other than those stated below, please state the person's country of birth. If the name of the country has changed since the person was born there, the most modern or present name should be given.*

- ☐ United Kingdom (the UK consists of the countries of England, Wales, Scotland and Northern Ireland but does not include the Channel Islands, the Isle of Man or the Republic of Ireland (Eire).

- ☐ St Helena ☐ Chile

Other country (please state)

c) Did the person arrive in the Falkland Islands within 6 months of birth?

- ☐ Yes (Go to part d)  
☐ No (Go to Question P7)

d) Was the person's mother normally resident in the Falkland Islands prior to the person's birth?

- ☐ Yes  
☐ No

**P7** How long has the person been resident in the Falkland Islands?

*Periods of temporary absence (such as overseas trips for medical treatment, holidays or business) should be ignored when calculating the duration of a person's residence.*

- ☐ 2 years or less  
☐ 3 to 5 years  
☐ 6 to 10 years  
☐ More than 10 years

**P8** Which of the following immigration categories applies to this person?

- ☐ Falkland Islands Status  
☐ Naturalised  
☐ Permanent Residence Permit  
☐ Work Permit  
☐ Visitor's Permit  
☐ Spouse/Dependent of Falkland Islands Status Holder  
☐ Spouse/Dependent of Permanent Residence Permit Holder  
☐ Spouse/Dependent of Work Permit Holder  
☐ Other (Please Specify)

**P9** What is the person's Citizenship?

*If this person holds more than one citizenship, please state the one which they consider to be their MAIN citizenship*

- ☐ British Citizenship  
☐ British Overseas Territories Citizenship  
☐ Citizen of another country - Please state below

**P10** Ancestry or Ethnic origin

*Ancestry or Ethnic Origin is not necessarily related to the place a person was born but is more the cultural group they most closely identify with. For example, a person may have been born in the UK but have Italian ancestry*

What is this person's ancestry or ethnic origin?

- |  |   |
|--|---|
| <input type="checkbox"/> Falkland Islander | <input type="checkbox"/> American                   |
| <input type="checkbox"/> United Kingdom    | <input type="checkbox"/> Polish                     |
| <input type="checkbox"/> European          | <input type="checkbox"/> Taiwanese                  |
| <input type="checkbox"/> St Helenian       | <input type="checkbox"/> Chinese                    |
| <input type="checkbox"/> Chilean           | <input type="checkbox"/> Japanese                   |
| <input type="checkbox"/> Filipino          | <input type="checkbox"/> Georgian                   |
| <input type="checkbox"/> New Zealander     | <input type="checkbox"/> Ukrainian                  |
| <input type="checkbox"/> Australian        | <input type="checkbox"/> Other (please state below) |

*If you are of mixed ethnic background or ancestry please state - for example, British Chilean*

**P11** Does this person speak a language other than English at home? *If the person is too young to talk answer no*

- ☐ No (Go to Question P12)  
☐ Yes (Please state which language)

b) How well does this person speak English?

- ☐ Very well                      ☐ Well  
☐ Not well                      ☐ Not at all

**P12** Religion  
*Answering this question is voluntary*

What is this person's religion?

- ☐ None                      ☐ Christian                      ☐ Jewish  
☐ Buddhist                      ☐ Hindu                      ☐ Muslim  
☐ Sikh  
☐ Any other religion (please state below)

*Please do not answer any more questions if the person is under the age of 14. If there are more people in the household, please move on to questions for person 3.*

**P13** Employment

a) What is this person's employment status?

- ☐ Employed (Go to part b)  
☐ Unemployed (Go to question P14)  
☐ Not working for other reasons (Go to question P14)  
☐ Retired (Go to question P15)

b) Does this person work as an employee or are they self-employed?

*Please answer the following question about your MAIN job (your MAIN job is the job in which you usually work the most hours).*

- ☐ Employed  
☐ Self Employed with employees  
☐ Self employed without employees

c) In this job, what is the person's main occupation?

*For example, administrative manager, clerk, book-keeper, restaurant/hotel manager or worker, cleaner, farm manager, farmer, agriculture worker, fisherman, computer operator, cook, waitress, barperson, shop assistant, tour guide, plumber, carpenter, builder, journalist etc.*

*If in doubt please state person's job title or main role and type of work undertaken*

*FIG employees need only write job title*

Please state this person's main occupation

d) In terms of the job above, which economic activity is the person working in?

*FIG employees please state Department/Section*

- ☐ Agriculture  
☐ Fishing  
☐ Construction  
☐ Mining and Quarrying  
☐ Electricity, Water and Gas  
☐ Wholesale and Retail Trade  
☐ Hospitality (hotels, restaurants, pubs etc.)  
☐ Transport and Storage  
☐ Communication  
☐ Financing  
☐ Insurance  
☐ Real Estate  
☐ Business Services  
☐ Community, Social and Personal Services  
☐ Other please state below

e) Does the person have a secondary or part-time occupation in addition to their main occupation?

- ☐ No (go to part h) ☐ Yes

If you answered Yes, please answer the following questions:

In their secondary employment is this person:

- ☐ An employee?  
☐ Self Employed with employees?  
☐ Self employed without employees?

f) In this person's secondary job, what is their occupation?

For example, administrative manager, clerk, book-keeper, restaurant/hotel manager or worker, cleaner, farm manager, farmer, agriculture worker, fisherman, computer operator, cook, waitress, barperson, shop assistant, tour guide, plumber, carpenter, builder, journalist etc.

If in doubt please state person's job title or main role and type of work undertaken

FIG employees need only write job title

Please state this person's secondary occupation

d) In terms of the job above, which economic activity is the person working in?

FIG employees please state Department/Section

- ☐ Agriculture  
☐ Fishing  
☐ Construction  
☐ Mining and Quarrying  
☐ Electricity, Water and Gas  
☐ Wholesale and Retail Trade  
☐ Hospitality (hotels, restaurants, pubs etc.)  
☐ Transport and Storage  
☐ Communication  
☐ Financing

Economic Activity continued.

- ☐ Insurance  
☐ Real Estate  
☐ Business Services  
☐ Community, Social and Personal Services  
☐ Other please state below

h) Please state the total number of paid hours the person normally works per week

Complete if employed or self-employed

Number of hours worked per week

Please go to question P15.

**P14 Not employed**

If the person is not employed, please answer the following questions

a) Is the person actively seeking any kind of paid work?

For example by looking at job advertisements, writing, phoning or applying in person to an employer, in contact with the FIG Training Unit to look for a job or advice in finding a job, contacting friends or relatives for help in finding a job, placing an advertisement about a job, taking steps to set up own business.

- ☐ Yes (Please answer Part b)  
☐ No (Go to Part c)

b) If a job was available, would the person be able to start straight away?

- ☐ Yes  
☐ No

Please continue with Part c

c) Is the person doing any of the following?  
Mark a cross in all boxes that apply to this person

- ☐ Household work, cooking, repairs, gardening etc. for their own household
- ☐ Looking after a child who is a member of their household
- ☐ Looking after a member of their household who is ill or has a disability
- ☐ Looking after a child (who does NOT live in their household)
- ☐ Helping someone who is ill or has a disability (who does NOT live in their household)
- ☐ Other helping or voluntary work for or through any organisation or group
- ☐ Attending or studying for 20 hours or more per week at school or any other place
- ☐ Attending or studying for less than 20 hours per week at school or any other place
- ☐ None of these

**P15** Income

What is this person's total ANNUAL income?  
Include all income that this person themselves got before tax or before anything was taken out of it. Include wages, salaries, commissions, bonuses etc., paid by employer, income from self employment or a business the person owns or works in, interest, dividends, rent, other investments, pensions, student grant payments, social welfare payments, child allowance, child support payments, or any other sources of income.

THIS INFORMATION WILL REMAIN CONFIDENTIAL. INFORMATION IN THE CENSUS REPORT RELATING TO INCOME WILL REFER TO THE NUMBER OF PEOPLE IN EACH INCOME BRACKET AND THE AVERAGE INCOME.

- |   |  |
|---|--|
| <input type="checkbox"/> £1 - £2000     | <input type="checkbox"/> £2001-£4000   |
| <input type="checkbox"/> £4001-£6000    | <input type="checkbox"/> £6001-£8000   |
| <input type="checkbox"/> £8001-£10000   | <input type="checkbox"/> £10001-£12000 |
| <input type="checkbox"/> £12001-£14000  | <input type="checkbox"/> £14001-£16000 |
| <input type="checkbox"/> £16001-£18000  | <input type="checkbox"/> £18001-£20000 |
| <input type="checkbox"/> £20001-£22000  | <input type="checkbox"/> £22001-£24000 |
| <input type="checkbox"/> £24001-£26000  | <input type="checkbox"/> £26001-£28000 |
| <input type="checkbox"/> £28001-£30000  | <input type="checkbox"/> £30001-£32000 |
| <input type="checkbox"/> £32001-£34000  | <input type="checkbox"/> £34001-£36000 |
| <input type="checkbox"/> £36001-£38000  | <input type="checkbox"/> £38001-£40000 |
| <input type="checkbox"/> £40001-£42000  | <input type="checkbox"/> £42001-£44000 |
| <input type="checkbox"/> £44000 or more |  |

**P16** Education

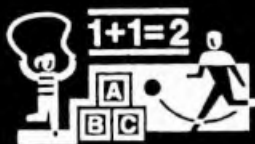
Has the person obtained any of the following qualifications?

Please mark a cross in the box next to all qualifications the person has obtained. If the qualification is not specified, please mark its nearest equivalent. If you are unsure of its nearest equivalent, please state the name of the qualification in the 'Other qualifications' space provided below. Do not include any qualifications not yet awarded.

- ☐ No qualifications
- ☐ Vocational qualifications
- ☐ NVQ Level 1
- ☐ NVQ Level 2
- ☐ NVQ Level 3
- ☐ NVQ Levels 4-5
- ☐ GNVQ Foundation
- ☐ GNVQ Intermediate
- ☐ GNVQ Advanced
- ☐ O'Level(s)
- ☐ CSE(s)
- ☐ GCSE(s)
- ☐ School Certificate
- ☐ AS Level(s)
- ☐ A Level(s)
- ☐ S Level(s)
- ☐ High School Certificate
- ☐ High School Diploma
- ☐ International Baccalaureate
- ☐ Ordinary National Certificate
- ☐ Ordinary National Diploma
- ☐ Higher National Certificate
- ☐ Higher National Diploma
- ☐ First Degree (eg. BA, BSc)
- ☐ Advanced Degree (eg MA, PhD, PGCE, post-graduate certificate diplomas)
- ☐ Professional Qualifications (eg doctor, lawyer etc.)
- ☐ Other qualifications (eg City and Guilds, RSA/OCR, BTEC/Edexcel)
- ☐ Other qualifications (please specify)

Are there more people living here? If yes, continue with Person 3.

# 3



Information about children helps Government and the Community plan for child care and education

**P1** What is the person's full name?

Last Name/Family Name

Forenames (Include all names, do not use initials)

What is this person's sex?

☐ Male ☐ Female

What is this person's date of birth?

Print numbers in boxes

Day

Month

Year of birth

How is this person related to person 1?

*For example, husband, wife, son, daughter (including adopted or step children) brother, sister, father, mother (including adoptive or step-parent), grandchild, parent-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, nephew, niece*

Or

*Unmarried partner, housemate/room-mate, lodger, foster child, joint head, domestic servant (living in), other non-relative*

Please print relationship below

**P2** Present Marital Status

*For the avoidance of doubt, even if the person is living apart from their spouse he or she is "married" unless there has been a formal end to the marriage by Decree Absolute or Annulment.*

- ☐ Never Married
- ☐ Married
- ☐ Married but permanently separated
- ☐ Cohabiting as man and wife
- ☐ Divorced and not now married
- ☐ Widow or Widower
- ☐ Other (please state)

**P3** Where was this person on Census night?

- ☐ At the address on the front of this form
- ☐ Elsewhere in the Falkland Islands
- ☐ Outside the Falkland Islands

**P4** What is this person's usual address?

*For children and students who live away from home during term time (i.e. Camp children living at Stanley House), the address on the front of the census form should be regarded as their usual address.*

- ☐ The Address on the front of this form
- ☐ Elsewhere - Please write full address below - DO NOT use PO Box number

**P5** Where was this person normally resident TEN YEARS AGO?

- ☐ Stanley (Go to Question P6)
- ☐ Camp (Go to Question P6)
- ☐ Overseas (Please answer P5 part b)
- ☐ Person less than 10 years old (Go to Question P6)

**b) Have you returned to the Falkland Islands after an absence of more than ten years?**

*Do not count any times during your absence in which you may have returned temporarily for holidays etc.*

- ☐ No (Go to question P6)
- ☐ Yes - If Yes please state how long you were away from the Islands

**P6** Country of Birth

a) Was this person born in the Falkland Islands?

- ☐ Yes (Go to Question P7)  
☐ No (Answer Parts b and c)

b) Where was the person born?

*If the person was born in a country other than those stated below, please state the person's country of birth. If the name of the country has changed since the person was born there, the most modern or present name should be given.*

- ☐ United Kingdom (the UK consists of the countries of England, Wales, Scotland and Northern Ireland but does not include the Channel Islands, the Isle of Man or the Republic of Ireland (Eire).

- ☐ St Helena ☐ Chile

Other country (please state)

c) Did the person arrive in the Falkland Islands within 6 months of birth?

- ☐ Yes (Go to part d)  
☐ No (Go to Question P7)

d) Was the person's mother normally resident in the Falkland Islands prior to the person's birth?

- ☐ Yes  
☐ No

**P7** How long has the person been resident in the Falkland Islands?

*Periods of temporary absence (such as overseas trips for medical treatment, holidays or business) should be ignored when calculating the duration of a person's residence.*

- ☐ 2 years or less  
☐ 3 to 5 years  
☐ 6 to 10 years  
☐ More than 10 years

**P8** Which of the following immigration categories applies to this person?

- ☐ Falkland Islands Status  
☐ Naturalised  
☐ Permanent Residence Permit  
☐ Work Permit  
☐ Visitor's Permit  
☐ Spouse/Dependent of Falkland Islands Status Holder  
☐ Spouse/Dependent of Permanent Residence Permit Holder  
☐ Spouse/Dependent of Work Permit Holder  
☐ Other (Please Specify)

**P9** What is the person's Citizenship?

*If this person holds more than one citizenship, please state the one which they consider to be their MAIN citizenship*

- ☐ British Citizenship  
☐ British Overseas Territories Citizenship  
☐ Citizen of another country - Please state below

**P10** Ancestry or Ethnic origin

*Ancestry or Ethnic Origin is not necessarily related to the place a person was born but is more the cultural group they most closely identify with. For example, a person may have been born in the UK but have Italian ancestry*

What is this person's ancestry or ethnic origin?

- |  |   |
|--|---|
| <input type="checkbox"/> Falkland Islander | <input type="checkbox"/> American                   |
| <input type="checkbox"/> United Kingdom    | <input type="checkbox"/> Polish                     |
| <input type="checkbox"/> European          | <input type="checkbox"/> Taiwanese                  |
| <input type="checkbox"/> St Helenian       | <input type="checkbox"/> Chinese                    |
| <input type="checkbox"/> Chilean           | <input type="checkbox"/> Japanese                   |
| <input type="checkbox"/> Filipino          | <input type="checkbox"/> Georgian                   |
| <input type="checkbox"/> New Zealander     | <input type="checkbox"/> Ukrainian                  |
| <input type="checkbox"/> Australian        | <input type="checkbox"/> Other (please state below) |

*If you are of mixed ethnic background or ancestry please state - for example, British Chilean*

**P11** Does this person speak a language other than English at home? *If the person is too young to talk answer no*

- ☐ No (Go to Question P12)  
☐ Yes (Please state which language)

b) How well does this person speak English?

- ☐ Very well                      ☐ Well  
☐ Not well                      ☐ Not at all

**P12** Religion

*Answering this question is voluntary*

What is this person's religion?

- ☐ None                      ☐ Christian                      ☐ Jewish  
☐ Buddhist                      ☐ Hindu                      ☐ Muslim  
☐ Sikh  
☐ Any other religion (please state below)

*Please do not answer any more questions if the person is under the age of 14. If there are more people in the household, please move on to questions for person 4.*

**P13** Employment

a) What is this person's employment status?

- ☐ Employed (Go to part b)  
☐ Unemployed (Go to question P14)  
☐ Not working for other reasons (Go to question P14)  
☐ Retired (Go to question P15)

b) Does this person work as an employee or are they self-employed?

*Please answer the following question about your MAIN job (your MAIN job is the job in which you usually work the most hours).*

- ☐ Employed  
☐ Self Employed with employees  
☐ Self employed without employees

c) In this job, what is the person's main occupation?

*For example, administrative manager, clerk, book-keeper, restaurant/hotel manager or worker, cleaner, farm manager, farmer, agriculture worker, fisherman, computer operator, cook, waitress, barperson, shop assistant, tour guide, plumber, carpenter, builder, journalist etc.*

*If in doubt please state person's job title or main role and type of work undertaken*

*FIG employees need only write job title*

Please state this person's main occupation

d) In terms of the job above, which economic activity is the person working in?

*FIG employees please state Department/Section*

- ☐ Agriculture  
☐ Fishing  
☐ Construction  
☐ Mining and Quarrying  
☐ Electricity, Water and Gas  
☐ Wholesale and Retail Trade  
☐ Hospitality (hotels, restaurants, pubs etc.)  
☐ Transport and Storage  
☐ Communication  
☐ Financing  
☐ Insurance  
☐ Real Estate  
☐ Business Services  
☐ Community, Social and Personal Services  
☐ Other please state below

e) Does the person have a secondary or part-time occupation in addition to their main occupation?

- ☐ No (go to part h) ☐ Yes

If you answered Yes, please answer the following questions:

In their secondary employment is this person:

- ☐ An employee?  
☐ Self Employed with employees?  
☐ Self employed without employees?

f) In this person's secondary job, what is their occupation?

For example, administrative manager, clerk, book-keeper, restaurant/hotel manager or worker, cleaner, farm manager, farmer, agriculture worker, fisherman, computer operator, cook, waitress, barperson, shop assistant, tour guide, plumber, carpenter, builder, journalist etc.

If in doubt please state person's job title or main role and type of work undertaken

FIG employees need only write job title

Please state this person's secondary occupation

d) In terms of the job above, which economic activity is the person working in?

FIG employees please state Department/Section

- ☐ Agriculture  
☐ Fishing  
☐ Construction  
☐ Mining and Quarrying  
☐ Electricity, Water and Gas  
☐ Wholesale and Retail Trade  
☐ Hospitality (hotels, restaurants, pubs etc.)  
☐ Transport and Storage  
☐ Communication  
☐ Financing

Economic Activity continued.

- ☐ Insurance  
☐ Real Estate  
☐ Business Services  
☐ Community, Social and Personal Services  
☐ Other please state below

h) Please state the total number of paid hours the person normally works per week

Complete if employed or self-employed

Number of hours worked per week

Please go to question P15.

P14 Not employed

If the person is not employed, please answer the following questions

a) Is the person actively seeking any kind of paid work?

For example by looking at job advertisements, writing, phoning or applying in person to an employer, in contact with the FIG Training Unit to look for a job or advice in finding a job, contacting friends or relatives for help in finding a job, placing an advertisement about a job, taking steps to set up own business.

- ☐ Yes (Please answer Part b)  
☐ No (Go to Part c)

b) If a job was available, would the person be able to start straight away?

- ☐ Yes  
☐ No

Please continue with Part c



c) Is the person doing any of the following?  
Mark a cross in all boxes that apply to this person

- ☐ Household work, cooking, repairs, gardening etc. for their own household
- ☐ Looking after a child who is a member of their household
- ☐ Looking after a member of their household who is ill or has a disability
- ☐ Looking after a child (who does NOT live in their household)
- ☐ Helping someone who is ill or has a disability (who does NOT live in their household)
- ☐ Other helping or voluntary work for or through any organisation or group
- ☐ Attending or studying for 20 hours or more per week at school or any other place
- ☐ Attending or studying for less than 20 hours per week at school or any other place
- ☐ None of these

**P15** Income

What is this person's total ANNUAL income?  
Include all income that this person themselves got before tax or before anything was taken out of it. Include wages, salaries, commissions, bonuses etc., paid by employer, income from self employment or a business the person owns or works in, interest, dividends, rent, other investments, pensions, student grant payments, social welfare payments, child allowance, child support payments, or any other sources of income.

THIS INFORMATION WILL REMAIN CONFIDENTIAL. INFORMATION IN THE CENSUS REPORT RELATING TO INCOME WILL REFER TO THE NUMBER OF PEOPLE IN EACH INCOME BRACKET AND THE AVERAGE INCOME.

- |   |  |
|---|--|
| <input type="checkbox"/> £1 - £2000     | <input type="checkbox"/> £2001-£4000   |
| <input type="checkbox"/> £4001-£6000    | <input type="checkbox"/> £6001-£8000   |
| <input type="checkbox"/> £8001-£10000   | <input type="checkbox"/> £10001-£12000 |
| <input type="checkbox"/> £12001-£14000  | <input type="checkbox"/> £14001-£16000 |
| <input type="checkbox"/> £16001-£18000  | <input type="checkbox"/> £18001-£20000 |
| <input type="checkbox"/> £20001-£22000  | <input type="checkbox"/> £22001-£24000 |
| <input type="checkbox"/> £24001-£26000  | <input type="checkbox"/> £26001-£28000 |
| <input type="checkbox"/> £28001-£30000  | <input type="checkbox"/> £30001-£32000 |
| <input type="checkbox"/> £32001-£34000  | <input type="checkbox"/> £34001-£36000 |
| <input type="checkbox"/> £36001-£38000  | <input type="checkbox"/> £38001-£40000 |
| <input type="checkbox"/> £40001-£42000  | <input type="checkbox"/> £42001-£44000 |
| <input type="checkbox"/> £44000 or more |  |

**P16** Education

Has the person obtained any of the following qualifications?

Please mark a cross in the box next to all qualifications the person has obtained. If the qualification is not specified, please mark its nearest equivalent. If you are unsure of its nearest equivalent, please state the name of the qualification in the 'Other qualifications' space provided below. Do not include any qualifications not yet awarded.

- ☐ No qualifications
- ☐ Vocational qualifications
- ☐ NVQ Level 1
- ☐ NVQ Level 2
- ☐ NVQ Level 3
- ☐ NVQ Levels 4-5
- ☐ GNVQ Foundation
- ☐ GNVQ Intermediate
- ☐ GNVQ Advanced
- ☐ O'Level(s)
- ☐ CSE(s)
- ☐ GCSE(s)
- ☐ School Certificate
- ☐ AS Level(s)
- ☐ A Level(s)
- ☐ S Level(s)
- ☐ High School Certificate
- ☐ High School Diploma
- ☐ International Baccalaureate
- ☐ Ordinary National Certificate
- ☐ Ordinary National Diploma
- ☐ Higher National Certificate
- ☐ Higher National Diploma
- ☐ First Degree (eg. BA, BSc)
- ☐ Advanced Degree (eg MA, PhD, PGCE, post-graduate certificate diplomas)
- ☐ Professional Qualifications (eg doctor, lawyer etc.)
- ☐ Other qualifications (eg City and Guilds, RSA/OCR, BTEC/Edexcel)
- ☐ Other qualifications (please specify)

Are there more people living here? If yes, continue with Person 4.

# Person

# 4



Your answers help  
Government to  
plan for the future

**P1** What is the person's full name?

Last Name/Family Name

Forenames (Include all names, do not use initials)

What is this person's sex?

☐ Male ☐ Female

What is this person's date of birth?

Print numbers in boxes

Day

Month

Year of birth

How is this person related to person 1?

For example, husband, wife, son, daughter  
(including adopted or step children) brother, sister,  
father, mother (including adoptive or step-parent),  
grandchild, parent-in-law, son-in-law, daughter-in-  
law, brother-in-law, sister-in-law, nephew, niece

Or

Unmarried partner, housemate/room-mate, lodger,  
foster child, joint head, domestic servant (living in),  
other non-relative

Please print relationship below

**P2** Present Marital Status

For the avoidance of doubt, even if the person is living apart from their spouse he or she is "married" unless there has been a formal end to the marriage by Decree Absolute or Annulment.

- ☐ Never Married  
☐ Married  
☐ Married but permanently separated  
☐ Cohabiting as man and wife  
☐ Divorced and not now married  
☐ Widow or Widower  
☐ Other (please state)

**P3** Where was this person on Census night?

- ☐ At the address on the front of this form  
☐ Elsewhere in the Falkland Islands  
☐ Outside the Falkland Islands

**P4** What is this person's usual address?

For children and students who live away from home during term time (i.e. Camp children living at Stanley House), the address on the front of the census form should be regarded as their usual address.

- ☐ The Address on the front of this form  
☐ Elsewhere - Please write full address below -  
 DO NOT use PO Box number

**P5** Where was this person normally resident TEN YEARS AGO?

- ☐ Stanley (Go to Question P6)  
☐ Camp (Go to Question P6)  
☐ Overseas (Please answer P5 part b)  
☐ Person less than 10 years old (Go to Question P6)

b) Have you returned to the Falkland Islands after an absence of more than ten years?

Do not count any times during your absence in which you may have returned temporarily for holidays etc.

- ☐ No (Go to question P6)  
☐ Yes - If Yes please state how long you were away from the Islands

**P6** Country of Birth

a) Was this person born in the Falkland Islands?

- ☐ Yes (Go to Question P7)  
☐ No (Answer Parts b and c)

b) Where was the person born?

*If the person was born in a country other than those stated below, please state the person's country of birth. If the name of the country has changed since the person was born there, the most modern or present name should be given.*

- ☐ United Kingdom (the UK consists of the countries of England, Wales, Scotland and Northern Ireland but does not include the Channel Islands, the Isle of Man or the Republic of Ireland (Eire).

- ☐ St Helena ☐ Chile

Other country (please state)

c) Did the person arrive in the Falkland Islands within 6 months of birth?

- ☐ Yes (Go to part d)  
☐ No (Go to Question P7)

d) Was the person's mother normally resident in the Falkland Islands prior to the person's birth?

- ☐ Yes  
☐ No

**P7** How long has the person been resident in the Falkland Islands?

*Periods of temporary absence (such as overseas trips for medical treatment, holidays or business) should be ignored when calculating the duration of a person's residence.*

- ☐ 2 years or less  
☐ 3 to 5 years  
☐ 6 to 10 years  
☐ More than 10 years

**P8** Which of the following immigration categories applies to this person?

- ☐ Falkland Islands Status  
☐ Naturalised  
☐ Permanent Residence Permit  
☐ Work Permit  
☐ Visitor's Permit  
☐ Spouse/Dependent of Falkland Islands Status Holder  
☐ Spouse/Dependent of Permanent Residence Permit Holder  
☐ Spouse/Dependent of Work Permit Holder  
☐ Other (Please Specify)

**P9** What is the person's Citizenship?

*If this person holds more than one citizenship, please state the one which they consider to be their MAIN citizenship*

- ☐ British Citizenship  
☐ British Overseas Territories Citizenship  
☐ Citizen of another country - Please state below

**P10** Ancestry or Ethnic origin

*Ancestry or Ethnic Origin is not necessarily related to the place a person was born but is more the cultural group they most closely identify with. For example, a person may have been born in the UK but have Italian ancestry*

What is this person's ancestry or ethnic origin?

- |  |   |
|--|---|
| <input type="checkbox"/> Falkland Islander | <input type="checkbox"/> American                   |
| <input type="checkbox"/> United Kingdom    | <input type="checkbox"/> Polish                     |
| <input type="checkbox"/> European          | <input type="checkbox"/> Taiwanese                  |
| <input type="checkbox"/> St Helenian       | <input type="checkbox"/> Chinese                    |
| <input type="checkbox"/> Chilean           | <input type="checkbox"/> Japanese                   |
| <input type="checkbox"/> Filipino          | <input type="checkbox"/> Georgian                   |
| <input type="checkbox"/> New Zealander     | <input type="checkbox"/> Ukrainian                  |
| <input type="checkbox"/> Australian        | <input type="checkbox"/> Other (please state below) |

*If you are of mixed ethnic background or ancestry please state - for example, British Chilean*

**P11** Does this person speak a language other than English at home? *If the person is too young to talk answer no*

- ☐ No (Go to Question P12)  
☐ Yes (Please state which language)

b) How well does this person speak English?

- ☐ Very well ☐ Well  
☐ Not well ☐ Not at all

**P12** Religion  
*Answering this question is voluntary*

What is this person's religion?

- ☐ None ☐ Christian ☐ Jewish  
☐ Buddhist ☐ Hindu ☐ Muslim  
☐ Sikh  
☐ Any other religion (please state below)

*Please do not answer any more questions if the person is under the age of 14. If there are more people in the household, please use additional forms.*

**P13** Employment

a) What is this person's employment status?

- ☐ Employed (Go to part b)  
☐ Unemployed (Go to question P14)  
☐ Not working for other reasons (Go to question P14)  
☐ Retired (Go to question P15)

b) Does this person work as an employee or are they self-employed?

*Please answer the following question about your MAIN job (your MAIN job is the job in which you usually work the most hours).*

- ☐ Employed  
☐ Self Employed with employees  
☐ Self employed without employees

c) In this job, what is the person's main occupation?

*For example, administrative manager, clerk, book-keeper, restaurant/hotel manager or worker, cleaner, farm manager, farmer, agriculture worker, fisherman, computer operator, cook, waitress, barperson, shop assistant, tour guide, plumber, carpenter, builder, journalist etc.*

*If in doubt please state person's job title or main role and type of work undertaken*

*FIG employees need only write job title*

Please state this person's main occupation

d) In terms of the job above, which economic activity is the person working in?

*FIG employees please state Department/Section*

- ☐ Agriculture  
☐ Fishing  
☐ Construction  
☐ Mining and Quarrying  
☐ Electricity, Water and Gas  
☐ Wholesale and Retail Trade  
☐ Hospitality (hotels, restaurants, pubs etc.)  
☐ Transport and Storage  
☐ Communication  
☐ Financing  
☐ Insurance  
☐ Real Estate  
☐ Business Services  
☐ Community, Social and Personal Services  
☐ Other please state below

e) Does the person have a secondary or part-time occupation in addition to their main occupation?

- ☐ No (go to part h) ☐ Yes

If you answered Yes, please answer the following questions:

In their secondary employment is this person:

- ☐ An employee?  
☐ Self Employed with employees?  
☐ Self employed without employees?

f) In this person's secondary job, what is their occupation?

For example, administrative manager, clerk, book-keeper, restaurant/hotel manager or worker, cleaner, farm manager, farmer, agriculture worker, fisherman, computer operator, cook, waitress, barperson, shop assistant, tour guide, plumber, carpenter, builder, journalist etc.

If in doubt please state person's job title or main role and type of work undertaken

FIG employees need only write job title

Please state this person's secondary occupation

d) In terms of the job above, which economic activity is the person working in?

FIG employees please state Department/Section

- ☐ Agriculture  
☐ Fishing  
☐ Construction  
☐ Mining and Quarrying  
☐ Electricity, Water and Gas  
☐ Wholesale and Retail Trade  
☐ Hospitality (hotels, restaurants, pubs etc.)  
☐ Transport and Storage  
☐ Communication  
☐ Financing

Economic Activity continued.

- ☐ Insurance  
☐ Real Estate  
☐ Business Services  
☐ Community, Social and Personal Services  
☐ Other please state below

h) Please state the total number of paid hours the person normally works per week

Complete if employed or self-employed

Number of hours worked per week

Please go to question P15.

**P14 Not employed**

If the person is not employed, please answer the following questions

a) Is the person actively seeking any kind of paid work?

For example by looking at job advertisements, writing, phoning or applying in person to an employer, in contact with the FIG Training Unit to look for a job or advice in finding a job, contacting friends or relatives for help in finding a job, placing an advertisement about a job, taking steps to set up own business.

- ☐ Yes (Please answer Part b)  
☐ No (Go to Part c)

b) If a job was available, would the person be able to start straight away?

- ☐ Yes  
☐ No

Please continue with Part c

c) Is the person doing any of the following?  
Mark a cross in all boxes that apply to this person

- ☐ Household work, cooking, repairs, gardening etc. for their own household
- ☐ Looking after a child who is a member of their household
- ☐ Looking after a member of their household who is ill or has a disability
- ☐ Looking after a child (who does NOT live in their household)
- ☐ Helping someone who is ill or has a disability (who does NOT live in their household)
- ☐ Other helping or voluntary work for or through any organisation or group
- ☐ Attending or studying for 20 hours or more per week at school or any other place
- ☐ Attending or studying for less than 20 hours per week at school or any other place
- ☐ None of these

**P15** Income

What is this person's total ANNUAL income?  
Include all income that this person themselves got before tax or before anything was taken out of it. Include wages, salaries, commissions, bonuses etc., paid by employer, income from self employment or a business the person owns or works in, interest, dividends, rent, other investments, pensions, student grant payments, social welfare payments, child allowance, child support payments, or any other sources of income.

THIS INFORMATION WILL REMAIN CONFIDENTIAL. INFORMATION IN THE CENSUS REPORT RELATING TO INCOME WILL REFER TO THE NUMBER OF PEOPLE IN EACH INCOME BRACKET AND THE AVERAGE INCOME.

- |   |  |
|---|--|
| <input type="checkbox"/> £1 - £2000     | <input type="checkbox"/> £2001-£4000   |
| <input type="checkbox"/> £4001-£6000    | <input type="checkbox"/> £6001-£8000   |
| <input type="checkbox"/> £8001-£10000   | <input type="checkbox"/> £10001-£12000 |
| <input type="checkbox"/> £12001-£14000  | <input type="checkbox"/> £14001-£16000 |
| <input type="checkbox"/> £16001-£18000  | <input type="checkbox"/> £18001-£20000 |
| <input type="checkbox"/> £20001-£22000  | <input type="checkbox"/> £22001-£24000 |
| <input type="checkbox"/> £24001-£26000  | <input type="checkbox"/> £26001-£28000 |
| <input type="checkbox"/> £28001-£30000  | <input type="checkbox"/> £30001-£32000 |
| <input type="checkbox"/> £32001-£34000  | <input type="checkbox"/> £34001-£36000 |
| <input type="checkbox"/> £36001-£38000  | <input type="checkbox"/> £38001-£40000 |
| <input type="checkbox"/> £40001-£42000  | <input type="checkbox"/> £42001-£44000 |
| <input type="checkbox"/> £44000 or more |  |

**P16** Education

Has the person obtained any of the following qualifications?

Please mark a cross in the box next to all qualifications the person has obtained. If the qualification is not specified, please mark its nearest equivalent. If you are unsure of its nearest equivalent, please state the name of the qualification in the 'Other qualifications' space provided below. Do not include any qualifications not yet awarded.

- ☐ No qualifications
- ☐ Vocational qualifications
- ☐ NVQ Level 1
- ☐ NVQ Level 2
- ☐ NVQ Level 3
- ☐ NVQ Levels 4-5
- ☐ GNVQ Foundation
- ☐ GNVQ Intermediate
- ☐ GNVQ Advanced
- ☐ O'Level(s)
- ☐ CSE(s)
- ☐ GCSE(s)
- ☐ School Certificate
- ☐ AS Level(s)
- ☐ A Level(s)
- ☐ S Level(s)
- ☐ High School Certificate
- ☐ High School Diploma
- ☐ International Baccalaureate
- ☐ Ordinary National Certificate
- ☐ Ordinary National Diploma
- ☐ Higher National Certificate
- ☐ Higher National Diploma
- ☐ First Degree (eg. BA, BSc)
- ☐ Advanced Degree (eg MA, PhD, PGCE, post-graduate certificate diplomas)
- ☐ Professional Qualifications (eg doctor, lawyer etc.)
- ☐ Other qualifications (eg City and Guilds, RSA/OCR, BTEC/Edexcel)
- ☐ Other qualifications (please specify)

Are there more people living here? If yes, please continue on additional person forms.

---

## SUBSIDIARY LEGISLATION

---

### CENSUS

#### Census (Forms) Regulation Order 2006

(S. R. & O. No. 21 of 2006)

*Made:* 31<sup>st</sup> July 2006

*Published:* 11<sup>th</sup> August 2006

*Coming into force:* on publication

IN EXERCISE of my powers under section 2 of the Census Ordinance 1990 (Title 62.1) and all other powers enabling me, I make the following Order —

#### **Citation and commencement**

1. This Order may be cited as the Census (Forms) Regulation Order 2006 and shall come into force upon publication in the *Gazette*.

#### **Forms to be used in taking of census**

2. The form set out in the Schedule to the Census (Forms) Regulations 2006(a) shall be used in the taking of the census on census day.

Made this 31<sup>st</sup> day of July 2006

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

---

#### EXPLANATORY NOTE

*(not forming part of the above Order)*

This Order prescribes the form to be used in taking the census in the Falkland Islands on census day, appointed by the Census Order 2006 as the 8<sup>th</sup> October 2006.

---

(a) SR&O No 20 of 2006

**CHARGING ORDERS ORDINANCE 1997**

**Section 1**

**COMMENCEMENT NOTICE**

IN EXERCISE of my powers under section 1 of the Charging Orders Ordinance 1997, I hereby notify that the Ordinance shall come into force upon publication of this Notice in the *Gazette*.

Dated this 1<sup>st</sup> day of August 2006

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

---

**COURT OF APPEAL ORDINANCE 1998**

**Section 1**

**COMMENCEMENT NOTICE**

IN EXERCISE of my powers under section 1 of the Court of Appeal Ordinance 1998, I hereby notify that the Ordinance shall come into force upon publication of this Notice in the *Gazette*.

Dated this 1<sup>st</sup> day of August 2006

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



## **FISHERIES (CONSERVATION AND MANAGEMENT) ORDINANCE 2005**

### **Section 38**

#### **Notice of Total Allowable Catch – Toothfish Fishery**

Notice is hereby given of the Total Allowable Catch set in respect of the following fishery:

Fishery:	Toothfish – Longline
Species:	Toothfish ( <i>Dissostichus eleginoides</i> )
Period:	1 January – 31 December 2006
Total Allowable Catch (Metric Tonnes):	1500

Dated this 23<sup>rd</sup> day of June 2006

A.J. BARTON  
*Director of Fisheries*

---

## **FISHERIES (CONSERVATION AND MANAGEMENT) ORDINANCE 2005**

### **Section 37**

#### **Notice of Total Allowable Effort – Squid Fishery**

Notice is hereby given of the Total Allowable Effort set in respect of the following fishery:

Fishery:	Squid ( <i>Loligo gahi</i> )
Species:	<i>Loligo gahi</i>
Period:	15 July – 30 September 2006
Total Allowable Effort (Vessel Units):	30.76

Dated this 23<sup>rd</sup> day of June 2006

A.J. BARTON  
*Director of Fisheries*

---

Published by the Attorney General's Chambers, Cable Cottage, Stanley, Falkland Islands  
Price: Six Pounds and Fifty Pence

© **CrownCopyright 2006**



**THE  
FALKLAND ISLANDS GAZETTE  
Supplement**

**PUBLISHED BY AUTHORITY**

---

*Vol. 17*

*1<sup>st</sup> September 2006*

*No. 13*

---

The following are published in this Supplement -

**Supplementary Appropriation (2005-2006)(No 3) Ordinance 2006 (No. 16 of 2006);**

**Bribery and Corruption Overseas Ordinance 2006 (No. 17 of 2006);**

**Stanley Common (Amendment) Ordinance 2006 (No. 18 of 2006); and**

**Proceeds of Crime Bill 2006.**

**ELIZABETH II**



**FALKLAND ISLANDS**

---

HARRIET HALL,  
*Acting Governor.*

**Supplementary Appropriation (2005-2006)(No 3) Ordinance 2006**

(No: 16 of 2006)

**ARRANGEMENT OF PROVISIONS**

Section

1. Short title
2. Appropriation of further sum

Schedule

# ELIZABETH II



## FALKLAND ISLANDS

HARRIET HALL,  
*Acting Governor.*

### SUPPLEMENTARY APPROPRIATION (2005-2006)(No 3) ORDINANCE 2006

(No: 16 of 2006)

*(assented to: 22 August 2006)*  
*(commencement: upon publication)*  
*(published: 1 September 2006)*

#### AN ORDINANCE

To appropriate and authorise the withdrawal from the Consolidated Fund of the additional sum of £142,100 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)(No 3) 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 £142,100 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 9 & 10 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> £
	<b>OPERATING BUDGET</b>	
0200	Health and Social Services	75,000
0551	Police & Prisons	17,100
	<b>TOTAL OPERATING BUDGET</b>	<hr/> <b>92,100</b>
	<b>FUND TRANSFERS/TRANSFER PAYMENTS</b>	
0999	Transfer Payments	50,000
	<b>TOTAL SUPPLEMENTARY EXPENDITURE</b>	<hr/> <b>142,100</b> <hr/>

Passed by the Legislature of the Falkland Islands this 28th day of July 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**

---

HARRIET HALL,  
*Acting Governor.*

**Bribery and Corruption Overseas Ordinance 2006**

(No: 17 of 2006)

**ARRANGEMENT OF PROVISIONS**

Section

1. Short title
2. Bribery and corruption of person overseas
3. Bribery and corruption committed outside the Falkland Islands
4. Presumption of corruption not to apply

ELIZABETH II



FALKLAND ISLANDS

HARRJET HALL,  
*Acting Governor.*

**BRIBERY AND CORRUPTION OVERSEAS ORDINANCE 2006**

(No: 17 of 2006)

*(assented to: 22 August 2006)*

*(commencement: upon publication)*

*(published: 1 September 2006)*

**AN ORDINANCE**

To make provision in relation to the bribery and corruption of overseas officials and bribery and corruption committed outside the Falkland Islands.

ENACTED by the Legislature of the Falkland Islands as follows —

**Short title**

1. This Ordinance may be cited as the Bribery and Corruption Overseas Ordinance 2006.

**Bribery and corruption of person overseas**

2. For the purposes of the common law offence of bribery it is immaterial if the functions of the person who receives or is offered a reward have no connection with the Falkland Islands and are carried out in a country or territory outside the Falkland Islands.

**Bribery and corruption committed outside the Falkland Islands**

3.—(1) This section applies if —

- (a) a person resident in the Falkland Islands who is a national of the United Kingdom or a body incorporated in the Falkland Islands does anything in a country or territory outside the Falkland Islands; and



(b) the act would, if done in the Falkland Islands constitute a corruption offence (as defined in subsection (3)).

(2) In such a case —

(a) the act constitutes the offence concerned; and

(b) proceedings for the offence may be taken in the Falkland Islands.

(3) These are corruption offences —

(a) any common law offence of bribery;

(b) the offences under section 1 of the Public Bodies Corrupt Practices Act 1889 (c.69) (corruption in office);

(c) the first two offences under section 1 of the Prevention of Corruption Act 1906 (c.34) (bribes obtained by or given to agents).

(4) A national of the United Kingdom is an individual who is —

(a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,

(b) a person who under the British Nationality Act 1981 (c.61) is a British subject, or

(c) a British protected person within the meaning of that Act.

**Presumption of corruption not to apply**

4. Section 2 of the Prevention of Corruption Act 1916 (c.64) (presumption of corruption in certain cases) is not to apply in relation to anything which would not be an offence apart from section 2 or section 3.

Passed by the Legislature of the Falkland Islands this 28th day of July 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**

---

HARRIET HALL,  
*Acting Governor.*

**Stanley Common (Amendment) Ordinance 2006**

(No: 18 of 2006)

**ARRANGEMENT OF PROVISIONS**

**Section**

1. Short title and commencement
2. Interpretation
3. Amendment of section 8
4. Amendment of section 10
5. Amendment of Part I of Second Schedule
6. Amendment of Part II of Second Schedule

ELIZABETH II



FALKLAND ISLANDS

HARRIET HALL,  
*Acting Governor.*

**STANLEY COMMON (AMENDMENT) ORDINANCE 2006**

(No: 18 of 2006)

*(assented to: 22 August 2006)*  
*(commencement: upon publication)*  
*(published: 1 September 2006)*

**AN ORDINANCE**

To amend the Stanley Common Ordinance 1999

ENACTED by the Legislature of the Falkland Islands as follows —

**Short title and commencement**

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

**Interpretation**

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

“the Common” has the same meaning as it has under section 2 of the principal Ordinance; and

“the principal Ordinance” means the Stanley Common Ordinance 1999(a).

**Amendment of section 8**

3. The following subsections shall be added to section 8 of the principal Ordinance —

---

(a) No 9 of 1999

“(5) Nothing in this Ordinance or in any regulations made hereunder shall operate so as to inhibit or make unlawful the use for firearms training by the Falkland Islands Defence Force and the Royal Falkland Islands Police of any range situate on the Common so approved for the purpose by the Governor.

(6) Nothing in this Ordinance or in any regulations made hereunder shall operate so as to inhibit or make unlawful the use for training by the Falkland Islands Defence Force and the Fire and Rescue Service of any part of the Common so approved for the purpose by the Governor.”

#### **Amendment of section 10**

4. Section 10 of the principal Ordinance is amended by replacing section 10(c)(iv) with the following —

“(iv) the purpose of supplying electricity pursuant to the Electricity Supply Ordinance (Title 3.31.1) and Regulations made thereunder including the installation of electricity wind turbines and associated equipment; or”

#### **Amendment of Part I of Second Schedule**

5. The following is added at the end of Part I of the Second Schedule to the principal Ordinance —

“No 1004	18 acres at Moody Valley	Barry Elsby and Bernadette Marguerite Paver
No 1021	2,550 square metres adjacent to The Brook, Moody Brook	Douglas Graham Fiddes”

#### **Amendment of Part II of Second Schedule**

5.—(1) The entry relating to Crown Lease 158 to Neil Watson is deleted from Part II of the Second Schedule to the principal Ordinance.

(2) The following is added at the end of Part II of the Second Schedule to the principal Ordinance —

“Crown Lease No 356	4.4 acres at Moody Brook	Douglas Graham Fiddes and Julia Bertrand Fiddes	11 December 2001 to 10 December 2021
Crown Lease December 357	4.4 acres at Moody Brook	Douglas Graham Fiddes and Julia Bertrand Fiddes	2 years from 11 2001 (continuing in occupation)

Crown Lease No 379	3,950 acres known as Mount Longdon Camp	Neil Watson	1 January 2006 to 31 December 2015
Crown Lease No 401	15.8 acres south of Airport Road	Maurice Davis and Nicholas Davis	1 April 2006 to 31 May 2010
Crown Lease No 403	17.1 acres south of Airport Road	Maurice Davis and Nicholas Davis	29 April 2006 to 31 May 2010
Right of Access contained in Crown Lease No 417	Track from Moody Brook east to Fairy Cove	Neil Rowlands and Dorinda Roberta Rowlands	999 years"

Passed by the Legislature of the Falkland Islands this 28th day of July 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.*

## Proceeds of Crime Bill 2006

(No: of 2006)

## ARRANGEMENT OF PROVISIONS

Clause

1. Short title and commencement
2. Adoption of Parts 2, 4, 5 and 7 to 12 of Proceeds of Crime Act 2002 (c.29)

Schedule 1  
Schedule 1  
Schedule 3

## PROCEEDS OF CRIME BILL 2006

(No:     of 2006)

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

A BILL

for

## AN ORDINANCE

To provide for confiscation orders in relation to persons who benefit from criminal conduct to prohibit dealing with property, to allow the recovery of property which is or represents property obtained through unlawful conduct or which is intended to be used in unlawful conduct, to make provision about money laundering.

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

### Short title and commencement

1. This Ordinance may be cited as the Proceeds of Crime Ordinance 2006 and shall come into force on such date as is appointed by the Governor by notice published in the Gazette.

### Adoption of Parts 2, 4, 5 and 7 to 12 of Proceeds of Crime Act 2002 (c.29)

2. Parts 2, 4, 5 and 7 to 12 of the Proceeds of Crime Act 2002 (c.29) are adopted as law of the Falkland Islands subject to the modifications and exceptions specified in the Schedule to this Ordinance.

### **Amendments and repeals of existing laws**

3.—(1) Schedule 2 shall have effect to amend existing laws in the manner specified therein.

(2) Schedule 3 shall have effect to repeal existing laws to the extent specified therein.

## **SCHEDULE 1**

### **MODIFICATIONS, ADAPTATIONS AND EXCEPTIONS SUBJECT TO WHICH PARTS 2, 4, 5 AND 7 TO 12 OF THE PROCEEDS OF CRIME ACT 2002 SHALL HAVE EFFECT IN THE FALKLAND ISLANDS**

1.—(1) In this Schedule —

(a) “the Act” means the Proceeds of Crime Act 2002 (c.29);

(b) every reference to a section, without more, is to a section of the Act.

(2) In the Act —

(a) unless otherwise specified, every reference to the Director is replaced by a reference to the Attorney General;

(b) the words “section 130 of the Sentencing Act”, wherever they appear, are replaced by the words “section 53 of the Criminal Justice Ordinance (Title 24.1)”;

(c) unless otherwise specified, the words “the Secretary of State”, wherever they appear, are replaced by the words “the Governor”;

(d) the words “England and Wales”, and “United Kingdom”, wherever they appear, are replaced by the words “the Falkland Islands”; and

(e) except where provided to the contrary the words “the Crown Court”, wherever they appear, are replaced by the words “the Magistrate’s Court”.

3. In section 6(2)(b) all words appearing after the word “offences” are omitted.

4. In section 8, subsection (7) is replaced by —

“(7) These are the provisions —

(a) the Drug Trafficking Offences Ordinance (Title 49.1);

(b) Part IV of the Criminal Justice Ordinance (Title 24.1);

(c) Part 4 of this Act.”

5. In section 9, subsection (3) is modified by the addition of the words “as if it formed part of the law of the Falkland Islands”.

6. In section 13 —

(a) the words “section 27 of the Misuse of Drugs Act 1971 (c.38)” in paragraph (b) of subsection (3) are replaced by the words “section 24 of the Misuse of Drugs Ordinance (Title 49.3)”;

(b) the words “section 143 of the Sentencing Act” in paragraph (c) of subsection (3) are replaced by the words “section 59 of the Criminal Justice Ordinance (Title 24.2)”;

(c) paragraph (d) of subsection (3) is omitted; and

(d) in paragraph (a) of subsection (5) the words “the Crown Court” are replaced by the words “the court” and the words “section 130 of the Sentencing Act” are replaced by the words “section 53 of the Criminal Justice Ordinance (Title 24.1)”.

7. In section 15(5) —

(a) paragraph (a) is replaced by —

“(a) any time limit for notice of appeal or of application for leave to appeal;” and

(b) paragraph (b) is omitted.

8. Section 23 is modified —

(a) in subsection (6) by replacing all words appearing after the words “be wound up under” by the words “Companies Act 1948 in its application to the Falkland Islands”

(b) by the addition of the following subsection —

“(7) An application to vary a confiscation order may only be made to the court which made that order.”.

9. Section 25 is modified —

(a) by omitting subsection (1)(b);

(b) by inserting after the words “the court” in subsection (2), the words “acting of its own motion”.

10. Section 28 is modified by the addition of the following subsection —



“(8) In this section “the court” means the Magistrate’s Court unless the proceedings referred to in subsection (1) are proceedings on indictment in the Supreme Court, when “the court” means the Supreme Court.”

11. Section 29 is modified by the addition of the following subsection —

“(5) In this section “the court” means the court which made the order under section 6 as applied by section 28.”

12. Section 31 is modified by replacing subsection (1) with —

“(1) If a court makes a confiscation order the Attorney General may appeal in respect of the order —

(a) to the Supreme Court in the case of an order made by the Magistrate’s Court; or

(b) to the Court of Appeal in the case of an order made by the Supreme Court.”

13. Section 32 is modified —

(a) by replacing the words “Court of Appeal”, wherever they appear, with the words “appellate court”;

(b) by replacing the words “the Crown Court”, wherever they appear, with the words “the court against whose decision the appeal was brought”.

14. Section 33 is modified by —

(a) replacing the words “House of Lords”, wherever they appear, with the words “Court of Appeal”; and

(b) replacing the “Court of Appeal”, wherever they appear in section 33 as enacted in England, with the words “Supreme Court”.

15. Section 35 is modified by replacing subsection (2) with the following —

“(2) Section 73 of the Criminal Justice Ordinance (Title 24.1) (application of procedure for enforcing fines) shall apply as if the amount ordered to be paid had been ordered to be paid under section 63 (confiscation orders) of that Ordinance.”

16. Section 36 is modified by replacing the words “section 139(2) to (4) and (9) of the Sentencing Act” with the words “section 14(1) to (7) and (9) (with the omission from that subsection of the words “subject to subsection (10)”) of the Criminal Justice Ordinance (Title 24.1).”

17. Section 38 is modified —

(a) in subsection (2) by the replacement of the words “section 108 of the Sentencing Act” with the words “section 40 of the Criminal Justice Ordinance (Title 24.1)”; and

(b) in paragraph (a) of subsection (4) by inserting before the words “section 189(1) of the Criminal Justice Act 2003” the words “any law of the Falkland Islands corresponding to”;

(c) by omitting paragraph (b) of section 38(4); and

(d) in paragraph (c) of section 38(4), by replacing the words “section 139(2) of the Sentencing Act” with the words “section 14(2) of the Criminal Justice Ordinance (Title 24.1)”.

**18. Section 39 is modified —**

(a) in paragraph (b) of subsection (1) and in subsection (5) by replacing the words “section 139(4) of the Sentencing Act” by the words “section 14(4) of the Criminal Justice Ordinance (Title 24.1)”; and

(b) in paragraph (c) of subsection (1) and in subsections (2) and (4) by replacing the words “section 139(2) of the Sentencing Act” with the words “section 14(2) of the Criminal Justice Ordinance (Title 24.1)”; and

(c) in subsection (5) by replacing the words “appropriate person” by the words “Attorney General”; and

(d) by omitting subsection (6).

**19. Section 41 is modified —**

(a) in subsection (1) by replacing the words “Crown Court” with the words “Magistrate’s Court”; and

(b) in subsection (8) by replacing paragraphs (a) to (e) with —

“(a) section 11 of the Drug Trafficking Offences Ordinance (Title 49.1);

(b) section 77 of the Criminal Justice Ordinance (Title 24.1); and

(c) section 29 of the Drug Trafficking Ordinance (No 25 of 1997).”

**20. Section 42 is modified —**

(a) in paragraph (b) of subsection (1) by replacing the words “a judge” with the words “the Senior Magistrate”; and

(b) in subsection (2) by replacing the words “Crown Court” by the words “Magistrate’s Court”.

**21. Section 43 is modified —**

(a) by replacing the words “Court of Appeal”, wherever they appear in the section) with the words “Supreme Court”; and

(b) in subsection (2) by replacing the words “Crown Court’s” with the words “Magistrate’s Court’s”.

**22. Section 44 is modified —**

(a) by replacing the words “House of Lords”, wherever they appear, with the words “Court of Appeal”; and

(b) by replacing the words “Court of Appeal”, wherever they appear in the section as enacted in England with the words “Supreme Court”.

**23. Section 45(1) is modified by replacing the words “officer of Revenue and Customs” with the words “Customs officer”.**

**24. Section 47 is modified —**

(a) in subsection (1) by replacing the words “The registration Acts” with the words “the Land Charges Ordinance 1996 (No 24 of 1996)” and by replacing the word “apply” with the word “applies”; and

(b) by omitting subsections (2), (3) and (4).

**25. Section 48 is modified by replacing the words “the Crown Court”, wherever they appear, with the words “the Magistrate’s Court”.**

**26. Section 49(8) is modified by replacing paragraphs (a) to (e) with —**

“(a) section 11 of the Drug Trafficking Offences Ordinance (Title 49.1);

(b) section 77 of the Criminal Justice Ordinance (Title 24.1); and

(c) section 29 of the Drug Trafficking Ordinance (No 25 of 1997).”

**27. Section 50(2) is modified by replacing the words “Crown Court” with the words “Magistrate’s Court”.**

**28. Section 51(7) is modified by replacing paragraphs (a) to (e) by —**

“(a) section 11 of the Drug Trafficking Offences Ordinance (Title 49.1);

(b) section 77 of the Criminal Justice Ordinance (Title 24.1); and

(c) section 29 of the Drug Trafficking Ordinance (No 25 of 1997).”

**29. Section 52 is modified —**

(a) by replacing the words “Court of Appeal”, wherever they appear, with the words “Supreme Court”;

(b) by replacing the words “Crown Court”, wherever they appear, with the words “Magistrate’s Court”; and

(c) by omitting paragraph (a) of subsection (6).

**30. Section 53(7) is modified by replacing paragraphs (a) to (e) in the same way as paragraphs (a) to (e) of section 51(7) are replaced by paragraph 28 of this Schedule.**

**31. Section 54(7) is modified by replacing the words “appropriate designated officer” with the words “Courts Administrator”.**

**32. Section 55 is modified —**

(a) by replacing the words “designated officer”, wherever they appear, and the words “designated officer’s” by the words “Courts Administrator” and “Courts Administrator’s”, respectively; and

(b) by omitting subsection (7).

**33. Section 57 is modified by omitting subsection (6).**

**34. Section 65 is modified by replacing the words “Court of Appeal”, wherever they appear, by the words “Supreme Court”.**

**35. Section 66 is modified in the like manner as section 44 is modified by virtue of paragraph 22 of this Schedule.**

**36. Section 67 is modified —**

(a) in paragraph (a) of subsection (2) —

(i) by replacing the word “constable” with the words “police officer”;

(ii) by replacing the words “section 19 of the Police and Criminal Evidence Act 1984 (c.60)” with the words “section 190 of the Criminal Justice Ordinance (Title 24.1)”;

(b) by omitting paragraph (b) of subsection (2);

(c) in subsection (3) —

(i) by replacing paragraph (a) of subsection (3) with —

“(a) has been seized by a customs officer under any provision of law conferring a general power of seizure etc on customs officers;” and

(ii) by omitting paragraph (b) of that subsection;

(d) by replacing subsection (5) with —

“(5) In such a case a court of summary jurisdiction may order the Financial Secretary (if the money is held by him in any fund under his control) or any bank or other financial institution holding the money in an account maintained by the Royal Falkland Islands Police or by the Customs Department to pay the money to the Courts Administrator for the court on account of the money due under the confiscation order.”;

(e) in subsection (6) —

(i) by replacing the words “building society” by the words “financial institution”;

(ii) by replacing the words “magistrate’s court” with the words “court of summary jurisdiction”;

(f) by replacing subsection (8) with —

“(8) For the purposes of this section “bank” and “financial institution” have the same meanings as they have under the Banking Ordinance (Title 10.1).”

**37.** Section 68 is omitted.

**38.** Section 70 is modified by replacing the words “magistrate’s court”, wherever they appear, with the words “Summary Court”.

**39.** Section 72 is modified by replacing subsection (9) with —

“(9) Compensation under this section is payable by the Crown to the applicant and is a charge on the Consolidated Fund.”

**40.** Section 73 is modified by replacing subsection (3) with —

“(3) Compensation under this section is payable by the Crown to the applicant and is a charge on the Consolidated Fund.”

41. Section 79(4) is modified by replacing paragraphs (a) to (e) with —

“(a) section 11 of the Drug Trafficking Offences Ordinance (Title 49.1);

(b) section 77 of the Criminal Justice Ordinance (Title 24.1); and

(c) section 29 of the Drug Trafficking Ordinance (No 25 of 1997).”

42. Section 82 is modified —

(a) by replacing paragraph (a) with —

“(a) section 24 of the Misuse of Drugs Ordinance (Title 49.3);”;

(b) by omitting paragraphs (b) and (c);

(c) by replacing paragraph (d) with —

“(d) section 59 of the Criminal Justice Ordinance (Title 24.1);” and

(d) by omitting paragraph (e).

43. Section 85 is modified —

(a) in subsection (1)(c) by replacing the words “High Court” with the words “Supreme Court”;

(b) by replacing the words “Court of Appeal”, wherever they appear in subsections (5) and (6) with the words “Supreme Court”; and

(c) by replacing the words “House of Lords” wherever they appear in subsection (6) with the words “Court of Appeal”.

44. Section 88 is modified by omitting subsection (5).

45. Section 89 is modified —

(a) in subsection (1) by inserting the words “the Supreme Court or” before the words “the Court of Appeal”;

(b) by omitting subsection (2);

(c) in subsection (3) by replacing the words “in the Criminal Appeal Act 1968 (c.19)(subject to any specified modifications)” with the words “relating to criminal appeals in the Court of Appeal Ordinance (Title 22.2)”;

(d) in subsection (4) by replacing —

(i) the words “criminal division of the Court of Appeal” with the words “the Supreme Court or the Court of Appeal”;

(ii) in paragraph (a) by replacing all words appearing after the words “section 43(1) or (2)” with —

“(appeals to the Supreme Court against orders made in restraint proceedings and to the Court of Appeal under section 44 (appeals to Court of Appeal against decision of Supreme Court under section 43))”,

(iii) by inserting in paragraph (b) after the word “appeals” the words “to the Supreme Court”; and

(iv) by adding a further paragraph —

“(c) section 65 (appeals to the Court of Appeal against decision of the Supreme Court under section 64),”.

46. Section 90 is omitted.

47. Section 91 is replaced by —

**“Criminal Procedure Rules**

**91.** Any Criminal Procedure Rules made under section 91 of the Act in the form it has effect in England and Wales in relation to —

(a) proceedings under this Part, or

(b) receivers appointed under this Part,

shall have effect in the Falkland Islands with all necessary modifications.”

48. Section 240 is modified —

(a) in paragraph (a) by replacing the words “High Court or Court of Session” with the words “Supreme Court”; and

(b) in paragraph (b) by omitting all words appearing after the words “civil proceedings” with the words “before a court of summary jurisdiction”.

49. Section 241 is modified —

(a) by replacing subsection (1) with —

“(1) Conduct occurring in the Falkland Islands is unlawful conduct if it is unlawful under the criminal law of the Falkland Islands.”

(b) in paragraph (a) of subsection (2), by replacing the words “of that country” with the words “of that country or territory”;

(c) by replacing paragraph (b) of subsection (2) with —

“(b) if it occurred in the Falkland Islands, would be unlawful under the criminal law of the Falkland Islands; and

(d) in subsection (3), by omitting the words “or sheriff”.

**50.** In sections 243(1), 245A(1), 245D(2) and 246(1) the words “High Court” are replaced by the words “Supreme Court”.

**51.** Section 244 is omitted.

**52.** Section 245(1) is modified by omitting paragraph (d).

**53.** Section 245C(6) is modified by omitting paragraph (b).

**54.** Section 246(7) is modified by omission of all words appearing after the words “interim receiver”.

**55.** Section 248 is modified —

(a) in subsection (1) —

(i) by replacing the words “The registration Acts” by the words “the Land Charges Ordinance (No 24 of 1996)”, and

(ii) by replacing the words “interim receiving orders”, wherever they appear, with the words “property freezing orders and in relation to interim receiving orders”;

(b) by omitting subsections (2), (3) and (4).

**56.** Section 249 is omitted.

**57.** Section 252 is modified by replacing with immediate effect subsection (4) with the new subsection (4) substituted by section 109 and Schedule 6 paragraphs 4, 14(1) and (2) of the Serious Organised Crime and Police Act 2005 from the date appointed under section 178(8) of that Act.

**58.** Section 253(2) is modified by replacing the words “High Court” with the words “Supreme Court”.



59. Sections 255A to 265 (which relate to Scotland) are omitted.

60. Section 266 is modified —

(a) by replacing subsection 2(b) with —

“(b) any provision which is incompatible with the Constitution”;

(b) by omitting subsection (5) (which relates to Scotland);

(c) by inserting after subsection (8) with immediate effect the subsections (8A) and (8B) which were inserted by section 109 and Schedule 6 paragraphs 4 and 15 of the Serious Organised Crime and Police Act 2005 as from a day to be appointed under section 178(8) of that Act.

61. Section 268 (which relates to Scotland) is omitted.

62. Section 269(2) is modified by omitting the words “right of irritancy”.

63. Section 271 is modified by replacing subsection (4) with —

“(4) But if —

(a) a property freezing order or an interim receiving order applied at any time to the associated property or joint tenancy; and

(b) the enforcement authority agrees that the person has suffered loss as a result of the order mentioned in paragraph (a),

the amount of the payment may be reduced by any amount the enforcement authority and that person agree is reasonable, having regard to that loss and relevant circumstances.”

64. Section 272 is modified by replacing subsection (5) with —

“(5) If —

(a) a property freezing order or an interim receiving order applied at any time to the associated property or joint tenancy; and

(b) the court is satisfied that the person who holds the associated property has suffered loss from the order mentioned in paragraph (a),

a recovery order making provision by virtue of subsection (2) or (3) may require the enforcement authority to pay compensation to that person.”

65. Section 273 is modified by replacing subsection (5) with —

“(5) None of the following provisions applies to a court making a recovery order by virtue of subsection (2) —

(a) any provision of any enactment (whenever passed or made and whether passed or made in the Falkland Islands or passed or made elsewhere and having effect in the Falkland Islands) which prevents assignment and the making of orders that restrain a person from receiving anything he is prevented from assigning; and

(b) any provision of the pension scheme in question corresponding to any of those provisions.”

66. Section 275 is modified by omitting the references to the legislation of Northern Ireland which appear in subsections (4) and (6).

67. Section 280 is modified by —

(a) replacing subsection (2) with —

“(2) The trustee is to make out of the sums —

(a) first any payment required to be made by him by section 272;

(b) next, any payment of legal expenses which, after giving effect to section 266(8B) are payable under this subsection in pursuance of provision under section 266(8A) contained in the recovery order;

(c) then, any payment of expenses incurred by a person acting as an insolvency practitioner which are payable under this subsection by virtue of section 432(10),

and any sum which remains is to be paid to the enforcement authority.”; and

(b) by omitting subsection (4).

68. Section 282 is modified —

(a) in subsection (1), by omitting the words “after consultation with the Scottish Ministers”; and

(b) by omitting subsections (3) and (4).

69. Section 283 is modified —

(a) in subsection (3) —

(i) by replacing the words “High Court in England and Wales” in paragraph (a) by the words “Supreme Court”; and

(ii) by omitting paragraph (b); and

(b) by replacing subsection (5) with —

“(5) If the court is satisfied that the applicant has suffered loss as a result of a property freezing order, or an interim receiving order, it may require the enforcement authority to pay compensation to him.”

70. Sections 284, 285 and 286 (which relate to Scotland) are omitted.

71. Section 287 is modified —

(a) in subsection (2) by omitting the words “after consultation with the Scottish Ministers”;

(b) by replacing subsection (3) with —

“(3) If the authority applies for a property freezing order or an interim receiving order before starting the proceedings, subsection (1) applies to the application instead of to the start of the proceedings.”; and

(c) by replacing subsection (4) with —

“(4) This section does not affect the continuation of proceedings for a recovery order which have been properly started or the making or continuing effect of a property freezing order or interim receiving order.”

72. Section 289 is modified —

(a) in subsection (1) and (2) by replacing the words “officer of Revenue and Customs or constable” with the words “Customs officer or police officer”;

(b) in subsections (3) and (4), by omitting the words “or constable”;

(c) in subsection (5), by omitting paragraph (b); and

(d) in subsection (6), by omitting all words after the words “Secretary of State”;

(e) in subsection (7) by replacing the words “section 164 of the Customs and Excise Management Act 1979” with the words “section 164 of the Customs Ordinance 2003 (No 9 of 2003)”.

73. Section 290 is modified —

(a) in subsections (2), (6) and (7) by replacing the words “judicial officer” with the words “justice of the peace”;

(b) by omitting subsection (3); and

(c) by replacing subsection (4) with —

“(4) A senior officer means —

(a) in relation to the exercise of the power by a customs officer, the Collector of Customs; and

(b) in relation to the exercise of the power by a police officer, a police officer of at least the rank of inspector.”

(d) by omitting subsection (5);

(e) in subsection (6), by replacing —

(i) the word “constable” by the words “police officer”;

(ii) the words “appointed person” by the words “Chief Executive”; and

(f) by omitting subsections (8) and (9).

**74.** Section 291 is modified —

(a) in subsection (1), by replacing the words “appointed person” by the words “Chief Executive”;

(b) in subsection (2), by replacing the words “officer of the Revenue and Customs or constable” with the words “customs officer or police officer”;

(c) in subsection (4), by omitting the words “or, as the case may be, the Scottish Ministers,”; and

(d) by omitting subsection (5).

**75.** Section 292 is modified —

(a) by replacing subsection (1) with —

“(1) The code of practice made and in operation under section 292(1) and (4) of the Act in the form it has effect in England shall with all necessary modifications apply in relation to the exercise of powers under section 289 by customs officers and police officers.”

(b) by omitting subsections (2), (3), (4) and (5); and

(c) in subsection (6), by replacing the words “an officer of the Revenue and Customs or constable” with the words “a customs officer or police officer”.

76. Section 293 (which relates to Scotland) is omitted.

77. Section 294 is modified, in subsections (1) and (2) by replacing the words “An officer of the Revenue and Customs or constable” with the words “A customs officer or a police officer”.

78. Section 295 is modified —

(a) in subsection (1) by replacing the words “the officer of the Customs and Revenue or constable” with the words “the customs officer or police officer”;

(b) in subsection (1B) —

(i) by replacing paragraph (d) with —

“(d) any public holiday”;

(ii) by omitting paragraph (e);

(c) by replacing subsection (4) with —

“(4) An application for an order under subsection (2) may be made by a customs officer or a police officer, and the justice may make the order if satisfied, in relation to any cash to be further detained, that either of the following conditions is met.”

79. Section 297 is modified —

(a) by omitting all words only relevant to an application in Scotland;

(b) in subsection (4) by replacing the words “An officer of Revenue and Customs or constable” with the words “A customs officer or police officer”.

80. Section 298 is modified —

(a) by replacing subsection (1) with —

“(1) While cash is detained under section 295 an application for the forfeiture of the whole or any part of it may be made by the Attorney General or a person authorised by the Attorney General to make the application.”

(b) by omitting the words “or Sheriff” in subsection (2).

81. Section 299 (in the form it was substituted by section 101 of the Serious Organised Crime Act 2005) is modified in subsection (1) by —

(a) in paragraph (a) by replacing the words “Crown Court” with the words “Supreme Court”; and

(b) by omitting paragraphs (b) and (c).

**82.** Section 300 is replaced by —

“(1) Cash forfeited under this Chapter and any accrued interest on it is to be paid into the Consolidated Fund.

(2) If, as a result of an appeal under section 299 the Supreme Court orders the repayment by the Crown of any sum forfeited pursuant to section 298 the court shall also order the payment by the Crown of such sum by way of interest as it considers just.”

**83.** Section 301 is modified —

(a) in subsection (1) —

(i) by replacing the words “magistrates’ court” with the words “Magistrate’s Court”; and

(ii) by omitting all words appearing in subsection (1) thereafter;

(b) by omitting the words “or sheriff” wherever they appear in subsections (2) and (3).

**84.** Section 302 is modified —

(a) in subsection (1) by omitting the words “or (in Scotland) the sheriff”;

(b) in subsections (2), (3), (4) and (5) by omitting the words “or sheriff” wherever they appear;

(c) by replacing subsection (6) with —

“(6) The compensation is to be paid by the Crown and is a charge on the Consolidated Fund.”; and

(d) by omitting subsection (7).

**85.** Section 303(1) is replaced by —

“**303.**—(1) In this Chapter, the minimum amount is the amount in sterling for the time being specified in an order made under section 303(1) in the form it has effect in England.”

**86.** Section 308 is modified —

(a) in subsection (3), by the omission of the last subsection;

(b) in subsection (4) by the replacement of paragraph (a) with —

“(a) a payment is made to a person in pursuance of a compensation order under section 53 of the Criminal Justice Ordinance (Title 24.1).”;

(c) by the omission of subsections (5), (6) and (7);

(d) in subsection (8) by the replacement in paragraph (b) of the words “section 8(7)(a) to (g)” with the words “section 8(7)(a) and (b)”;

(e) in subsection (9) by the replacement of the same words in paragraph (b) of that subsection in the like manner as in subparagraph (d) of this paragraph.

**87.** Section 309 is modified in subsection (4) by omission of the words “after consultation with the Scottish Ministers”.

**88.** Section 311 is modified —

(a) in subsection (3) —

(i) by replacing paragraph (b) with —

“(b) is an asset of a company and a compromise or arrangement made pursuant to section 206 of the Companies Act 1948 has effect in relation to the company and that asset;”

(ii) by omitting paragraph (c);

(iii) by omitting all words appearing after “adjudged bankrupt” in paragraph (d);

(iv) by replacing paragraph (e) with —

“(e) it is an asset of an individual and a composition or scheme or arrangement accepted and approved pursuant to section 16 of the Bankruptcy Act 1914 has effect in relation to him;” and

(b) by replacing subsection (4) with —

“(4) An application under this section or under any provision of the Bankruptcy Act 1914 for leave to take proceedings for a recovery order may be made without notice to any person.”

(c) by replacing subsection (6) with the following —

“(6) For the purposes of the application of the Bankruptcy Act 1914 to insolvent partnerships and estates of deceased persons under any provision of that Act, subsections (1) to (3) of this section shall be deemed to be part of that Act.”;

(d) subsection (7) is omitted;

(e) subsection (8) is modified —

(i) by replacing paragraph (a) with —

“(a) an asset means any property within the meaning of section 167 of Bankruptcy Act 1914”;

(ii) in paragraph (b) —

(aa) by omitting the words “or trust deed”; and

(bb) by replacing all words appearing after the words “is the court” with the words “for the purposes of the application in the Falkland Islands of the Bankruptcy Act 1914”; and

(iii) by omitting paragraph (d).

**89.** Sections 312 to 315 are omitted.

**90.** In section 316 —

(a) the definitions of “constable”, “the court”, “interim administration order”, “interim receiving order” and “part” are omitted;

(b) the definition of “enforcement authority” is replaced by —

“ “enforcement authority” means the Attorney General”;

(c) the definition of “interest” is replaced by —

“ “interest” in the case of land means any legal estate and any equitable interest or power”;

(d) paragraph (b) of the definition of “respondent” is omitted;

(e) subsection (4) is replaced by —

“(4) Property is all property wherever situated whether real or personal and includes things in action and incorporeal property.”;



(f) in subsection (9), paragraph (b) is modified by omitting all words appearing after the word “discontinued”.

91. Section 327 is modified —

(a) by omitting all words after the words “England and Wales” (the latter being replaced by the words “the Falkland Islands” by paragraph 1(b)(iv) of this Schedule);

(b) by inserting the following subsections after subsection (2) —

“(2A) Nor does a person commit an offence under subsection (1) if —

(a) he knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a particular country or territory outside the Falkland Islands, and

(b) the relevant criminal conduct —

(i) was not at the time it occurred, unlawful under the law of that country or territory, and

(ii) is not of a description specified by an order made by the Secretary of State for the purposes of section 327(2A)(b) of the Act in the form it has effect in England.

(2B) In subsection (2A) “the relevant criminal conduct” is the criminal conduct by reference to which the property concerned is criminal property.”

92. Section 329 is modified by inserting the following subsections after subsection (2) —

“(2A) Nor does a person commit an offence under subsection (1) if —

(a) he knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a country or territory outside the Falkland Islands; and

(b) the relevant criminal conduct —

(i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory, and

(ii) is not of a description prescribed by an order made by the Secretary of State for the purposes of section 329(2A) in the form it has effect in England.

(2B) In subsection (2A) “the relevant criminal conduct” is the criminal conduct by reference to which the property concerned is criminal property.

(2C) A deposit-taking body that does an act mentioned in subsection (1) does not commit an offence under that subsection if —

(a) it does the act in operating an account maintained with it, and

(b) the arrangement facilitates the acquisition, retention, use or control of criminal property that is less than the threshold amount determined under section 339A for the act.”

**93. Section 330 is modified —**

(a) by replacing subsection (1) with —

“(1) A person commits an offence if the conditions in subsections (2) to (4) are satisfied.”

(b) by inserting the following subsection after subsection (3) —

“(3A) The third condition is —

(a) that he can identify the other person mentioned in subsection (2) or the whereabouts of any of the laundered property; or

(b) that he believes, or it is reasonable to expect him to believe, that the information or other matter mentioned in subsection (3) will or may assist in identifying that other person or the whereabouts of any of the laundered property.”;

(c) by inserting the following subsections after subsection (5) —

“(5A) The laundered property is the property forming the subject matter of the money laundering that he knows or suspects, or has reasonable grounds for knowing or suspecting, that other person to be engaged in.

(6) But he does not commit an offence under this section if —

(a) he has a reasonable excuse for not making the required disclosure,

(b) he is a professional legal adviser, and

(i) if he knows either of the things mentioned in subsection (5)(a) and (b), he knows the thing because of information or other matter that came to him in privileged circumstances; or

(ii) the information or other matter mentioned in subsection (3) came to him in privileged circumstances, or”; and

(d) by inserting the following subsection after subsection (7) —

“(7A) Nor does a person commit an offence under this section if —

- (a) he knows, or believes on reasonable grounds, that the money laundering is occurring in a particular country or territory outside the Falkland Islands, and
- (b) the money laundering —
  - (i) is not unlawful under the criminal law applying in that country or territory; and
  - (ii) is not of a description prescribed in an order made by the Secretary of State for the purposes of section 330(7A) in the form it has effect in England.”
- (e) by inserting the following subsection after subsection 9 —
 

“(9A) But a disclosure which satisfies paragraphs (a) and (b) of subsection (9) is not to be taken as a disclosure to a nominated officer if the person making the disclosure —

  - (a) is a professional legal adviser;
  - (b) makes it for the purpose of obtaining advice about making a disclosure under this section; and
  - (c) does not intend it to be a disclosure under this section.”

**94. Section 331 is modified —**

- (a) by inserting the following subsection after subsection (3) —
 

“(3A) The third condition is —

  - (a) that he knows the identity of the other person mentioned in subsection (2), or the whereabouts of any of the laundered property, in consequence of a disclosure made under section 330,
  - (b) that that other person, or the whereabouts of any of the laundered property, can be identified from the information or other matter mentioned in subsection (3), or
  - (c) that he believes, or it is reasonable to expect him to believe, that the information or other matter will or may assist in identifying that other person or the whereabouts of any of the laundered property.”
- (b) in subsection (4), by replacing the words “Director General of the Serious Organised Crime Agency” with the words “Attorney General”;
- (c) by inserting the following subsection after subsection (5) —

“(5A) The laundered property is the property forming the subject matter of the money laundering that he knows or suspects, or has reasonable grounds for knowing or suspecting, that other person to be engaged in.”

(d) by inserting the following subsection after subsection (6) —

“(6A) Nor does a person commit an offence under this section if —

(a) he knows, or believes on reasonable grounds, that the money laundering is occurring in a particular country or territory outside the Falkland Islands, and

(b) the money laundering —

(i) is not unlawful under the criminal law applying in that country or territory; and

(ii) is not of a description prescribed in an order made by the Secretary of State for the purposes of section 331(6A) of the Act in the form it has effect in England.”

95. Section 332 is modified —

(a) in subsection (1), by replacing the words “section 338” by the words “section 337 or 338”;

(b) by inserting the following subsection after subsection (3) —

“(3A) The third condition is —

(a) that he knows the identity of the other person mentioned in subsection (2), or the whereabouts of any of the laundered property, in consequence of a disclosure made under the application section,

(b) that the other person, or the whereabouts of any of the laundered property, can be identified from the information or other matter mentioned in subsection (3), or

(c) that he believes, or it is reasonable to expect him to believe, that the information or other matter will or may assist in identifying that other person or the whereabouts of any of the laundered property.”;

(c) in subsection (4) by replacing the words “Director General of the Serious Organised Crime Agency” by the words “Attorney General (who may authorise himself for the purposes of this Part)”;

(d) by inserting the following two subsections after subsection (5) —

“(5A) The laundered property is the property forming the subject matter of the money laundering that he knows or suspects that other person to be engaged in.

(5B) The application section is section 337 or, as the case may be, section 338.”;

(e) by inserting the following subsection after subsection (6) —

“(7) Nor does a person commit an offence under this section if —

(a) he knows, or believes on reasonable grounds, that the money laundering is occurring in a particular country or territory outside the Falkland Islands, and

(b) the money laundering —

(i) is not unlawful under the criminal law applying in that country or territory; and

(ii) is not of a description prescribed in an order made by the Secretary of State for the purposes of section 332 for the purposes of section 332 in the form it has effect in England.”

**96.** Section 334 is replaced by —

**“Penalties**

**334.**—(1) A person guilty of an offence under section 337, 328 or 329 is liable on conviction to imprisonment for a term not exceeding 14 years or to a fine of such amount as the court sees fit, or both.

(2) A person guilty of an offence under section 330, 331, 332 or 333 is liable on conviction to imprisonment for a term not exceeding 5 years or to a fine not exceeding the maximum of level 12 on the standard scale, or both.

(3) A person guilty of an offence under section 339A is liable to a fine not exceeding level 5 on the standard scale.”

**97.** Section 335 is modified —

(a) by replacing references to “nominated officer” wherever they occur, with references to “police officer of the rank of inspector or above or to the Collector of Customs”; and

(b) in subsection (7) by replacing all the words appearing after “Good Friday or a day which is a” with the words “public holiday.”.

**98.** Section 336 is replaced with the following —

**“336.—(1)** A nominated officer must not give the appropriate consent unless he makes a disclosure that property is criminal property to the Attorney General or Principal Crown Counsel and one of the following conditions is satisfied —

(a) the Attorney General gives consent to the doing of the act; or

(b) before the end of seven working days starting with the first working day after the nominated officer makes the disclosure, he does not receive notice from the Attorney General that consent to the doing of the act is refused;

(c) before the end of the period referred to in paragraph (b) he receives such a notice but the moratorium period has expired.

(2) A person who is a nominated officer commits an offence if —

(a) in breach of subsection (1) he gives consent to a prohibited act, and

(b) he knows or suspects that the act is a prohibited act.

(3) A person guilty of such an offence is liable on conviction to imprisonment for a term not exceeding five years or to a fine not exceeding level 10 on the standard scale.

(4) The moratorium period is the period of 31 days starting with the day on which the nominated officer is given notice that consent to the doing of the act is refused.

(5) A working day is a day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a public holiday.

(6) References to a prohibited act are to an act mentioned in section 327(1), 328(1) or 329(1) (as the case may be).

(7) A nominated officer is a person nominated to receive disclosures under section 338.”

**99.** Section 337 is modified —

(a) by replacing subsection (4) with —

“(4) The third condition is that the disclosure is made to a police officer of the rank of inspector or above or to a nominated officer as soon as is practicable after the information or other matter comes to the discloser.”;

(b) by the insertion after subsection (4) of —

“(4A) Where a disclosure consists of a disclosure protected under subsection (1) and a disclosure of either or both of —

(a) the identity of the other person mentioned in subsection (3), and

(b) the whereabouts of property forming the subject matter of the money laundering that the discloser knows or suspects, or has reasonable grounds for knowing or suspecting the other person to be engaged in,

the disclosure of the thing mentioned in paragraph (a) or (b) is not to be taken to breach any restriction on the disclosure of information (however imposed)."

**100. Section 338 is modified —**

(a) by replacing subsection (1) with —

"(1) For the purposes of this Part, a disclosure is authorised if —

(a) it is a disclosure to a police officer of the rank of inspector or above or to a nominated officer that property is criminal property, and

(b) the first, second or third condition set out below is satisfied."

(b) by inserting the following subsection after subsection (2) —

"(2A) The second condition is that —

(a) the disclosure is made while the alleged offender is doing the prohibited act,

(b) he began to do the act at a time when, because he did not then know or suspect that the property constituted or represented a person's benefit from criminal conduct, the act was not a prohibited act, and

(c) the disclosure is made on his own initiative and as soon as is practicable after he first knows or suspects that the property constitutes or represents a person's benefit from criminal conduct."

(c) in paragraph (a) of subsection (3) by inserting the word "third" between the word "The" at the commencement of the subsection, and the word "condition".

**101. Section 339 is modified —**

(a) by inserting the following subsections after subsection (1);

"(1A) A person commits an offence if he makes a disclosure under section 330, 331, 332, or 338 otherwise than in the form prescribed under subsection (1) or otherwise than in the manner so prescribed.

(1B) But a person does not commit an offence under subsection (1A) if he has a reasonable excuse for making the disclosure otherwise than in the form prescribed under subsection (1) or (as the case may be) otherwise than in the manner so prescribed.”

(b) by replacing subsections (2) and (3) with —

“(2) The power under subsection (1) to prescribe the form in which a disclosure must be made includes power to provide for the form to include a request to a person making a disclosure that the person provide information specified or described in the form if he has not provided it in making the disclosure.

(3) Where under subsection (2) a request is included in a form prescribed under subsection (1), the form must —

(a) state that there is no obligation to comply with the request, and

(b) explain the protection conferred by subsection (4) on a person who complies with the request.”; and

(c) by omitting subsections (5) and (6).

**102.** The following section is inserted after section 339 —

**“Threshold amounts**

**339A.**—(1) This section applies for the purposes of sections 327(2C), 328(5) and 329(2C).

(2) The threshold amount for acts done by a deposit-taking body in operating an account is £250 unless a higher amount is specified under the following provisions of this section (in which event it is that higher amount).

(3) The Collector of Customs or a police officer of the rank of inspector or above (or a nominated officer), may specify the threshold amount for acts done by a deposit-taking body in operating an account —

(a) when he gives consent, or gives notice refusing consent, to the deposit-taking body’s doing of an act mentioned in section 327(1), 328(1) or 329(1) in opening, or operating, the account or a related account, or

(b) on a request from the deposit-taking body.

(4) Where the threshold amount for acts done in operating an account is specified under subsection (3) or this subsection, the Collector of Customs or a police officer of the rank of inspector or above or a nominated officer may vary the amount (whether on a request from the deposit-taking body or otherwise) by specifying a different amount.



(5) Different threshold amounts may be specified under subsections (3) and (4) for different acts done in operating the same account.

(6) The amount specified under subsection (3) or (4) as the threshold amount for acts done in operating an account must, when specified, not be less than the amount specified in subsection (2).

(7) The Governor may by order vary the amount for the time being specified in subsection (2).

(8) For the purposes of this section, an account is related to another if each is maintained with the same deposit-taking body and there is a person who, in relation to each account, is the person or one of the persons entitled to instruct the body as respects the operation of the account.

(9) The Governor may exercise his powers under subsection (7) by adopting, with such modifications as he sees fit, an order made by the Secretary of State under subsection (7) in the form it has effect in England."

**103. Section 340 is modified —**

(a) by omitting subsection (13); and

(b) by omitting paragraph (b) of subsection (14).

**104. Section 343 is modified —**

(a) by replacing subsection (2) with —

"(2) In relation to an application for the purposes of a confiscation investigation, a judge is the Senior Magistrate;" and

(b) by replacing the words "High Court" in subsection (3) with the words "Supreme Court".

**105. Section 344 is modified —**

(a) by replacing the words "Crown Court" with the words "Magistrate's Court"; and

(b) by replacing the words "High Court" with the words "Supreme Court".

**106. Section 350 is modified —**

(a) by omitting the word "authorised" in subsection (1);

(b) by replacing the words "officer of the department" in subsection (2) with the words "public officer";

(c) by replacing paragraphs (a) and (b) of subsection (5) with —

“(a) the Senior Magistrate, in the case of an order made for the purposes of a confiscation investigation or a money laundering investigation;

(b) a Supreme Court judge, in the case of an order made for the purposes of a civil recovery investigation.”

**107.** Section 351 is modified by replacing subsection (5) with —

“(5) Every application under this section must, except with the leave of the judge, be made by the Attorney General or by a person authorised by him to make the application.”

**108.** Section 352 is modified —

(a) by replacing the words “a constable or an officer of Revenue and Customs” in paragraph (a) of subsection (5) with the words “a police officer of the rank of inspector or above or the Collector of Customs”; and

(b) by replacing the words “a named member of the staff of the Agency” in paragraph (b) of subsection (5) with the words “a public officer named by the Attorney General”.

**109.** Section 353 is modified by replacing subsection (10) with —

“(10) An appropriate person is —

(a) a police officer or a customs officer, if the warrant is sought for the purposes of a confiscation investigation or a money laundering investigation;

(b) a public officer named by the Attorney General, if the warrant is sought for the purposes of a civil recovery investigation.”

**110.** Section 354 is modified by replacing the words “High Court” in subsection (2) with the words “Supreme Court”.

**111.** Section 355 is modified —

(a) by replacing subsection (3) with —

“(3) This subsection applies to the following provisions of the Criminal Justice Ordinance (Title 24.1) —

(a) section 186 (search warrants - safeguards);

(b) section 187 (execution of warrants);

(c) section 192 (access and copying);

(d) section 193 (retention).”;

(b) by omitting subsection (4).

**112.** Section 359 is modified by replacing subsection (4) with —

“(4) A person guilty of an offence under subsection (3) is liable on conviction to imprisonment for a term not exceeding two years or a fine not exceeding level 10 on the standard scale.”

**113.** Section 360 is modified by omitting all words appearing after the words “section 5 of the Perjury Act 1911 (c.6)” in paragraph (c) of subsection (2).

**114.** Section 364 is modified —

(a) in subsection (3) —

(i) by replacing all words appearing in paragraph (d) after the words “allocated to it” with the words “Companies Act 1948 or any corresponding legislation of any country or territory outside the Falkland Islands”.

(ii) by omitting paragraph (e);

(iii) by replacing paragraph (f) with —

“(f) its registered office, and any previous registered offices under the Companies Act 1948 or anything similar under corresponding legislation of any country or territory outside the Falkland Islands;” and

(iv) by replacing all words appearing after “Limited Liability Partnerships Act 2002 (c.12)” with the words “of Great Britain or anything similar under corresponding legislation of any country or territory outside the Falkland Islands.”

(b) in subsection (5) —

(i) by inserting after paragraph (a) —

“(aa) constitutes an offence specified in section 415(1A) of this Act,”; and

(ii) by inserting in paragraph (b), after the words “paragraph (a)”, the words “or (aa)”.

**115.** Section 369 is modified —

(a) by replacing paragraph (a) of subsection (3) with —

“(a) the Attorney General or any public officer named by him;”,

(b) by omitting subsections (5) and (6);

(c) by replacing subsection (7) with —

“(7) Except as provided by paragraph (b) of subsection (3), an application under this section may only be made by the Attorney General or a public officer named by him.”

**116. Section 375 is modified —**

(a) in subsection (2) in the like manner as section 369(3)(a) is modified above; and

(b) by omitting subsections (4) and (5).

**117. Section 377 is modified —**

(a) by replacing paragraphs (a) to (e) of subsection (1) with —

“(a) the Attorney General and persons exercising functions on his behalf;

(b) police officers; and

(c) customs officers.”

(b) by omitting subsections (2) to (5);

(c) by inserting the following subsection after subsection (7) —

“(7A) The code of practice mentioned in subsection (1) shall have effect in the Falkland Islands with such modifications as would apply to it if it were imperial legislation to which section 76 of the Interpretation and General Clauses Ordinance (Title 67.1) applied.”; and

(d) by omitting subsection (9).

**118. Section 378 is modified —**

(a) by replacing subsection (1) with —

“(1) In relation to a confiscation investigation or money laundering investigation these are appropriate officers —

(a) the Attorney General and Principal Crown Counsel;

(b) a police officer of the rank of sergeant or above;

(c) the Collector of Customs; and

(d) any person appointed by the Governor to be an appropriate officer for the purpose of confiscation investigations.”

(b) by replacing subsection (2) with —

“(2) In relation to a confiscation investigation and a money laundering investigation these are senior appropriate officers —

(a) the Attorney General and Principal Crown Counsel;

(b) any police officer of the rank of inspector or above; and

(c) a person appointed by the Governor to be a senior appropriate officer.”; and

(c) by omitting subsections (4) to (7).

**119.** Section 379 is modified —

(a) by replacing the words “Police and Criminal Evidence Act 1984 (c.60)” with the words “for the purposes of Part XII of the Criminal Justice Ordinance (Title 24.1)”; and

(b) by omitting all words having relation to Northern Ireland.

**120.** Sections 380 to 412 (which apply only to Scotland) are omitted.

**121.** Section 417 is replaced by the following —

“**417.**—(1) This section applies if a person is adjudged bankrupt in the Falkland Islands.

(2) The following property is excluded from the property of the bankrupt for the purposes of the Bankruptcy Act 1914 —

(a) property for the time being subject to a restraint order which was made under section 41, 120 or 190 before the order adjudging him bankrupt;

(b) any property in respect of which an order under section 50 or 52 is in force;

(c) any property in respect of which an order under section 128(3) is in force;

(d) any property in respect of which an order under section 198 or 200 is in force.

(3) If in the case of a debtor an interim receiver stands at any time appointed under section 8 of the Bankruptcy Act 1914 and any property of the debtor is then subject to a restraint order

under section 41, 120 or 190 the powers conferred on the receiver by virtue of that Act do not apply to property then subject to the restraint order.”

**122.** Section 418 is modified —

(a) in subsection (3) —

(i) by replacing paragraph (a) with —

“(a) property of the bankrupt for the purposes of the Bankruptcy Act 1914;”,

(ii) by omitting paragraph (b);

(iii) by replacing paragraph (c) with —

“(c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 26(2) of the Bankruptcy Act 1914;”,

(b) in subsection (4) by replacing the words “1986 Act” with the words “Bankruptcy Act 1914”; and

(c) by omitting subsection (5).

**123.** Section 419 is modified —

(a) by replacing the words “sections 339, 340 or 423 of the 1986 Act” in subsections (2) and (3) in each case with the words “section 27, 42 or 44 of the Bankruptcy Act 1914.”; and

(b) by omitting subsection (5).

**124.** Sections 420 to 422 (which relate to Scotland) are omitted.

**125.** Sections 423 to 425 (which relate to Northern Ireland) are omitted.

**126.** Section 426 is modified —

(a) in subsections (1) and (7) by replacing in each case the words “1986 Act” with the words “Companies Act 1948”; and

(b) by omitting subsections (3), (8) and (10).

**127.** Section 427 is modified —

(a) in subsection (1) by replacing the words “1986 Act” with the words “Companies Act 1948”;

(b) subsections (3) and (4) are replaced by —

“(3) No order may be made corresponding with an order which, in England, may be made under section 238, 239 or 423 of the Insolvency Act 1986 (avoidance of certain transactions), or otherwise in relation to that gift at any time when —

(a) any property of the recipient of the tainted gift is subject to a restraint order under section 41, 120 or 190, or

(b) there is in force of such property an order under section 50, 52, 128(3), 198 or 200.

(4) An order corresponding with an order which, in England, may be made under section 238, 239 or 423 of the Insolvency Act 1986, or otherwise, after an order mentioned in subsection (3)(a) or (b) is discharged must take into account any realisation under Part 2 of this Act held by the recipient of the tainted gift.”

**128.** Sections 428 to 429 (which relate to Northern Ireland) are omitted.

**129.** Section 430 is modified —

(a) by replacing subsection (1) with —

“(1) In this section “company” means a company which may be wound up under the Companies Act 1948.”;

(b) by omitting subsection (3);

(c) in subsection (7) by replacing the words “1986 Act or 1989 Order” with the words “Companies Act 1948”; and

(d) by omitting subsection (8).

**130.** Section 431 is modified by replacing the words “1986 Act” in subsection (1) with the words “Bankruptcy Act 1914”.

**131.** Section 432 is modified —

(a) by replacing the words “interim receiving order under section 246” in paragraph (b) of subsection (1), in paragraph (a) of subsection (8) and in paragraph (a) of subsection (9) in each case with the words “a property freezing order made under section 245A or an interim receiving order made under section 246”; and

(b) in subsection (4) by replacing the words “1985 Act, the 1986 Act, the 1989 Order” with the words “the Bankruptcy Act 1914, the Companies Act 1948, any other written law of the Falkland Islands.”.

**132.** Section 433 is modified by —

(a) replacing subsection (2) with the following subsections —

“(2) A person acts as an insolvency practitioner in relation to a company by acting —

(a) as its liquidator, or provisional liquidator, or

(b) as the supervisor of any compromise or arrangement with its creditors approved by it;

(2A) A person acts as an insolvency practitioner in relation to an individual by acting —

(a) as his trustee in bankruptcy or interim receiver of his property;

(b) as trustees under a deed which is a deed of arrangement made for the benefit of his creditors; or

(c) as administrator of the insolvent estate of a deceased person.”

(b) by omitting subsections (4) and (5).

**133.** Section 434 is omitted.

**134.** Section 436 is modified —

(a) in subsection (1) by replacing the words “a permitted person” by the words “a customs officer, police officer, other public officer or the Commissioner of Taxes”,

(b) by omitting subsections (3), (5), (8) and (9).

**135.** Section 437 is modified —

(a) by replacing all references in that section to the Commissioners of Inland Revenue with references to the Commissioner of Taxes;

(b) by replacing all references in that section to “the Commissioners of Customs and Excise” with references to “Collector of Customs”;

(c) in paragraph (a) of subsection (4) by replacing the words “Board of Inland Revenue” with the words “the Taxation Officer”.

**136.** Section 438 is modified —

(a) in subsection (1) —



(i) by the omission of paragraph (e); and

(ii) by replacing paragraph (f) with —

“(f) the exercise by any person of his functions under Chapter 3 of Part 5”;

(b) by replacing subsection (3) with —

“(3) But such information may be disclosed by the Attorney General to —

(a) the Governor;

(b) the Commissioner of Taxation; and

(c) the Collector of Customs.”

(c) by omitting subsection (8).

137. Sections 439 to 441 (which relate to Scotland) are omitted.

138. Section 443 is omitted.

139. Section 444 is modified —

(a) in subsection (1) by replacing the words “Her Majesty” with the words “the Governor”;

(b) in subsection (3) —

(i) by replacing the words “listed persons” in paragraph (a) with the words “Attorney General”; and

(ii) by replacing the words “a court in the part of the United Kingdom” with the words “the court in which”; and

(c) by omitting subsection (4) (inserted by section 108 of the Serious Organised Crime and Police Act 2005);

(d) by adding the following subsection —

“(5) The Governor’s powers under subsection (1) include power to apply, with such modifications as he may think fit, any Order in Council made under section 444(1) in the form that subsection has effect in the United Kingdom.”

140. Section 445 is modified —

(a) in subsection (1) by replacing the words “Her Majesty” with the words “the Governor”;  
and

(b) in subsection (2) by replacing paragraph (b) with —

“(b) provisions about the functions of the Governor, the Attorney General, police officers, customs officers and tax officers.”

**141.** Section 447(8) is modified by replacing the words “in any part of the United Kingdom” in both places they occur, with the words “in the Falkland Islands”.

**142.** Section 448 is replaced by —

“**448.** The Governor may by Order make such provision about tax as he considers necessary or expedient to give better effect in the Falkland Islands to the purposes of the Act and, without prejudice to the generality of the foregoing, may for such purposes make any provision corresponding to provision made in Schedule 10 of the Act in the form it has effect in the United Kingdom.”

**143.** Sections 449 to 451 are omitted.

**144.** Sections 453 to 458 are omitted.

**145.** Schedule 1 is omitted.

**146.** Schedule 2 is modified by replacing references to the provisions of legislation specified in the left hand column of the following table with the provision of the legislation specified opposite it in the right hand column of that table —

**TABLE**

<b>Provision of English law</b>	<b>Corresponding provision of Falkland Islands law</b>
(a) <u>Misuse of Drugs Act 1971 (c.38)</u>	(a) <u>Misuse of Drugs Ordinance (Title 49.3)</u>
(1) section 3	(1) section 3
(2) section 4(2) or (3)	(2) section 4
(3) section 5(3)	(3) section 5(2)
(4) section 8	(4) section 8
(5) section 20	(5) section 18(1)
(b) <u>Customs and Excise Management Act 1979 (c.2)</u>	(b) <u>Customs Ordinance 2003 (No 9 of 2003)</u>
(1) section 50(2) or (3)	(1) section 43(2) or (3)
(2) section 68(2)	(2) section 60
(3) section 170	(3) section 159

(c) Criminal Justice (International Co-operation) Act 1990 (c.5)

(1) section 12

(2) section 19

(d) Firearms Act 1968 (c.27)

(1) section 3(1)

(c) Criminal Justice (International Co-operation) Ordinance (Title 24.2)

(1) section 13

(2) section 19

(d) Firearms and Ammunition Ordinance (Title 23.2)

(1) section 9(1)

147. Schedules 3 to 5 are omitted.

148. Schedule 6 is modified in paragraph 2(4) by omitting the references to Scottish and Northern Irish legislation.

149. Schedules 7 and 8 are omitted.

150. Schedule 9 is modified —

(a) in paragraph 1(1) —

(i) by replacing paragraph (a) with —

“(a) accepting deposits by a person under a licence under the Banking Ordinance (Title 10.1);”

(ii) by omitting sub-paragraphs (b), (c) and (e),

(iii) by replacing the words “15,000 euro” in sub-paragraph (n) with “10,000 pounds”;

(b) in paragraph 1(2) by omitting sub-paragraph (b);

(c) by omitting paragraphs (a) to (d) and (f) of paragraph 2;

(d) by omitting paragraph 3(2) to (6) and (7).

(e) by replacing sub-paragraphs (a) to (g) of paragraph 4(1) with —

“(a) in relation to banks and financial institutions, the Financial Secretary,

(b) in relation to any person carrying on business in the Falkland Islands either on his own account, in partnership or as an employee who is a member of, or subject to the exercise of disciplinary powers by, any body which is a designated professional body for the purposes of Part 20 of the Financial Services and Markets Act 2000 (c.8);

(f) by omitting paragraph 2(2) and (3);

(g) by replacing the words “The Treasury” in paragraph 5 with the words “the Governor”.

151. Schedules 10, 11 and 12 are omitted.

## SCHEDULE 2

### AMENDMENTS

#### *Introduction*

1. The amendments specified in this Schedule shall have effect.

#### *Misuse of Drugs Ordinance (Title 49.3)*

2. Section 24 of the Misuse of Drugs Ordinance (forfeiture) is amended —

(a) in subsection (1) by replacing the words “a drug trafficking offence” as defined in the Drug Trafficking Offences Ordinance section 2(1)” with the words “an offence falling within subsection (3) of this section”; and

(b) by adding the following subsection after subsection (2) —

“(3) An offence falls within this section if it is an offence which is specified in paragraph 1 of Schedule 2 to the Proceeds of Crime Act 2002 (drug trafficking offences”, or so far as it relates to that paragraph, paragraph 10 of that Schedule.”

#### *Part VII of Criminal Justice Ordinance (Title 24.1)*

3. Section 132 of the Criminal Justice Ordinance (rehabilitated persons and spent convictions) is amended by the insertion of the following subsection after subsection (2) —

“(2A) In subsection (2)(a) of this section the reference to a fine or other sum adjudged to be paid by or imposed on a conviction does not include a reference to an amount payable under a confiscation order made under Part 2 of the Proceeds of Crime Act 2002.”.

## SCHEDULE 3

### REPEALS

Short title and Title No	Extent of Repeal
Drug Trafficking Offences Ordinance (Title 49.1)	the whole Ordinance
Criminal Justice (International Co-operation) Ordinance (Title 24.2)	section 16

### OBJECTS AND REASONS

The objects and reasons are as stated in the long title.

Published by the Attorney General's Chambers, Cable Cottage, Stanley, Falkland Islands  
Price: Eight Pounds and Ten Pence

© CrownCopyright 2006



# THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

---

*Vol. 17*

*4<sup>th</sup> October 2006*

*No. 14*

---

The following are published in this Supplement –

**Building Designation (The Cottage, Beaver Island) Order 2006 (S. R. & O. No. 22 of 2006);**

**Coins (No 2) Order 2006 (S. R. & O. No. 23 of 2006);**

**Explanatory Memorandum to Police and Criminal Evidence Bill 2006;**

**Police and Criminal Evidence Bill 2006; and**

**Criminal Appeals Bill 2006.**

---

**SUBSIDIARY LEGISLATION**

---

**PLANNING AND BUILDING**

**Building Designation (The Cottage, Beaver Island) Order 2006**

S. R. & O. No: 22 of 2006

*Made: 28 September 2006*

*Published: 4 October 2006*

*Coming into force: on publication*

IN EXERCISE of my powers under section 65(1) of the Planning Ordinance (Title 55.3) and of all other powers enabling me in that behalf, I make the following Order —

**Citation**

1. This Order may be cited as the Building Designation (The Cottage, Beaver Island) Order 2006.

**Designation**

2. The building specified in the Schedule to this Order is designated as a building of special architectural or historic interest.

**SCHEDULE**

The building known as The Cottage, Beaver Island.

Made this 28<sup>th</sup> day of September 2006

A. E. Huckle,  
Governor

---

**EXPLANATORY NOTE**

*(not forming part of the above Order)*

This Order designates the building known as The Cottage on Beaver Island as a building of special architectural or historic interest. Planning permission is thus required for its demolition, alteration or extension.

---

## SUBSIDIARY LEGISLATION

---

### CURRENCY

#### Coins (No 2) Order 2006

S. R. & O. No: 23 of 2006

*Made:* 30 September 2006

*Published:* 4 October 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 (No 2) 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 the Schedule to this Order are hereby authorised.

(2) The Schedule to this Order shall have effect so as to specify the denomination, fineness, weight, diameter, quality, shape, edge and number of the coins authorised by paragraph (1) of this article, the tolerance or remedy which may be permitted in respect of variations from the standard weight, diameter and fineness of the coins and the design of the obverse and reverse of the coins.

#### **Deemed denomination of Crown coins and their value as legal tender**

3. For all the purposes of the Ordinance —

(a) Cupro-Nickel Crown coins and Sterling Silver Crown coins authorised by this Order shall each be deemed to be of 25 pence denomination;

(b) Gold one fifth Crown coins authorised by this Order shall each be deemed to be of £1 denomination; and

(c) Gold one twenty-fifth Crown coins authorised by this Order shall each be deemed to be of 20 pence denomination,



and all those coins shall be legal tender in the Falkland Islands in the amount of their deemed denomination.

Made this 30<sup>th</sup> day of September 2006

A. E. Huckle  
Governor

### **Schedule**

#### **Specifications of coins of the Falkland Islands to commemorate the lives of six Great Britons**

<b>Type</b>	<b>Cupro-nickel</b>	<b>Silver Proof</b>	<b>Gold Proof</b>	<b>Gold Proof</b>
Denomination	1 Crown	1 Crown	1/5 <sup>th</sup> Crown	1/25 <sup>th</sup> 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	25,000	2,000	20,000
Mint	Pobjoy Mint Ltd			
Remedy	Variations to be allowed of the tolerance permitted by the Pobjoy Mint Ltd.			
Obverse design	The uncouped portrait of Her Majesty the Queen by Ian Rank-Broadley surrounded by the inscription "QUEEN ELIZABETH II FALKLAND ISLANDS" and the date "2006" at bottom.			

- Reverse design (1) Design depicts an image of Sir Winston Churchill framed within the sash of the Order of the Garter. Wording "1874 – WINSTON CHURCHILL – 1965" appears in surround of coin. Denomination appears at bottom.
- Reverse design (2) Design depicts an image of Charles Darwin framed by a border depicting various steps in the Evolution Chain together with a Warrah. The 'Beagle' appears to the right. Wording "1809 – CHARLES DARWIN – 1882" appears in surround of the coin. Denomination appears at bottom.
- Reverse design (3) Design depicts an image of Vice-Admiral Nelson framed by a border inscribed with the famous signal ENGLAND EXPECTS THAT EVERY MAN WILL DO HIS DUTY together with a ship's cannon. The 'Victory' is shown to the left and the Order of Bath to the right. Wording "1758 – HORATIO NELSON – 1805" appears in surround of coin. Denomination appears at bottom.
- Reverse design (4) Design depicts an image of Lord Baden-Powell framed by a border showing images from Scouting together with the scout badge. A scout is shown to the left and a camp site to the right. Wording "1857 – ROBERT BADEN-POWELL – 1941" appears in surround of coin. Denomination appears at bottom.
- Reverse design (5) Design depicts an image of Queen Elizabeth I framed by a border showing heraldic images together with the Tudor Rose. Wording "1533 – QUEEN ELIZABETH I – 1603" appears in surround of coin. Denomination appears at bottom.
- Reverse design (6) Design depicts an image of Isambard Kingdom Brunel with the ss Great Britain in the background. The design framed by a border showing different images associated with him together with the propeller from the Great Britain. Wording "1806 – ISAMBARD KINGDOM BRUNEL – 1859" appears in surround of coin. Denomination appears at bottom.

*This Explanatory Memorandum seeks to explain those provisions of the Bill which appear to require explanation. Those provisions which are self-explanatory are not explained.*

## **EXPLANATORY MEMORANDUM**

### **POLICE AND CRIMINAL EVIDENCE BILL 2006**

#### **1. Introductory**

1.1 The Criminal Justice Ordinance (Title 24.1) contains provisions in Part X, XI, XII and XIII, that is to say sections 150-205 (but excluding sections 194-196) which are modelled on the provisions of the Police and Criminal Evidence Act 1984 ("PACE") as originally enacted in 1984. The Criminal Justice Ordinance came into force on 1<sup>st</sup> January 1990. The provisions based on PACE, as it is commonly known, have not been revised since they were enacted. PACE itself has been the subject of considerable amendment in England and Wales since 1984 and the purposes of the Police and Criminal Evidence Bill 2006 are to re-enact, with considerable amendments, the provisions of Part X to XIII (except sections 194-196) of the Criminal Justice Ordinance and to enact into Falkland Islands law equivalents of provisions relating to criminal evidence which are contained in the Criminal Justice Act 2003 of England and Wales.

1.2 The provisions have been placed in a Police and Criminal Evidence Bill because the Criminal Justice Ordinance is of a considerable length dealing with a wide range of subject matters and it is considered better that it should be split up into a number of Ordinances rather than grow to an enormous size. PACE is an Act of Parliament which was enacted in England to institute a legislative framework as to the powers of police officers in England and Wales to combat crime, as well as providing codes of practice for the exercise of those powers. The purposes of parts X to XIII of the Criminal Justice Ordinance were to institute in a similar legislative frame work consistent with and supplementing the relevant provisions, of Chapter I (Fundamental Rights and Freedoms) of the constitution. Like PACE, the equivalent provisions of the Criminal Justice Ordinance have always aimed to establish a balance between the powers of the police and the rights of members of the public.

1.3 Major amendments to PACE were made in England by the Serious Organised Crime and Police Act 2005. This made major changes to the existing powers of arrest including the category of arrestable offences.

1.4 A failure by the police (and other law enforcement bodies) to adhere to the requirements of PACE and the codes of practice issued can result in the evidence resulting from the breach being found to be "inadmissible": that is to say not to be allowed to be taken into account (in Court) in determining the guilt of the accused.

1.5 There are local codes of practice which were issued in 1989 and 1990 corresponding to some of the codes issued under PACE. These need to be replaced. It is intended that those codes will be replaced as soon as possible after the Bill is enacted and that they will take into account the codes now in force in England and issued under PACE.

## **2 Overview of the Bill**

2.1 The Bill is divided into 2 Parts. Part I (clauses 1 and 2) is introductory. Part II (clauses 3 to 77) deals with Police Powers. Part III (clauses 78 to 129) deals with evidence in criminal proceedings. It would replace (and very much enlarge upon) Part VI of the Criminal Justice Ordinance (Title 24). Part IV of the Bill contains some final provisions, including repeals.

## **3 Part I of the Bill**

3.1 This Part consists of two clauses. Clause 1 provides for the Bill, if enacted, to come into force on such date as may be notified by the Governor by order published in the Gazette and provides for difference days to be so notified for different provisions and different purposes. This will allow the Ordinance to come into effect in stages, if this proves to be necessary. The clause also provides for an order under subclause (2) to make transitional provision in relation to the coming into force of provisions for the Bill.

3.2 Clause 2 of the Bill is an interpretation provision ("a dictionary clause").

## **4 Part II: Police Powers**

4.1 Part II of the Bill, which deals with police powers, is divided into 6 Chapters covering sections 3-77 of the Bill. Chapter 1 deals with police powers to stop and search which are contained in clauses 3-8 of the Bill.

4.2 Clause 3 of the Bill is a provision new to Falkland Islands law which replicates section 1 PACE 1984. It confers power on a police officer to stop and search persons, vehicles etc:-

(a) for stolen or "prohibited articles",

(b) any article in relation to which a person has committed or is committing an offence under section 16 of the Crimes Ordinance (having an article with a blade or point in a public place) and

(c) (or any firework which a person possesses in contravention of a provision imposed by fireworks regulations.

4.3 "Prohibited articles" are offensive weapons and articles which are made or adapted for use in connection with an offence of burglary, theft or of taking a motor vehicle or other conveyance without authority.

4.4 The power conferred on the police officer by clause 3(1) can be exercised (a) in any place to which at the time the public or any section of the public has access, on payment or otherwise either as a right or by virtue of express or implied permission or (b) in any other place which is not a dwelling to which persons have ready access at the time. It is a power to stop and search persons, vehicles etc without a warrant.

4.5 The power is not exercisable unless a police officer exercising it on reasonable grounds suspects that he will find:-

(a) stolen or prohibited articles

(b) an article with a blade or point or

(c) any firework which a person possesses in contravention of a provision of a fireworks regulations.

4.6 Further, if the person the police officer desires to stop or search a person who is in a garden or yard occupied with and used for the purposes of a dwelling, or is on other land occupied and used with a dwelling, the police officer cannot to search that person under the clause unless the police officer has reasonable grounds for believing that the person he desires to search does not live in the dwelling and that he is not in the place in question with the express or implied permission of a person who resides in the dwelling. A similar provision applies in respect of a vehicle which is in a garden or yard occupied and used for the purposes of a dwelling or on other land so occupied and used.

4.7 Clause 4 is also new to Falkland Islands law and corresponds to section 2 PACE 1984. Clause 4 provides that when a police officer has detained a person or vehicle in the exercise of a power conferred by clause 3 he cannot for the exercise of his power of search require a person to remove any article of clothing other than an outer coat, jacket or gloves. Nor has a police officer not in uniform any power to stop a vehicle.

4.8 Clause 4(10) provides that clauses 3 and 4 also apply to vessels, aircraft and hovercraft.

4.9 A duty to make records concerning searches would be imposed by clause 5(1). The duty does not apply to a search under section 27(2) of the Aviation Security Act nor does it apply if it is not practicable to make such a record. The record must be made in writing. If a police officer is required by Clause 5(1) to make a record of a search but it is not practicable to make the record on the spot he is obliged to make it as soon as practicable after the completion of the search. Where the search is one of a person the record of the search must include a note of the person's name, if the police officer knows it, but the police officer does not have power to detain a person to find out his name. If he does not know the person's name, clause 5(4) requires the police officer to include in the record notes describing that person. The record of a search of a vehicle is to include a note describing the vehicle. The record of a search of a person or vehicle must (clause 5(6)) state the object of the search, the grounds for making it, the date and time when it was made, the place where it was made, whether anything and if so what was found, whether any, and if so what, injury to a person or damage to property appears to the police officer to have resulted from the search and lastly, must identify the police officer making it. Requirements imposed by clause 5 with regard to records of searches of vehicles also to apply to vessels, aircraft and hovercraft (clause 5(10)).

4.10 Clause 6 makes provision in relation to road checks conducted by police officers for the purpose of ascertaining whether a vehicle is carrying a person who is committing an offence other than a road traffic offence or a vehicle tax offence, a person who is witness to such an offence, a person intending to commit such an offence or a person who is unlawfully at large. "Road check" is defined by clause 6(2). Under clause 6(3) a road check could only be carried

out if a police officer of the rank of an Inspector or above authorises it in writing. The purpose of the road check is to discover whether a vehicle is carrying a person who has committed an offence other than a road traffic offence or a vehicle tax offence. A road check can only be authorised if the police officer authorising it has reasonable grounds for believing that the offence is a serious arrestable offence and for suspecting that the person is, or is about to be, in the locality in which vehicles would be stopped if the road check were authorised. The clause also extends to enable the police to conduct road checks to find witnesses to a serious arrestable offence, persons intending to commit such an offence and persons who are unlawfully at large (e.g. an escaped prisoner). In the circumstances of the Falkland Islands the provisions of clause 6 are likely very rarely to be used. Nevertheless, they are necessary.

4.11 Clause 8 of the Bill deals with police stop and search powers at airports. As the footnote to the clause indicates, the provisions of the clause are directed at theft and not at airport security.

4.12 Chapter 2 of the Bill (clauses 9-24) would re-enact, with some amendments, the corresponding provisions (sections 179-197) of the Criminal Justice Ordinance. These clauses deal with the police powers of entry search and seizure.

4.13 Clause 9 contains the expressions "items subject to legal privilege", "excluded material" and "special procedure material". These expressions are defined and are explained in paragraphs 4.13 and 4.15.

4.14 Under clause 25 a police officer may arrest without a warrant:-

(a) anyone who is about to commit an offence;

(b) anyone who is in the act of committing an offence;

(c) anyone whom he has reasonable grounds for suspecting to be about to commit an offence;

(d) any one whom he has reasonable grounds to be suspecting to be committing an offence (see clause 25(1)). If a police officer has reasonable grounds for suspecting that an offence has been committed he has power to arrest without warrant any one he has reasonable grounds to suspect of being guilty of it and, under clause 25(3), if an offence is being committed, a police officer may arrest without a warrant —

(i) anyone who is guilty of the offence, and

(ii) anyone whom he has reasonable grounds for suspecting to be guilty of it. Nonetheless a police officer cannot exercise a power of arrest under clause 25 except for one of the reasons specified in clause 25(5).

4.15 Returning to clause 9, "items subject to legal privilege" are defined in clause 11. The terms of clause 11 are self-explanatory. "Excluded material" is defined in clause 12. That clause is also believed to be self-explanatory.

4.16 Clause 9(1)(d), as stated above, provides that a justice of the peace cannot issue a search warrant in respect of material which consists of or includes items subject to legal privilege, excluded material or special procedure material.

4.17 "Special procedure material" is material other than items subject to legal privilege and "excluded material" is material in the possession of a person who acquired or created it in the course of any trade, business profession or other occupation, or for the purpose of any paid or unpaid office and holds it subject to an express or implied undertaking to hold it in confidence or to a restriction or obligation such as a restriction on disclosure or an obligation of secrecy contained in any enactment including an enactment passed after the Bill is enacted. "Personal records" and "journalistic material" (which are categories of "excluded material") are defined in clauses 13 and 14 respectively.

4.18 Where a police officer wishes to obtain access to "excluded material" or "special procedure material", instead of applying to a Justice of the Peace for a search warrant he must, under clause 10, make application to and obtain an order by a Judge of the Supreme Court or the Senior Magistrate in either case under and in accordance with Schedule 1 to the Bill. This Schedule contains a number of conditions and requirements which the police must satisfy before they can obtain an order or warrant from a Judge of the Supreme Court or the Senior Magistrate so as to obtain access to the material. It has not so far been necessary to make any application for access under the provisions of the Criminal Justice Ordinance which would be replaced by clause 10 and Schedule 1 to the Bill.

4.19 Clauses 16 and 17 of the Bill contain a number of safeguards in relation to the issue to police officers of warrants to enter and search premises. The clauses are believed to be self-explanatory.

4.20 Under clause 18 a police officer has power to enter and search any premises for the purpose of executing a warrant of arrest or a warrant of commitment to prison. He also has power to do so for the purpose of arresting a person for a recordable offence, for the purpose of re-capturing a person who is unlawfully at large and whom he is pursuing or for the purpose of saving life or limb or preventing serious damage to property. Except for the purpose of saving life or limb or preventing serious damage to property, the powers of entry and search conferred by clause 18 will only be exercisable if the police officer has reasonable grounds for believing that the person whom he is seeking is on the premises. Where premises consist of two or more separate dwellings, the police officer's powers of entry and search are restricted to the common parts (e.g. entrance hall and stairs) and any dwelling within the premises in which the police officer has reasonable grounds for believing that the person whom he is seeking may be.

4.21 When a person has been arrested for a recordable offence a police officer may under clause 19(1) enter and search any premises occupied or controlled by that person. He may only do so, however, if he has reasonable grounds for suspecting that there is on the premises

evidence, other than items subject to legal privilege, which relates to that offence or to some other arrestable offence which is connected or similar to that offence. The power to search conferred is only a power to search to the extent that is reasonably required for the purpose of discovering the evidence and, in any case, if the arrested person has already been taken to a police station or released upon bail a police officer can only exercise the power of search with the authority in writing of an officer of a rank of Inspector or above.

4.22 Clause 20 confers a general power of seizure upon police officers. Under it a police officer who is lawfully on any premises may seize anything which is on the premises if he has reasonable grounds for believing —

(a) that it has been obtained in consequence of the commission of an offence; and

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

4.23 A police officer lawfully upon premises may also seize anything which is on the premises if he has reasonable grounds for believing —

(a) that it is evidence in relation to an offence which he is investigating or any other offence; and

(b) that it is necessary to seize it in order to prevent the evidence being concealed, lost, altered or destroyed.

4.24 Clause 20(4) confers powers on a police officer to require information which is contained in a computer and which is accessible from the premises to be produced in a form in which it can be taken away if he has reasonable grounds for believing that it is evidence in relation to an offence which is investigating or any other offence or that it has been obtained in consequence of the commission of an offence and, in any case, that it is necessary to do so in order to prevent it being concealed, lost, tampered with or destroyed. The police officer does not however under clause 20 or any other enactment have power to seize an item which he has reasonable grounds for believing to be subject to legal privilege.

4.25 Clause 21(1) extends the power of seizure conferred by an enactment mentioned in clause 21(2) so as to enable a police officer who has entered premises in the exercise of such a power to require any information contained in a computer and accessible from the premises to be produced in the form in which it can be taken away and which is visible and legible. The provisions to which clause 21(1) applies include clauses 9 and 19 and paragraph 13 of Schedule 1 to the Bill.

4.26 Clause 22(1) and (2) read together require a police officer who seizes anything in the exercise of a power conferred by an enactment to provide the occupier of the premises on which the thing was seized or the person who shows himself to have had custody or control of it immediately before the seizure with a record of what the police officer seized within a reasonable time from the making of the request for that record.



4.27 Subject to clause 22(8), a person who had custody or control of the thing seized immediately before it was seized or someone acting on his behalf is entitled under clause 22(3) to access to anything which has been seized by a police officer and is retained by the police for the purpose of investigating an offence. The officer in charge of the investigation is obliged to allow the person who makes the request to have access to the thing in question under the supervision of a police officer. Clause 22(4) makes similar provision in relation to request for photograph or copy of a thing which has been seized, when the photograph or copy must be supplied within a reasonable time of the request for it. However under clause 22(8) there is no duty under clause 22 to grant access to, or to supply a photograph or copy of, anything if the officer in charge of the investigation for the purposes of which it was seized has reasonable grounds for believing that to do so would prejudice:-

- (a) the investigation;
- (b) the investigation of an offence other than the offence for the purpose of investigating which the thing was seized; or
- (c) any criminal proceedings which may be brought as a result of:-
  - (i) the investigation of which the officer is in charge or
  - (ii) the investigation of any other offence.

4.28 Clause 23 confers a power on a police officer who has seized anything or has taken it away following a requirement made by a police officer by virtue of clause 20 or 21 to retain the thing seized or taken away so long as is necessary in all the circumstances. Clause 23(3) and (4) contain exceptions to the police officer's right to retain things seized or taken away.

4.29 Clause 24 defines the meaning of "premises" and "off-shore installation".

4.30 Chapter 3 of Part II (clauses 25-37) deals with police officers' powers of arrest.

4.31 Clause 25(1), (2) and (3) set out the circumstances in which a police officer may arrest a person without a warrant. These powers are, by virtue of clause 25(4) and (5), exercisable only if the police officer has reasonable grounds for believing that for any of the reasons mentioned in clause 25(5) it is necessary to arrest the person in question. It therefore follows that even where the power of arrest arises under clause 25(1), (2) or (3) the power cannot lawfully be exercised unless for one of the reasons set out in clause 25(5) it is necessary to do so.

4.32 The powers of persons other than police officers to arrest without a warrant are set out in clause 26.

4.33 Clause 27 renders of no effect powers of arrest without a warrant or court order conferred by legislation passed before 1 January 1990.

4.34 Clause 28 provides that only such force may be used by a person in making an arrest as is reasonable in the circumstances in the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large. Under clause 29(1) when the person is arrested otherwise than on being informed that he is under arrest, he must be told as soon as is practicable after the arrest that he is under arrest, otherwise the arrest is not lawful. Clause 29(2) provides that where the person is arrested by a police officer, clause 29(1) applies whether or not the fact of the arrest is obvious. Except where a person has escaped from arrest before the information can be given, clause 29(3) would require that a person arrested is informed of the ground for the arrest at the time, or as soon as is practicable after, the arrest and where the person is arrested by a police officer clause 29(4) has the effect that clause 29(3) applies regardless of whether the ground for the arrest is obvious.

4.35 If:-

- (a) a person attends voluntarily at a police station or any other place where a police officer is present or
- (b) accompanies a police officer to a police station or any such other place without having been arrested,

clause 30 has the effect that:-

- (a) the person concerned is entitled to leave at will, unless he is placed under arrest, and
- (b) that he must be informed at once that he is under arrest if a decision is taken by a police officer to prevent him from leaving at will.

4.36 If a person is arrested or taken into custody by a police officer after being arrested by a person other than a police officer, clause 31(1), read with clause 31(2), would require that the person arrested must be taken by a police officer to a police station as soon as practicable after the arrest (but this provision has effect subject to clause 32 (which relates to release on bail) and clause 31(5) (which provides for release without bail)). In any case, clause 31(2) does not, by virtue of clause 31(4) apply where the arrested person is a member of Her Majesty's armed forces who has been arrested by a member of the joint services police for an offence in respect of which the courts of the Falkland Islands do not have jurisdiction to try him and he is taken by the police officer to a place in the occupation of Her Majesty's armed forces set aside for keeping in custody a member of those forces who are under arrest.

4.37 Clause 31(5) and (6), read together require that a person arrested by a police officer at any place other than the police station must be released without bail if, before the person arrested reaches a police station, a police officer is satisfied that there are no grounds for keeping him under arrest or releasing him on bail under clause 32.

4.38 Clause 31(8) provides that the requirement under clause 31(2) for a person who is arrested to be taken by a police officer to a police station as soon as practicable after the arrest does not apply if the presence of the person at a place other than a police station is necessary in

order to carry out such investigations as is reasonable to carry out immediately. However under clause 31(10) where there is such delay the reasons for the delay must be recorded when the person first arrives at the police station or is released on bail.

4.39 Clause 32 deals with the grant of bail to a person arrested elsewhere than at a police station. Clause 32(2) enables a person arrested elsewhere than at a police station to be released on bail under clause 32(1) at any time before he arrives at a police station. A person so released must be required to attend a police station and no other requirement may be imposed on the person as a condition of the bail.

4.40 Clause 33 provides for the giving of a notice in writing to a person who is granted bail under clause 32 and specifies the contents of such a notice.

4.41 Clauses 34 and 35 are supplemental to clauses 32 and 33 and do not appear to require explanation.

4.42 Clause 36 provides for the further arrest, for another offence, of a person who is under arrest for an offence at a police station.

4.43 Clause 37 confers power on a police officer to search an arrested person in any case where the person arrested has been arrested at a place other than a police station provided that the police officer has reasonable grounds for believing that the arrested person may present a danger to himself or others. Under clause 37(2), and subject to clause 37(3)(2)(5) a police officer also has powers in any such case:-

- (a) to search the arrested person for anything which he might use to assist him to escape from lawful custody or which might be evidence relating to an offence, and

- (b) to enter and search any premises in which the person was when he was arrested or immediately before he was arrested for evidence relating to the offence for which he has been arrested.

4.44 Under clause 37(3) the power to search is only a power to search to the extent that it is reasonably required for the purpose of discovering anything which might assist the person arrested to escape from lawful custody or which might be evidence relating to an offence and under sub-clause (4) those powers are not to be construed as authorising a police officer to require a person to remove any of his clothing in public other than an outer coat, jacket or gloves.

4.45 Clause 37(5) prohibits a police officer from searching a person for anything which he might use to assist him to escape from lawful custody or which might be evidence relating to an offence unless he has reasonable grounds for believing that the person to be searched may have concealed on himself anything which might fall into either of those two categories. Nor has the police officer power under clause 37(2)(b) power to enter and search premises in which a person was when arrested or immediately before he was arrested unless the police officer has reasonable grounds for believing there is evidence on the premises for which a search is permitted under that paragraph. When the power for searching premises conferred by clause 37(2)(b) relates to

premises consisting of two or more separate dwellings, it is limited to a power to search any dwelling in which the arrest took place or in which the person arrested was immediately before his arrest and a power to search any parts of the premises which the occupier of any such dwelling uses in common with the occupiers of any other dwellings contained in the premises.

4.46 A police officer searching a person under clause 37(1) has under clause 37(8) power to seize and retain anything he finds which he has reasonable grounds for believing that the person searched might use to cause physical injury to himself or any other person.

4.47 Chapter 4 (clauses 38-59) deals with detention by the police.

4.48 Clause 38(1) prohibits the police from keeping anybody in police detention in accept in accordance with the provisions of chapter 4. Clause 38(2) requires “the responsible officer” to order the immediate release from custody of a person being detained by the police if the responsible officer become aware that the grounds for the detention of that person have ceased to apply and he is not aware of any other grounds on which the continued detention of that person could be justified under the provisions of chapter 4. However, a person who appears to the responsible office to have been unlawfully at large when he was arrested is not to be released under clause 38(2). A person who is released under clause 38(2) must be released without bail unless there is need for further investigation of any matter in connection with which he was detained at any time during the period of his detention or proceedings may be taken against him in respect of any such matter. If those circumstances apply the person is to be released on bail.

4.49 Clause 39 defines “responsible officer”.

4.50 Clause 40 is a lengthy one. Under clause 40(2) where a person is arrested for an offence and brought to a police station or returns to a police station in accordance with a condition of police bail, it is the duty of the responsible officer to decide whether there is sufficient evidence to charge the person with the offence for which he was arrested. He can detain the person at the police station (subject to the provisions of the Bill) for such a period as is necessary to enable him to decide whether he has sufficient evidence. If the responsible officer decides that he does not have sufficient evidence to charge the person for the offence for which he was arrested, that person must be released either on bail or without bail, unless the responsible officer has reasonable grounds for believing that the persons detention without being charged is necessary:-

(a) to secure or preserve evidence relating to an offence for which he is under arrest or

(b) to obtain such evidence by questioning him, when, if the responsible officer has reasonable grounds for so believing, he may authorise the arrested person to be kept in police detention.

4.51 Where the responsible officer authorises a person who has not been charged to be kept in police detention he is obliged under clause 40(4), as soon as is practicable to make a written record of the grounds for the detention. Under clause 40(5) that record must be made in the presence of the person arrested except that clause 45(6) provides exceptions if the person detained is:-

- (a) incapable of understanding what is said to him;
- (b) violent or likely to become violent; or
- (c) in urgent need of medical attention.

4.52 If the responsible officer decides that he has before him sufficient evidence to charge the person arrested for the offence for which he was arrested then the responsible officer must decide to take one of the following courses:-

- (a) to release the person arrested without charge and on bail to enable the Attorney General to make a decision under clause 42 or
- (b) to release the person without charge and on bail but not for that purpose;
- (c) to release the person without charge and without bail, or
- (d) to charge the person.

4.53 Where a person is released without charge and on bail for the purpose of enabling the Attorney General to make a decision under clause 42, the responsible officer must inform him that he is being released for this reason. If a person is released without charge and on bail for any other reason or is released without charge and without bail and, in either case, at the time of his release a decision whether he should be prosecuted for the offence for which he was arrested has not been taken, it is the duty of the responsible officer so to inform him that that is the case.

4.54 If the arrested person is not in a fit state to be charged or released clause 40(11) would enable him to be kept in police detention until he is. The responsible officer's duty under clause 40(1) to decide whether he has sufficient evidence to charge an arrested person with the offence for which he was arrested is required by clause 40(12) to be carried out by the responsible officer as soon as practicable after the person arrested arrives at the police station or, in the case of a person arrested at the police station, as soon as practicable after the arrest.

4.55 Where the arrested person is a juvenile, the responsible officer will be under a duty under clause 40(13) to take such steps as are practicable to ascertain the identity of a person responsible for the welfare of the juvenile and, if he succeeds in doing so and it is practicable to do so he must tell that person as soon as practicable if at the time of the juvenile's release a decision as to whether the juvenile should be prosecuted has not been taken.

4.56 Further provision in relation to person released without charge and on bail for the purpose of enabling the Attorney General to make a decision under clause 42 is made by clauses 43 and 44. Where a person is released on bail for the purpose of enabling the Attorney General to take a decision an officer involved in the investigation of the offence must send to the Attorney General such information as may be specified in guidance given by the Attorney General under clause 41. The Attorney General is then to decide whether there is sufficient evidence to charge the person

with an offence and, if so, with what offence, or whether he should be given a caution and to give written notice of his decision to an officer involved in the investigation of the offence.

4.57 If the Attorney General's decision under clause 42 is that there is not sufficient evidence to charge the person with an offence, or that there is sufficient evidence to charge the person with an offence but that the person should not be charged with an offence or given a caution in respect of an offence, a responsible officer is to give the person concerned notice in writing that he is not to be prosecuted. However if the decision of the Attorney General is that the person should be charged with an offence, or given a caution in respect of an offence, the person is to be charged or cautioned by the police accordingly except that if the Attorney General's decision is that the person should be given a caution in respect of the offence, and it proves not to be possible to give the person such a caution, the person is to be charged with the offence. (It will not be possible to give a person a caution in respect of the offence unless he is prepared to admit that he has committed the offence).

4.58 Clause 45 deals with the question of whether a person charged with an offence is or is not to be granted bail. The clause provides that it does not apply where the person arrested was arrested under a warrant endorsed for bail because, in such a case, the police are obliged after charging the person to release him on bail. In any other case the responsible officer must order the release of the arrested person either on bail or without bail unless one or other or more of the six requirements of clause 45(1)(a) is satisfied or, in the case of a juvenile, the responsible officer has reasonable grounds for believing that he ought to be detained in his own interests.

4.59 Where the release of a person arrested is not required by clause 45(1) the responsible officer may under clause 45(2) authorise him to be kept in police detention and, if he does so, he is obliged under clause 45(3) to make a written record of the grounds for the detention as soon as practicable and to make that record in the presence of the person charged who shall at that time be informed by the responsible officer of the grounds for his detention unless at the time when the written record is made, the person charged is:-

- (a) incapable of understanding what is said to him;
- (b) violent or likely to become violent, or
- (c) in urgent need of medical attention.

4.60 Clause 46 deals with the duties of the responsible officer in relation to persons detained and is believed to be self explanatory.

4.61 Periodical reviews of the detention of each person in police detention in connection with the investigation of an offence are required by clause 47(1). The review is to be carried out by the "review officer" who is the chief police officer or such other police officer as may have been designated by the chief police officer and who is of at least the rank of sergeant. Subject to the provisions of subclause (4), which allows a review to be postponed in certain circumstances:-

(a) the first review is to be carried out not later than 6 hours after the detention was first authorised;

(b) the second review is to be carried out not later than 9 hours after the first;

(c) subsequent reviews are to be carried out at intervals of not more than 9 hours.

4.62 A review may be postponed under subclause (4) if:-

(a) having regard to all the circumstances prevailing at the latest time for it specified in subclause (3) if, it is not practicable to carry out the review at that time;

(b) if at that time that person in detention is being questioned by a police officer and the responsible officer is satisfied that an interruption of the questioning for the purpose of carrying out the review would prejudice the investigation in connection with which the person is being questioned, or

(c) if at that time no review officer is readily available.

4.63 Where a review is postponed under subclause (4) it is required by subclause (5) to be carried out as soon as practicable after the latest time specified in subclause (3). The fact that a review was postponed does not affect any requirement of clause 47 as to the time at which any subsequent review is to be carried out (clause 47(6)).

4.64 Clause 47(12) requires the responsible officer, before determining whether to authorise a person's continued detention to give that person (unless he is asleep) or any legal practitioner representing him who is available at the time of the review, an opportunity to make representations to him about the detentions. Those representations may be made either orally or in writing but the responsible officer may refuse to hear oral representations from the person whose detention is under review if he considers that he is unfit to make such representations by reason of his condition or behaviour.

4.65 Clause 48 makes provision for review hearings to be conducted by telephone.

4.66 Limits on the period a person may be detained by the police without charge are laid down by clause 49. Subject to clauses 50 and 51 clause 49(1) provides that a person shall not be kept in police detention for more than 24 hours without being charged. Special provision is made by the clause in relation to persons who are admitted to hospital while under arrest or who are arrested outside Stanley. Subject to those provisions a person must be released at the expiry of 24 hours from the time from which that period is to be calculated under the clause ("the relevant time") unless his extended detention has been authorised or is otherwise permitted in accordance with clauses 51, 52 or 53.

4.67 Under clause 50(1) the chief police officer can authorise the keeping of a person in police detention for a period expiring at or before 36 hours after the relevant time. He can only authorise such further detention if he has reasonable grounds for believing that:-

(a) the detention of that person without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him and

(b) the investigation is being conducted diligently and expeditiously.

4.68 Where the chief police officer authorises the keeping of a person in police detention for an extended period he must inform the person of the grounds for his continued detention and record those grounds in that person's custody record. Before determining whether to authorise the keeping of a person in continued detention, the police officer must give that person or any illegal practitioner representing him who is available at the time an opportunity to make representations to him about the detention. Those representations may be made either orally or in writing but the chief police officer may refuse to hear all representations from the person in detention if he considers that he is unfit to make representations by reason of his condition or behaviour. Where the chief police officer authorises the further keeping of a person in detention and that person has not yet exercised a right conferred on him by clause 64 (right to have someone informed when arrested) or 65 (access to legal advice) the chief police officer is to inform him of that right, permit him to exercise that right if he wishes to do so and to record in his custody record the time at which he was informed of the right, whether or not he exercised that right, and if he exercised that right, the time at which he exercised it.

4.69 Clause 51 enables a court of summary jurisdiction (i.e. the Summary Court or the Magistrate's Court) on application made on oath by a police officer to issue a warrant of further detention authorising the keeping of the person to whom the warrant relates in the detention of the police for a further period. The court cannot issue the warrant unless it is satisfied that there are reasonable grounds for believing that the further detention is justified. The court cannot hear an application for a warrant of further detention unless the person to whom the application relates has been furnished with a copy of the court process initiating the application and has been brought before the court for the hearing. The person to whom the application relates is entitled to legal representation at the hearing and if he is not so represented, but wishes to be so represented, the court is obliged to adjourn the hearing to enable him to obtain representation. He may be kept in police detention during the adjournment.

4.70 A person's further detention can only be authorised for the purposes of clause 51 or 52 if:-

(a) his detention without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him; and

(b) the investigation is being conducted diligently and expeditiously.

4.71 An application for a warrant of further detention may be made before the expiration of 36 hours before the relevant time or in a case where:-

(a) it is not practicable for the court of summary jurisdiction to which the application will be made to sit before the expiry of 36 hours after the relevant time, but



(b) the court will sit during the 6 hours following the end of that period,

at any time before the expiry of that 6 hours. If an application for a warrant of further detention is made after the expiry of 36 hours after the relevant time and the court believes that it would have been reasonable for the police to make it before the expiry of that period, the court must dismiss the application.

4.72 If the court grants the application, the warrant for the detention shall authorise such period not exceeding 36 hours of further detention from the “relevant time” as the court thinks fit having regard to the evidence before it. Where a warrant of further detention is issued, the person to whom it relates shall be released from police detention, either on bail or without bail, upon or before the expiry of the warrant unless he is charged (clause 51(15)).

4.73 A warrant of further detention can, however, be further extended by a court of summary jurisdiction under clause 52 and may be so extended for a period not longer than 48 hours stated in the further warrant.

4.74 Clause 54(1) requires that where a person is charged with an offence and after being charged is kept in police detention he must be brought before a court of summary jurisdiction. The period before which he must be brought before a court is, under clause 54(2) to be not later than 24 hours from the time at which he was charged unless that time would expire on a Saturday, Sunday or Public Holiday in which case the person concerned is to be brought before a court not later than the earliest convenient time on which he can be brought before a court on the first day following the day on which he was charged which is not a Saturday, Sunday or Public Holiday but nothing in clause 54 requires a person who is in hospital to be brought before a court if he is not well enough.

4.75 Under clause 55(1), a police officer has power to arrest without a warrant any person who, having been released on bail subject to a duty to attend at a police station, fails to attend at that police station at the time appointed for him to do so. The person so arrested must be taken to that police station as soon as practicable after the arrest.

4.76 Clause 56 would make provision for the granting of bail by the police.

4.77 Chapter 5 (clauses 60-76) of Part II relates to questioning and treatment of persons by the police. Clause 60 provides for the continued abolition of certain powers created before 1 January 1990 of police officers to search persons and the abolition of any rule of common law which would authorise such a search. Clause 61 requires that the responsible officer is to ascertain everything which a person has with him when he is brought to the police station after being arrested elsewhere or after being committed to custody by order or sentence of the court or arrested or detained at the police station. The responsible officer has power under clause 61(4) to seize and retain any such thing or cause such thing to be seized and retained but there are restrictions under clause 61(5) on the seizure of clothes and personal effects. When anything is seized the person from whom it is seized must be told the reason for the seizure unless he is violent or likely to become violent or incapable of understanding what is said to him. The person may be searched if the responsible officer considers it necessary to enable him to carry out his

duties under the clause. A person who is in custody at a police station or who is in police detention otherwise than in a police station may at any time be searched in order to find out whether he has with him anything which he could use for the purposes specified in clause 61(5)(a):-

- (a) to injure himself,
- (b) to damage property,
- (c) to interfere with evidence, or
- (d) to assist him to escape.

4.78 An intimate search cannot be conducted under the clause and the police officer carrying out any search must be of the same sex as the person searched.

4.79 Clause 62 makes provision for searches and examination of a person to find out his identity.

4.80 Clause 63 relates to intimate searches.

4.81 "Intimate search" is defined by clause 75(1) as meaning a search which consists of the physical examination of a person's body orifices other than the mouth. A police officer could not carry out an intimate search unless it has been authorised by the chief police officer under clause 63(1). The circumstances in which the chief police officer could grant such authorisation are that he has reasonable grounds for believing:-

(a) that a person who has been arrested and is in police detention may have concealed on him anything which:-

- (i) he could use to cause physical injury to himself or others; and
- (ii) he might so use it while he is in police detention or the custody of the court or

(b) that such a person:-

- (i) may have a Class A drug concealed on him;
- (ii) was in possession of it with the appropriate criminal intent before his arrest.

4.82 "The appropriate criminal intent" is defined in clause 63(17). The chief police officer cannot authorise an intimate search of a person unless he has reasonable grounds for believing that the thing in question cannot be found without his being intimately searched. The chief police officer's authorisation can be given orally or in writing but, if he gives it orally, he must confirm it in writing as soon as possible. An intimate search which is only a drug offence search must be by way of examination by a registered medical practitioner or a registered nurse and

every intimate search must be by way of examination by a registered medical practitioner or a registered nurse unless the chief police officer considers that that is not practicable, when the intimate search in question may be carried out by a police officer of the same sex as the person being searched.

4.83 An intimate search can only be carried out at a police station, at a hospital or at some other place used for medical purposes. An intimate search which is only a drug offence search cannot be carried at a police station. If an intimate search of a person is carried out, the custody record relating to him must state which parts of his body were searched and why they were searched. The responsible officer can seize and retain anything which is found on an intimate search of a person or cause anything such thing to be seized and retained if he believes that the person from whom it was seized may use it:-

- (a) to cause harm to himself or any other person,
- (b) to damage property;
- (c) to interfere with evidence; or
- (d) to assist him to escape.

4.84 The responsible officer may also seize and retain anything found on an intimate search which he has reasonable grounds to believe may be evidence relating to an offence.

4.88 Clause 64(1) confers a right on a person who has been arrested and is being held in custody in a police station or other premises to have one friend, relative or other person who is known to him, or who is likely to take an interest in his welfare told, as soon as is practical except to the extent that delay is permitted by clause 64, that the person has been arrested and is being detained there. Under clause 64(2) delay in informing the friend, relative or other person is only permitted if an officer of at least the rank of inspector authorises it and then only in the case of a person who is in police detention for an offence for which a person of 21 years or over may be imprisoned for 2 years or more. In any case the person in custody must be permitted to exercise the right within 36 hours from the relevant time. Delay can in any case only be authorised if the officer authorising the delay has reasonable grounds for believing that telling the named person of the arrest:-

- (a) will lead to interference with or harm to evidence connected with the offence or interference with or physical injury to another person,
- (b) will lead to the alerting of another person suspected of having committed such an offence but not yet arrested for it; or
- (c) will hinder the recovery of any property obtained as the result of such an offence.

4.89 The officer is also permitted to authorise delay where he has reasonable grounds for believing:-

(a) the person detained for the offence has benefited from his criminal conduct, and

(b) the recovery of the value of the property constituting the benefit will be hindered by telling the named person of the arrest. If a delay is authorised by the chief police officer, the detained person must be told of the reason for the delay which must be noted in his custody record.

4.90 Clause 65 confers a right of access to legal advice and clause 65(1) states the general principle that a person arrested and held in custody in a police station or other premises shall be entitled, if he so requests, to consult a legal practitioner privately at any time. A request to consult a legal practitioner, and the time at which it was made, must be recorded in the custody record unless it is made at a time while he is at court after being charged with an offence. If a person makes such a request he must be permitted to consult a legal practitioner as soon as is practicable except to the extent that delay is permitted by clause 65. In any case he must be permitted to consult a legal practitioner within 36 hours from the relevant time. Delay in compliance with a request is only permitted if the chief police officer authorises it. The chief police officer may only authorise delay where:-

(a) he has reasonable grounds for believing that the exercise of the right at the time when the person detained desires it will lead with interference with or harm to evidence connected with the offence or interference with or physical injury to another person,

(b) it will lead to the alerting of another person suspected of having committed such an offence but not yet arrested for it; or

(c) it will hinder the recovery of any property obtained as a result of such an offence

(d) he has reasonable grounds for believing that:-

(i) the person detained for the offence has benefited from his criminal conduct, and

(ii) the recovery of the property constituting the benefit will be hindered by the exercise of the right. If a delay is authorised the detained person must be told the reason for it and that reason shall be noted in his custody record.

4.91 Clause 66 will require the Governor to issue a Code of Practice in connection with the tape recording of interviews and to give effect to that Code of Practice by an Order.

4.92 Clause 67 would confer power on the Governor similarly to make a code in relation to the visual recording of interviews of persons suspected of a criminal offence.

4.93 Clause 68 prohibits a persons fingerprints being taken, subject to the provisions of the clause, without the appropriate consent. "The appropriate consent" is defined in clause 77, since that phrase recurs in a number of provisions in Chapter 5 of part II of the Bill. Clause 68(3), (4), (6), (9) and (10) contain exceptions to the need to have "the appropriate consent" to the taking of

fingerprints. Clause 76 makes provision in relation to the taking of fingerprints without any need for consent of certain convicted persons whose fingerprints have not previously been taken.

4.94 Clause 69 relates to the taking of “intimate samples”. “Intimate samples” is defined by clause 75 as meaning:-

- (a) sample of blood, semen or any other tissue, fluid, urine or public hair;
- (b) a dental impression; and
- (c) a swab taken from a persons body orifice other than the mouth.

4.95 Clause 69 provides that subject to clause 72 an intimate sample may be taken from a person in police detention only:-

- (a) if a police officer or at least the rank of inspector authorises it to be taken; and
- (b) if the appropriate consent is given.

4.96 Clause 69(2) makes provision for the taking of an intimate sample from a person who is not in police detention in the circumstances set out in the sub clause. Again the authority of a police officer of at least the rank of inspector is required together with the appropriate consent.

4.97 A police officer can only give an authorisation under clause 70(1) or (2) if he has reasonable grounds for suspecting the involvement of the person, from whom the sample is to be taken, in a recordable offence and for believing that the sample will tend to confirm or disprove his involvement. Where a police officer gives an authorisation and it is proposed that an intimate sample shall be taken in pursuance of that authorisation, a police officer must inform the person from whom the sample is to be taken of the giving of the authorisation and of the grounds for giving it. The duty to state the grounds for giving the authorisation includes a duty to state the nature of the offence in which it is suspected that the person from whom the sample is to be taken has been involved. A dental impression may only be taken by a registered dentist and any other form of intimate sample, except a sample of urine, may only be taken from a person by a registered medical practitioner or a registered nurse. Where a person refuses without good cause to the taking of an intimate sample, in any proceedings against that person for an offence the court, in determining whether to commit that person for trial or whether there is a case to answer then the court or the jury, in determining whether that person is guilty of the offence charged, may draw such inferences from the refusal as appear proper. Nothing in clause 69 applies to the taking of a specimen for the purposes of any provision of the Road Traffic Ordinance.

4.98 Clause 70 provides that a non-intimate sample except as provided by the clause may not be taken from a person without the appropriate consent which must be in writing. However a non-intimate sample (an expression defined by clause 77) may be taken from a person without the appropriate consent if the person is in police detention in consequence of his arrest for a recordable offence and he has not had non-intimate sample of the same type and from the same part of his body taken in the course of the investigation of the offence by the police or has had

such a sample taken but it proved insufficient. Under clause 70(7) a non-intimate sample may be taken from the person (whether or not he is in police detention or held in custody by the police on the authority of the court) without the appropriate consent if:-

(a) he has been charged with a recordable offence or informed that he will be reported for such an offence and

(b) either he has not had a non-intimate sample taken from him in the course of the investigation of the offence by the police or he has had a non-intimate sample taken from him either it was not suitable for the same means of analysis or, although so suitable, the sample proved insufficient. Under clause 70(8) a non-intimate sample may be taken from a person without appropriate consent if he has been convicted of a recordable offence. Under clause 71(9) a non-intimate sample may also be taken from a person without appropriate consent if he is a person who is being detained following acquittal on grounds of insanity or finding of unfitness to plead.

4.99 Clause 71 would give statutory authority for the checking of finger prints taken by the Royal Falkland Islands Police force with prints taken by United Kingdom and Islands police forces and other relevant law enforcement authorities and make connected provision.

4.100 Clause 72 make provision in relation to the destruction of finger prints and samples. Under clause 72(3) finger prints taken by virtue of clause 68(10) must be destroyed as soon as they have fulfilled the purpose for which they were taken. (Clause 68(10) enable a police officer to take a persons finger prints without the appropriate consent, subject to conditions, the first of which is that the police officer reasonably suspects that the person is committing or attempting to commit an offence and the second of which is that the name of the person is unknown to, and cannot be readily ascertained by, the police officer or the police officer has reasonable grounds for doubting whether a name furnished by the person as his name is his real name). Otherwise under clause 72(1) the finger prints or samples may be retained after they have fulfilled the purpose for which they were taken. They may not however be used by any person accept for purposes related to the prevention or detection of crime, the investigation of an offence, the conduct of a prosecution or the identification of a deceased person or of the person from whom a body part came.

4.101 Clause 72(4) requires finger prints, impressions of foot wear or samples taken from a person in connection with the investigation of an offence where that person is not suspected of having committed the offence to be destroyed accept provided in following sub clauses as soon as they have fulfilled the purpose for which they were taken.

4.102 Clause 72(9) confers a right upon a person who asked to be allowed to witness the destruction of his fingerprints or copies of them to witness that destruction.

4.103 Clause 73 makes provision in relation to the photographing of suspects.

4.104 Clause 74 makes provision for the finger printing of persons who:-

- (a) have been convicted of a recordable offence;
- (b) have not at any time been in police detention for the offence; and
- (c) have not had their finger prints taken:-
  - (i) in the course of the investigation of the offence by the police; or
  - (ii) since the conviction.

4.105 Clause 74(1) enables a police officer at any time not later than one month after the date of the conviction to require such a person to attend a police station in order that his finger prints may be taken. Supplementary provision is made by the subsequent sub clauses which are self explanatory.

4.106 Clause 75 contains a number of definitions for the purposes of Part II of the Bill.

4.107 Chapter 6 of Part II of the Bill (clauses 76 and 77) make provision in relation to the issue of codes of practice by the police in connection with the exercise by police officers of their statutory powers under the Bill. The clauses are self-explanatory.

### **Part III of the Bill**

4.108 Part III of the Bill (clauses 78 to 131) would make provision in relation to evidence in criminal cases.

4.109 Clauses 78 to 80 would re-enact sections 100 to 102 of the Criminal Justice Ordinance. They would not change the law.

4.110 Section 103 of the Criminal Justice Ordinance would be re-enacted by clause 81. It relates to the admission in evidence of confessions made by an accused person.

4.111 Clause 82, which is a new provision, would enable confessions made by an accused person to be given in evidence for a co-accused insofar as it is relevant to any matter in issue in the proceedings and is not excluded by the court, the court could exclude the confession being given in evidence in the circumstances set out in subclause (2). Supplementary provision is made by subclauses (3) to (5).

4.112 Confessions by mentally handicapped persons is made by clause 83 which re-enacts section 104 of the Criminal Justice Ordinance and does not change the law.

4.113 Clause 84 enables the court to refuse to allow evidence on which the prosecution proposes to rely to be given in court if the court believes that having regard to all the circumstances the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to allow it to be given. The clause would re-enact section 105 of the Criminal Justice Ordinance and would not change the law.

4.114 Clause 85 would re-enact section 106 of the Criminal Justice Ordinance, without changing the law and clause 88 would re-enact section 107 of the Criminal Justice Ordinance without changing the law.

4.115 Clause 87 is self-explanatory and is new provision not at present appearing in Falkland Islands law.

4.116 Advance notice of expert evidence in the Supreme Court in criminal proceedings would be required by virtue of clause 88. The object of the provision is to avoid either side in criminal proceedings “ambushing” the other by calling experts without first disclosing the gist of the evidence the expert will give.

4.117 Chapter 2 of Part III of the Bill (clauses 89 to 103) would make new provision in relation to evidence of bad character. There are lengthy footnotes printed in the draft Bill explaining where necessary their effect and the reader is respectfully referred to those footnotes for explanation of the clauses in question.

4.118 Chapter 3 of Part III of the Bill (clauses 104 to 122) contains provisions, the majority of which are entirely new to Falkland Islands statutory law, concerning the admissibility of “hearsay evidence”. Again there are extensive explanatory footnotes where necessary to which the reader is referred.

4.119 Chapter 4 of Part III is headed “Miscellaneous and supplemental” and consists of clauses 123 to 127.

4.120 Clause 123 would allow evidence of witnesses (other than the accused) in criminal proceedings for an offence punishable by imprisonment for two years or more to give evidence by video recording. The defendant, however, could not do so (although his witnesses could). The provision would only apply in the circumstances set out in subclause (1). Supplementary provision in relation to clause 123 would be made by clause 124. It provides that a witness may not give evidence in chief otherwise than by means of the recording as to any matter which, in the opinion of the court, has been dealt with adequately in the recorded account. It also deals with the editing of a video recording to exclude prejudicial or irrelevant material.

4.121 Clause 125 would make new provision enabling a witness giving oral evidence in criminal proceedings to refresh his memory about any matter from a document made or verified by him at an earlier time. Clause 126 is a “dictionary” clause.

#### **Part IV of the Bill**

4.122 Part IV of the Bill consists of clauses 128 to 131. Clause 128 would repeal those provisions of the Criminal Justice Ordinance which would be replaced by the provisions of the Bill.

4.123 Clause 129 provides for a seamless transition from the repealed provisions to the provisions of the Bill.



4.124 Clause 130 would amend section 9 of the Criminal Justice (International Co-operation) Ordinance in such a way as to confer the same powers of search and seizure in relation to an overseas offence in respect of the investigation of which the Falkland Islands are assisting the relevant overseas country as would apply in respect of Falkland Islands offences.

4.125 Clause 131 gives effect to Schedule 3 which would repeal the application in the Falkland Islands of the provisions mentioned in that Schedule and which have been repealed in England.

# POLICE AND CRIMINAL EVIDENCE BILL 2006

(No:    of 2006)

## ARRANGEMENT OF PROVISIONS

Clause

### **PART I: PRELIMINARY**

1. Short title and commencement
2. Interpretation

### **PART II: POLICE POWERS**

#### **Chapter 1**

#### **Powers to stop and search**

##### *Powers to stop and search*

3. Power of police officer to stop and search persons, vehicles etc
4. Provisions relating to search under section 3 and other powers
5. Duty to make records concerning searches
6. Road checks
7. Reports of recorded searches and of road checks

##### *Airports*

8. Exercise of police functions at airports

#### **Chapter 2**

#### **Powers of entry, search and seizure**

##### *Search warrants*

9. Powers to authorise entry and search of premises
10. Special provisions as to access
11. Meaning of “items subject to legal privilege”
12. Meaning of “excluded material”
13. Meaning of “personal records”
14. Meaning of “journalistic material”
15. Meaning of “special procedure material”
16. Search warrants – safeguards
17. Execution of warrants

##### *Entry and search without search warrant*

18. Entry and search for purpose of arrest etc
19. Entry and search after arrest

##### *Seizure etc*

20. General power of seizure etc

- 21. Extension of power of seizure to computerised information
- 22. Access and copying
- 23. Retention

#### *Supplementary*

- 24. Meaning of “premises” etc

### **Chapter 3 Arrest**

- 25. Arrest without warrant: police officers
- 26. Arrest without warrant: other persons
- 27. Repeal of statutory powers of arrest without warrant or order
- 28. Use of force in making arrest etc
- 29. Information to be given on arrest
- 30. Voluntary attendance at police station etc
- 31. Arrest elsewhere than at a police station
- 32. Bail elsewhere than at police station
- 33. Bail under section 32: notices
- 34. Bail under section 32: supplemental
- 35. Failure to answer bail under section 32
- 36. Arrest for further offence
- 37. Search upon arrest

### **Chapter 4 Detention**

#### *Detention – conditions and duration*

- 38. Limitations on police detention
- 39. Responsible officers
- 40. Duties of responsible officers before charge
- 41. Guidance
- 42. Consultation with the Attorney General
- 43. Breach of bail following release under section 40(7)(a)
- 44. Release under section 40(7)(a): further provision
- 45. Duties of responsible officers after charge
- 46. Responsibilities in relation to persons detained
- 47. Review of police detention
- 48. Use of telephone for review hearings
- 49. Limits on period of detention without charge
- 50. Authorisation of continued detention
- 51. Warrants of further detention
- 52. Extension of warrants of further detention
- 53. Detention before charge – supplementary

*Detention – miscellaneous*

- 54. Detention after charge
- 55. Power of arrest for failure to answer to police bail
- 56. Bail after arrest
- 57. Records of detention
- 58. Savings
- 59. Children

**Chapter 5**

**Questioning and treatment of persons by police**

- 60. Abolition of certain powers of police officers to search persons
- 61. Searches of detained persons
- 62. Searches and examination to ascertain identity
- 63. Intimate searches
- 64. Right to have someone informed when arrested
- 65. Access to legal advice
- 66. Tape-recording of interviews
- 67. Visual recording of interviews
- 68. Fingerprinting
- 69. Intimate samples
- 70. Other samples
- 71. Fingerprints and samples: supplementary provisions
- 72. Destruction of fingerprints and samples
- 73. Photographing of suspects etc
- 74. Fingerprinting of certain offenders
- 75. Chapter 5 – supplementary

**Chapter 6**

**Codes of practice – general**

- 76. Codes of practice
- 77. Codes of practice – supplementary

**PART III: EVIDENCE IN CRIMINAL PROCEEDINGS**

**Chapter 1**

**General**

*Convictions and acquittals*

- 78. Proof of convictions and acquittals
- 79. Conviction as evidence of commission of an offence
- 80. Provisions supplementary to section 79

*Confessions*

- 81. Confessions

- 82. Confessions may be given in evidence for co-accused
- 83. Confessions by mentally handicapped persons

#### *Miscellaneous*

- 84. Exclusion of unfair evidence
- 85. Time for taking accused's evidence
- 86. Compellability of accused's spouse
- 87. Rule where accused's spouse not compellable
- 88. Advance notice of expert evidence in Supreme Court

### **Chapter 2 Evidence of bad character**

#### *Introductory*

- 89. "Bad character"
- 90. Abolition of common law rules

#### *Persons other than defendants*

- 91. Non-defendant's bad character

#### *Defendants*

- 92. Defendant's bad character
- 93. "Important explanatory evidence"
- 94. "Matter in issue between the defendant and the prosecution"
- 95. "Matter in issue between the defendant and a co-defendant"
- 96. "Evidence to correct a false impression"
- 97. "Attack on another person's character"
- 98. Stopping case where evidence contaminated
- 99. Offences committed by defendant when a child

#### *General*

- 100. Assumption of truth in assessment of relevance or probative value
- 101. Court's duty to give reasons for rulings
- 102. Rules of court
- 103. Interpretation

### **Chapter 3 Hearsay evidence**

#### *Hearsay evidence: main provisions*

- 104. Admissibility of hearsay evidence
- 105. Statements and matters stated

#### *Principal categories of admissibility*

- 106. Cases where a witness is unavailable
- 107. Business and other documents

- 108. Preservation of certain common law categories of admissibility
- 109. Inconsistent statements
- 110. Other previous statements of witnesses

#### *Supplementary*

- 111. Additional requirement for admissibility of multiple hearsay
- 112. Documents produced as exhibits
- 113. Capability to make statement
- 114. Credibility
- 115. Stopping the case where the evidence is unconvincing
- 116. Court's general discretion to exclude evidence

#### *Miscellaneous*

- 117. Expert evidence: preparatory work
- 118. Representations other than by a person
- 119. Abolition of right of accused to make unsworn statement

#### *General*

- 120. Rules of court
- 121. Proof of statements in documents
- 122. Interpretation of this Chapter

### **Chapter 4 Miscellaneous and supplemental**

- 123. Evidence by video recording
- 124. Video evidence: further provisions
- 125. Use of documents to refresh memory
- 126. Interpretation of Chapter 4
- 127. Saving

## **PART IV: GENERAL**

- 128. Partial repeal of Criminal Justice Ordinance
- 129. Continuity of law
- 130. Amendment of Criminal Justice (International Co-operation) Ordinance
- 131. Specified Acts partially to cease to have effect in the Falkland Islands

## **SCHEDULES**

**Schedule 1** Special Procedure

**Schedule 2** Preserved powers of arrest

**Schedule 3** Provisions of Acts wholly or partly ceasing to have effect in the Falkland Islands

# POLICE AND CRIMINAL EVIDENCE BILL 2006

(No: of 2006)

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

## A BILL

for

## AN ORDINANCE

To make new provision in relation to the powers of the police and criminal evidence and re-enact, with amendments in certain cases, existing provisions relating to those matters, and for connected purposes.

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

### PART 1: PRELIMINARY

#### Short title and commencement

1.—(1) This Ordinance may be cited as the Police and Criminal Evidence Ordinance 2006 and shall come into force on such date as may be notified by the Governor by Order published in the Gazette, and different days may be so notified for different provisions and different purposes.

(2) An Order under subsection (1) may make such transitional provision as appear to the Governor to be necessary or expedient in connection with the provisions thereby brought into operation.

#### Interpretation

2.—(1) In this Ordinance—

“document” means anything in which information of any description is recorded;

“items subject to legal privilege” has the meaning assigned by section 11;

“premises” has the meaning assigned by section 24;

“recordable offence” means any offence punishable, in the case of an adult, by imprisonment and a person is to be taken as having committed such an offence if, whether or not he was sentenced to a term of imprisonment in respect of it—

(a) he has been convicted of such an offence;

(b) he has in accordance with a provision of the law of the Falkland Islands, after admitting that offence, had a reprimand administered to him by a police officer in respect of such an offence; or

(c) he has in accordance with a provision of the law of the Falkland Islands, after admitting that offence, had a caution administered to him by a police officer in respect of that offence;

and for the purposes of this definition the question of whether an offence is one which is punishable on conviction by imprisonment for two years or more shall be determined without regard to any enactment prohibiting or restricting the imprisonment of offenders below a certain age or of first offenders;

“supervision order” means an order under section 17(1)(b) of the Children Ordinance 1994 and includes an interim supervision order under section 23 of that Ordinance; and

“vessel” includes any ship, boat, raft or other apparatus constructed or adapted for floating on water.

(2) A person is in police detention for the purposes of this Ordinance if—

(a) he has been taken to a police station after being arrested for an offence; or

(b) he is arrested at a police station after attending voluntarily at the station or accompanying a police officer to it,

and is detained there or is detained elsewhere in the charge of a police officer, except that a person who is at a court after being charged is not in police detention for those purposes.

(3) In this Ordinance, unless the contrary is stated in any particular case, any reference to the Criminal Justice Ordinance (Title 24.1), or any provision of that Ordinance, is a reference to that Ordinance or that provision in the form it appeared in the Revised Edition of the Laws of the Falkland Islands on 30<sup>th</sup> June 2005.

## **PART II: POLICE POWERS**

### **Chapter 1**

#### **Powers to stop and search**

##### *Powers to stop and search*

#### **Power of police officer to stop and search persons, vehicles etc<sup>1</sup>**

3.—(1) A police officer may exercise any power conferred by this section —

---

<sup>1</sup> This a new provision to the Falkland Islands and replicates section 1 Police and Criminal Evidence Act 1984 (PACE) as amended



(a) in any place to which at the time when he proposes to exercise the power the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission; or

(b) in any other place to which people have ready access at the time when he proposes to exercise the power but which is not a dwelling.

(2) Subject to subsection (3) to (5) below, a police officer —

(a) may search —

(i) any person or vehicle;

(ii) anything which is in or on a vehicle,

for stolen or prohibited articles or any article to which subsection (9) or any firework to which subsection (10)<sup>2</sup> applies; and

(b) may detain a person or vehicle for the purpose of such a search.

(3) This section does not give a police officer power to search a person or vehicle or anything in or on a vehicle unless he has reasonable grounds for suspecting that he will find stolen or prohibited articles or any article to which subsection (9) below applies or any firework to which subsection (10) applies.

(4) If a person is in a garden or yard occupied with and used for the purposes of a dwelling or on other land so occupied and used, a police officer may not search him in the exercise of the power conferred by this section unless the police officer has reasonable grounds for believing —

(a) that he does not reside in the dwelling; and

(b) that he is not in the place in question with the express or implied permission of a person who resides in the dwelling.

(5) If a vehicle is in a garden or yard occupied with and used for the purposes of a dwelling or on other land so occupied and used, a police officer may not search the vehicle or anything in or on it in the exercise of the power conferred by this section unless he has reasonable grounds for believing —

(a) that the person in charge of the vehicle does not reside in the dwelling; and

---

<sup>2</sup> Subsections (9) and (10) correspond respectively to subsection (8A) of PACE which was inserted by s.140(1)(c) Criminal Justice Act 1988 and (8B) which was inserted by section 115(1) of the Serious Organised Crime and Police Act 2005

(b) that the vehicle is not in the place in question with the express or implied permission of a person who resides in the dwelling.

(6) If in the course of such a search a police officer discovers an article which he has reasonable grounds for suspecting to be a stolen or prohibited article or an article to which subsection (9) applies, he may seize it.

(7) An article is prohibited for the purposes of this Part of this Ordinance if it is —

(a) an offensive weapon; or

(b) an article —

(i) made or adapted for use in the course of or in connection with an offence to which this sub-paragraph applies; or

(ii) intended by the person having it with him for such use by him or by some other person.

(8) The offences to which subsection (7)(b)(i) above applies are —

(a) burglary;

(b) theft;

(c) offences under section 12 of the Theft Act 1968 (taking motor vehicle or other conveyance without authority) and until such time as that section has effect in the Falkland Islands, section 30 of the Road Traffic Ordinance (Title 63.1);

(d) offences under section 15 of that Act (obtaining property by deception); and

(e) offences under section 1 of the Criminal Damage Act 1971 (destroying or damaging property).

(9) This subsection applies to any article in relation to which a person has committed or is committing an offence under section 16 of the Crimes Ordinance.

(10) This subsection applies to any firework which a person possesses in contravention of a provision imposed by fireworks regulations.

(11) In this section —

(a) “firework” shall be construed in accordance with the definition of “fireworks” in section 1(1) of the Fireworks Act 2003<sup>3</sup>; and

(b) “fireworks regulations” has the same meaning as in that Act.<sup>4</sup>

(12) In this Part “offensive weapon” means any article —

(a) made or adapted for use for causing injury to persons or

(b) intended by the person having it with him for such use by him or by some other person.

**Provisions relating to search under section 3 and other powers<sup>5</sup>**

4.—(1) A police officer who detains a person or vehicle in the exercise —

(a) of the power conferred by section 3; or

(b) of any other power —

(i) to search a person without first arresting him; or

(ii) to search a vehicle without making an arrest,

need not conduct a search if it appears to him subsequently —

(aa) that no search is required; or

(bb) that a search is impracticable.

(2) If a police officer contemplates a search, other than a search of an unattended vehicle, in the exercise —

(a) of the power conferred by section 3; or

(b) of any other power, except the power conferred by section 27(2) of the Aviation Security Act 1982 —

(i) to search a person without first arresting him; or

(ii) to search a vehicle without first making an arrest,

---

<sup>3</sup> The Fireworks Act 2003 applies in the Falkland Islands because it augments or replaces provisions of the Explosives Act 1875 and other statutes augmenting or replacing the provisions of that Act. See Part XI of the Interpretation and General Clauses Ordinance. The 1875 Act has applied since 1901.

<sup>4</sup> Subsection (11) was inserted by s. 115(1), (5) of the Serious Organised Crime and Police Act 2005.

<sup>5</sup> This provision is new and corresponds to section 2 PACE

it shall be his duty, subject to subsection (4), to take reasonable steps before he commences the search to bring to the attention of the appropriate person —

(aa) if the police officer is not in uniform, documentary evidence that he is a police officer; and

(bb) whether he is uniform or not, the matters specified in subsection (3);

and the police officer shall not commence the search until he has performed that duty.

(3) The matters referred to in subsection (2)(ii) are —

(a) the police officer's name;

(b) the object of the proposed search;

(c) the police officer's grounds for proposing to make it; and

(d) the effect of section 5(7) or (8), as may be appropriate.

(4) A police officer need not bring the effect of section 5(7) or (8) to the attention of the appropriate person if it appears to the police officer that it will not be practicable to make the record required by section 5(1).

(5) In this section "the appropriate person" means —

(a) if the police officer proposes to search a person, that person; and

(b) if he proposes to search a vehicle, or anything in or on a vehicle, the person in charge of the vehicle.

(6) On completing a search of an unattended vehicle or anything in or on such a vehicle in the exercise of any such power as is mentioned in subsection (2) above a police officer shall leave a notice —

(a) stating that he has searched it;

(b) giving the name of the police station to which he is attached;

(c) stating that an application for compensation for any damage caused by the search may be made to that police station; and

(d) stating the effect of section 5(8).

(7) The police officer shall leave the notice inside the vehicle unless it is not reasonably practicable to do so without damaging the vehicle.

(8) The time for which a person or vehicle may be detained for the purposes of such a search is such time as is reasonably required to permit a search to be carried out either at the place where the person or vehicle was first detained or nearby.

(9) Neither the power conferred by section 3 nor any other power to detain and search a person without first arresting him or to detain and search a vehicle without making an arrest is to be construed —

(a) as authorising a police officer to require a person to remove any of his clothing in public other than an outer coat, jacket or gloves; or

(b) as authorising a police officer not in uniform to stop a vehicle.

(10) This section and section 3 apply to vessels, aircraft and hovercraft as they apply to vehicles.

**Duty to make records concerning searches<sup>6</sup>**

5.—(1) Where a police officer has carried out a search in the exercise of any such power as is mentioned in section 4(1), other than a search under section 27(2) of the Aviation Security Act 1982, he shall make a record of it in writing unless it is not practicable to do so.

(2) If —

(a) a police officer is required by subsection (1) to make a record of a search; but

(b) it is not practicable to make the record on the spot,

he shall make it as soon as practicable after the completion of the search.

(3) The record of a search of a person shall include a note of his name, if the police officer knows it, but a police officer may not detain a person to find out his name.

(4) If a police officer does not know the name of the person whom he has searched, the record of the search shall include a note otherwise describing that person.

(5) The record of a search of a vehicle shall include a note describing the vehicle.

(6) The record of a search of a person or a vehicle —

(a) shall state —

(i) the object of the search;

(ii) the grounds for making it;

(iii) the date and time when it was made;

---

<sup>6</sup> Again this provision is new: it corresponds to section 3 PACE

(iv) the place where it was made;

(v) whether anything, and if so what, was found;

(vi) whether any, and if so what, injury to a person or damage to property appears to the police officer to have resulted from the search; and

(b) shall identify the police officer making it.

(7) If a police officer who conducted a search of a person made a record of it, the person who was searched shall be entitled to a copy of the record if he asks for one before the end of the period specified in subsection (9).

(8) If—

(a) the owner of a vehicle which has been searched or the person who was in charge of the vehicle at the time when it was searched asks for a copy of the record of the search before the end of the period specified in subsection (9); and

(b) the police officer who conducted the search made a record of it,

the person who made the request shall be entitled to a copy .

(9) The period mentioned in subsections (7) and (8) above is the period of 12 months beginning with the date on which the search was made.

(10) The requirements imposed by this section with regard to records of searches of vehicles shall apply also to records of searches of vessels, aircraft and hovercraft.

### **Road checks**

6.—(1) This section shall have effect in relation to the conduct of road checks by police officers for the purpose of ascertaining whether a vehicle is carrying —

(a) a person who has committed an offence other than a road traffic offence or a vehicle tax offence;

(b) a person who is a witness to such an offence; or

(c) a person intending to commit such an offence; or

(d) a person who is unlawfully at large.

(2) For the purposes of this section a road check consists of the exercise in a locality of the power conferred by section 123 of the Road Traffic Ordinance in such a way as to stop during

the period for which its exercise in that way in that locality continues all vehicles or vehicles selected by any criterion.<sup>7</sup>

(3) Subject to subsection (5) of this section there may only be such a road check if a police officer of the rank of inspectors or above authorises it in writing.

(4) An officer may only authorise a road check under subsection (3) —

(a) for the purpose specified in subsection (1)(a), if he has reasonable grounds —

(i) for believing that the offence is a serious arrestable offence; and

(ii) for suspecting that the person is, or is about to be, in the locality in which vehicles would be stopped if the road check were authorised;

(b) for the purpose specified in subsection (1)(b), if he has reasonable grounds for believing that the offence is a serious arrestable offence;

(c) for the purpose specified in subsection (1)(c), if he has reasonable grounds —

(i) for believing that the offence would be a serious arrestable offence; and

(ii) for suspecting that the person is, or is about to be, in the locality in which vehicles would be stopped if the road check were authorised.

(d) for the purpose specified in subsection (1)(d), if he has reasonable grounds for suspecting that the person is, or is about to be, in that locality.

(5) An officer giving an authorisation under this section shall specify the locality in which vehicles are to be stopped.

(6) An officer giving an authorisation under this section —

(a) shall specify a period, not exceeding two days, during which the road check may continue; and

(b) may direct that the road check —

(i) shall be continuous; or

(ii) shall be conducted at specified times,

during that period.

---

<sup>7</sup> It will be necessary to amend this subclause if the Road Traffic Bill is not enacted before it or the numbering of the clauses of that Bill are altered.

(7) If it appears to an officer of the rank of inspector or above that a road check ought to continue beyond the period for which it has been authorised he may, from time to time, in writing specify a further period, not exceeding two days, during which it may continue.

(8) Every written authorisation shall specify —

- (a) the name of the officer giving it;
- (b) the purpose of the road check; and
- (c) the locality in which vehicles are to be stopped.

(9) The duty to specify the purposes of a road check imposed by subsection (8) includes a duty to specify any relevant serious arrestable offence.

(10) Where a vehicle is stopped in a road check, the person in charge of the vehicle at the time when it is stopped shall be entitled to obtain a written statement of the purpose of the road check if he applies for such a statement not later than the end of the period of twelve months from the day on which the vehicle was stopped.

(11) Nothing in this section affects the exercise by police officers of powers to stop vehicles for purposes other than those specified in subsection (1).

#### **Reports of recorded searches and of road checks**

7.—(1) The chief police officer shall not later than 31<sup>st</sup> March in each year submit to the Governor a report containing information —

- (i) about searches recorded under section 3 which have been carried out in the area to which the report relates during the period to which it relates; and
- (ii) about road checks authorised in that area during that period under section 6,

and the Governor shall cause that report to be laid before the Police Committee.

(2) The information about searches shall not include information about specific searches but shall include —

- (a) the total numbers of searches in each month during the period to which the report relates—
  - (i) for stolen articles;
  - (ii) for offensive weapons or articles to which section 1 applies; and
  - (iii) for other prohibited articles;



(b) the total number of persons arrested in each such month in consequence of searches of each of the descriptions specified in paragraph (a)(i) to (iii).

(3) The information about road checks shall include information —

(a) about the reason for authorising each road check; and

(b) about the result of each of them.

### *Airports*

#### **Exercise of police functions at airports**

8.—(1) Every police officer shall, when acting in the execution of his duty, be entitled to enter any part of any airport.

(2) Any police officer may in any airport —

(a) stop, and without warrant search and arrest, any airport employee whom he has reasonable grounds to suspect of having in his possession or of conveying in any manner anything stolen or unlawfully obtained on the aerodrome; and

(b) if he has reasonable grounds to suspect that anything stolen or unlawfully obtained on the aerodrome may be found in or on any vehicle carrying an airport employee or in or on any aircraft, stop and without warrant search and detain the vehicle or, as the case may be, board and without warrant search the aircraft.

(3) Any police officer may —

(a) stop any person who is leaving a cargo area in an aerodrome and inspect any goods carried by that person;

(b) stop and search any vehicle or aircraft which is leaving any such area and inspect the vehicle or aircraft and any goods carried on or in it; and

(c) detain in the area —

(i) any such goods as aforesaid for which there is not produced a document authorising their removal from the area signed by a person authorised in that behalf by the manager of the aerodrome; and

(ii) any such vehicle or aircraft as aforesaid so long as there are on or in it goods liable to detention under this paragraph.

(4) Nothing in subsection (3) shall be construed as conferring a power to search any person.

(5) In any cargo area in an aerodrome the powers of a police officer under subsection (2)(b) —

- (a) extend to any vehicle whether or not it is carrying an airport employee; and
- (b) include power, not only to board and search an aircraft, but also to stop and detain it.
- (6) In this section “airport employee”, in relation to any aerodrome, means any person in the employment of the manager of the aerodrome and any person employed otherwise than by the manager to work on the aerodrome.
- (7) In this section “cargo area” means any area which is used wholly or mainly for the storage or handling of cargo in an aerodrome.
- (8) The powers conferred by this section on a police officer are without prejudice to any powers exercisable by him apart from this section (9). In this section, “airport” means Mount Pleasant Airport, Stanley Airport and any other aerodrome designated for the purposes of this section by an Order made by the Governor under this subsection.<sup>8</sup>

## Chapter 2

### Powers of entry, search and seizure<sup>9</sup>

#### *Search warrants*

#### **Powers to authorise entry and search of premises**

9.—(1) If on application made by a police officer a justice of the peace is satisfied that there are reasonable grounds for believing —

- (a) that a serious arrestable offence<sup>10</sup> has been committed; and
- (b) that there is material on premises specified in the application which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence; and
- (c) that the material is likely to be relevant evidence; and
- (d) that it does not consist of or include items subject to legal privilege, excluded material or special procedure material; and

---

<sup>8</sup> The provisions of this clause are directed at theft. The Home Office has published (late 2005) a paper in relation to the expansion of police powers of search at airports, believing that the present UK legislation is unsatisfactory, particularly where there is a security threat. The above clause does not attempt, in advance of that review and any legislation which may result, to address that issue.

<sup>9</sup> Clauses 9 to 24 would re-enact sections 179 to 197 of the existing Ordinance

<sup>10</sup> S.8(1)(a) PACE, to which subclause (1)(a) corresponds refers to “indictable offences”. However the range of indictable offences is much smaller in the Falkland Islands and many more offences are triable summarily only.

- (e) that any of the conditions specified in subsection (3) applies,
- he may issue a warrant authorising a police officer to enter and search the premises.
- (2) A police officer may seize and retain anything for which a search has been authorised under subsection (1).
- (3) The conditions mentioned in subsection (1)(e) are —
- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises;
  - (b) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the evidence;
  - (c) that the entry to the premises will not be granted unless a warrant is produced;
  - (d) that the purpose of a search may be frustrated or seriously prejudiced unless a police officer arriving at the premises can secure immediate entry to them.
- (4) In this Ordinance “relevant evidence” in relation to an offence, means anything that would be admissible in evidence at a trial for the offence.
- (5) The power to issue a warrant conferred by this section is in addition to any such power otherwise conferred.

**Special provisions as to access<sup>11</sup>**

10.—(1) A police officer may obtain access to excluded material or special procedure material for the purposes of a criminal investigation by making an application under Schedule 1 and in accordance with that Schedule.

(2) Any enactment passed before 1<sup>st</sup> January 1990 under which a search of premises for the purposes of a criminal investigation could be authorised by the issue of a warrant to a police officer shall cease to have effect so far as it relates to the authorisation of searches —

- (a) for items subject to legal privilege; or
- (b) for excluded material; or
- (c) for special procedure material consisting of documents or records other than documents.

---

<sup>11</sup> This section corresponds to section 9 of PACE. 1<sup>st</sup> January 1990 (which appears in subclause (2)) was the date on which the corresponding provision (section 180(2)) of the Criminal Justice Ordinance) came into force.

**Meaning of “items subject to legal privilege”<sup>12</sup>**

**11.—**(1) Subject to subsection (2), in this Ordinance “items subject to legal privilege” means —

(a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;

(b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative or any other person made in connection with or in contemplation of legal proceedings and for the purpose of such proceedings; and

(c) items enclosed with or referred to in such communications and made —

(i) in connection with the giving of legal advice; or

(ii) in connection with or in contemplation of legal proceedings and for the purpose of such proceedings,

when they are in the possession of a person who is entitled to possession of them.

(2) Items held with the intention of furthering a criminal purpose are not items subject to legal privilege.

**Meaning of “excluded material”<sup>13</sup>**

**12.—**(1) Subject to the following provisions of this section, in this Ordinance “excluded material” means —

(a) personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which he holds in confidence;

(b) human tissue or tissue fluid which has been taken for the purposes of diagnosis or medical treatment and which a person holds in confidence;

(c) journalistic material which a person holds in confidence and which consists —

(i) of documents; or

(ii) of records other than documents.

(2) A person holds material other than journalistic material in confidence for the purposes of this section if he holds it subject —

---

<sup>12</sup> This clause corresponds to section 10 of PACE.

<sup>13</sup> This clause corresponds to section 11 of PACE

- (a) to an express or implied undertaking to hold it in confidence; or
  - (b) to a restriction on disclosure or an obligation of secrecy contained in any enactment, including an enactment passed after this Ordinance.
- (3) A persons holds journalistic material in confidence for the purposes of this section if—
- (a) he holds it subject to such an undertaking, restriction or obligation; and
  - (b) it has been continuously held (by one or more persons) subject to such an undertaking, restriction or obligation since it was first acquired or created for the purposes of journalism.

**Meaning of “personal records”<sup>14</sup>**

13. In this Part “personal records” means documentary and other records concerning an individual (whether living or dead) who can be identified from them and relating —

- (a) to his physical or mental health ;
- (b) to spiritual counselling or assistance given or to be given to him; or
- (c) to counselling or assistance given or to be given to him, for the purposes of his personal welfare, by any voluntary organisation or by any individual who —
  - (i) by reason of his office or occupation has responsibilities for his personal welfare; or
  - (ii) by reason of an order of a court has responsibilities for his supervision.

**Meaning of “journalistic material”<sup>15</sup>**

14.—(1) Subject to subsection (2), in this Part “journalistic material” means material acquired or created for the purposes of journalism.

(2) Material is only journalistic material for the purposes of this Part if it is in the possession of a person who acquired or created it for the purposes of journalism.

(3) A person who receives material from someone who intends that the recipient shall use it for the purposes of journalism is to be taken to have acquired it for those purposes.

**Meaning of “special procedure material”<sup>16</sup>**

15.—(1) In this Part “special procedure material” means —

- (a) material to which subsection (2) applies; and

<sup>14</sup> This clause corresponds to section 12 of PACE

<sup>15</sup> This clause corresponds to section 13 of PACE

<sup>16</sup> This clause corresponds to section 14 of PACE

(b) journalistic material, other than excluded material.

(2) Subject to the following provisions of this section, this subsection applies to material, other than items subject to legal privilege and excluded material, in the possession of a person who —

(a) acquired or created it in the course of any trade, business, profession or other occupation or for the purpose of any paid or unpaid office; and

(b) holds it subject —

(i) to an express or implied undertaking to hold it in confidence; or

(ii) to a restriction or obligation such as is mentioned in section 12(2)(b).

(3) Where material is acquired —

(a) by an employee from his employer and in the course of his employment; or

(b) by a company from an associated company,

it is only special procedure material if it was special procedure material immediately before the acquisition.

(4) Where material is created by an employee in the course of his employment, it is only special procedure material if it would have been special procedure material had his employer created it.

(5) Where material is created by a company on behalf of an associated company, it is only special procedure material if it would have been special procedure material had the associated company created it.

(6) A company is to be treated as another's associated company for the purposes of this section at a given time if, at that time or at any time within one year previously, one of the two has control of the other, or both are under the control of the same person or persons.

(7) For the purposes of subsection (6) a person shall be taken to have control of a company —

(a) if he exercises, or is able to exercise or is entitled to acquire, control, whether direct or indirect, over the company's affairs, and in particular, but without prejudice to the generality of the preceding words, if he possesses, or is entitled to acquire, the greater part of the share capital or voting power in the company; or

(b) if he possesses, or is entitled to acquire, either —

(i) the greater part of the issued share capital of the company; or

(ii) such part of that capital as would, if the whole of the income of the company were in fact distributed to the members, entitle him to receive the greater part of the amount so distributed; or

(iii) such redeemable share capital as would entitle him to receive on its redemption the greater part of the assets which, in the event of a winding up, would be available for distribution among members; or

(c) if in the event of a winding up he would be entitled to the greater part of the assets available for distribution among members.

(8) For the purposes of subsection (6), where two or more persons together satisfy any of the conditions in paragraphs (a) to (c) of subsection (7), they shall be taken to have control of the company.

(9) In subsection (7) "member" includes any person having a share or interest in the capital or income of the company, and, for the purposes of that subsection, a person shall be treated as entitled to acquire anything which he is entitled to acquire at a future date, or will at a future date be entitled to acquire; and, for the purposes of paragraphs (b)(iii) and (c) of that subsection, any loan creditor may be treated as a member (and the references to share capital as including loan capital).

(10) For the purposes of subsections (8) and (9), there may also be attributed to any person any rights or powers of a nominee for him, that is to say any rights or powers which another person possesses on his behalf or may be required to exercise on his discretion or behalf.

(11) For the purposes of subsections (8) and (9), there may also be attributed to any person all the rights and powers of any company of which he has, or he and associates of his have, control or any two or more such companies, or any associate of his or any two or more associates of his, including those attributed to a company or associate under subsection (5), but not those attributed to an associate under this subsection.

(12) For the purposes of subsection (11) "associate" means in relation to a person —

(a) any spouse, parent, grandparent, child or grandchild or brother or sister of the person;

(b) the trustee or trustees of any settlement in relation to which the person is, or any person referred to in paragraph (a) (living or dead) is or was a settlor; and

(c) where the person is interested in any shares or obligations to the company which are subject to any trust, or are part of the estate of a deceased person, any other person interested therein.

### **Search warrants – safeguards<sup>17</sup>**

16.—(1) This section and section 17 have effect in relation to the issue to police officers under any enactment, including an enactment passed after this Ordinance, of warrants to enter and search premises; and an entry on or search of premises under a warrant is unlawful unless it complies with this section and section 17.

(2) Where a police officer applies for any such warrant, it shall be his duty —

(a) to state —

(i) the ground on which he makes the application; and

(ii) the enactment under which the warrant would be issued;

(b) to specify the premises which it is desired to enter and search; and

(c) to identify, so far as is practicable, the articles or persons to be sought.

(3) An application for such a warrant shall be made ex parte and supported by an information in writing.

(4) The police officer shall answer on oath any question that the justice of the peace, Senior Magistrate or judge hearing the application asks him.

(5) A warrant shall authorise an entry on one occasion only.

(6) A warrant —

(a) shall specify —

(i) the name of the person who applies for it;

(ii) the date on which it is issued;

(iii) the enactment under which it is issued; and

(iv) the premises to be searched; and

(b) shall identify, so far as is practicable, the articles or persons to be sought.

(7) Two copies shall be made of a warrant, and each of them shall be clearly certified as copies.

---

<sup>17</sup> This clause corresponds to section 15 of PACE



### **Execution of warrants<sup>18</sup>**

17.—(1) A warrant to enter and search premises may be executed by any police officer.

(2) Such a warrant may authorise persons to accompany any police officer who is executing it.

(3) Entry and search under a warrant must be within one month from the date of its issue.

(4) Entry and search under a warrant must be at a reasonable hour unless it appears to the police officer executing it that the purpose of the search may be frustrated on an entry at a reasonable hour.

(5) Where the occupier of premises which are to be entered and searched is present at the time when a police officer seeks to execute a warrant to enter and search them, the police officer —

(a) shall identify himself to the occupier and, if not in uniform, shall produce to him documentary evidence that he is a police officer;

(b) shall produce the warrant to him; and

(c) shall supply him with a copy of it.

(6) Where —

(a) the occupier of such premises is not present at the time when a police officer seeks to execute such a warrant; but

(b) some other person who appears to the police officer to be in charge of the premises is present,

subsection (5) shall have effect as if any reference to the occupier were a reference to that other person.

(7) If there is no person present who appears to the police officer to be in charge of the premises, he shall leave a copy of the warrant in a prominent place on the premises.

(8) A search under a warrant may only be a search to the extent required for the purpose for which the warrant was issued.

(9) A police officer executing a warrant shall make an endorsement on it stating —

(a) whether the articles or persons sought were found; and

(b) whether any articles were seized, other than articles which were sought.

---

<sup>18</sup> This clause corresponds to section 16 of PACE

(10) A warrant which —

(a) has been executed; or

(b) has not been executed within the time authorised for its execution,

shall be returned to the office of the court out of which it was issued.

(11) A warrant which is returned under subsection (10) shall be retained for twelve months from its return in the court office.

(12) If during the period for which a warrant is to be retained the occupier of the premises to which it relates asks to inspect it, he shall be allowed to do so.

#### *Entry and search without search warrant*

#### **Entry and search for purpose of arrest etc<sup>19</sup>**

18.—(1) Subject to the following provisions of this section and without prejudice to any other enactment, a police officer may enter and search any premises for the purpose —

(a) of executing —

(i) a warrant of arrest issued in connection with or arising out of criminal proceedings; or

(ii) a warrant of commitment issued under any provision of any enactment;

(b) of arresting a person for recordable offence;

(c) of recapturing a person who is unlawfully at large and whom he is pursuing; or

(d) of saving life or limb or preventing serious damage to property.

(2) Except for the purpose specified in subsection (1)(d), the powers of entry and search conferred by this section —

(a) are only exercisable if the police officer has reasonable grounds for believing that the person whom he is seeking is on the premises; and

(b) are limited, in relation to premises consisting of two or more separate dwellings, to powers to enter and search —

(i) any parts of the premises which the occupiers of any dwelling comprised in the premises use in common with the occupiers of any other such dwelling; and

---

<sup>19</sup> This clause corresponds to section 17 of PACE

(ii) any such dwelling in which the police officer has reasonable grounds for believing that the person whom he is seeking may be.

(3) The power of search conferred by this section is only a power to search to the extent that is reasonably required for the purpose for which the power of entry is exercised.

(4) Subject to subsection (5), all the rules of common law under which a police officer has power to enter premises without a warrant are hereby abolished.

(5) Nothing in subsection (4) affects any power of entry to deal with or prevent a breach of the peace.

**Entry and search after arrest<sup>20</sup>**

19.—(1) Subject to the following provisions of this section, a police officer may enter and search any premises occupied or controlled by a person who is under arrest for a recordable offence, if he has reasonable grounds for suspecting that there is on the premises evidence, other than items subject to legal privilege, that relates —

(a) to that offence; or

(b) to some other arrestable offence which is connected or similar to that offence.

(2) A police officer may seize and retain anything for which he may search under subsection (1).

(3) The power to search conferred by subsection (1) is only a power to search to the extent that is reasonably required for the purpose of discovering such evidence.

(4) Subject to subsection (5), the powers conferred by this section may not be exercised unless an officer of the rank of Inspector or above has authorised them in writing.

(5) A police officer may conduct a search under subsection (1) —

(a) before the person is taken to a police station or released on bail under section 32;

(b) without obtaining an authorisation under subsection (4);

if the condition in subsection (6) is satisfied.

(6) The condition is that the presence of the person at a place (other than a police station) is necessary for the effective investigation of the offence.

---

<sup>20</sup>This clause corresponds to section 18 of PACE. Subclause (5) reflects the amended subsection (5) of section 18 PACE inserted by section 12 and Schedule 1 paragraph 2 CJA 2003 and subclause (6) reflects the new subsection (5A) inserted by that paragraph.

(7) If a police officer conducts a search by virtue of subsection (5), he shall inform an officer of the rank of Inspector or above that he has made the search as soon as practicable after he has made it.

(8) An officer who —

(a) authorises a search; or

(b) is informed of a search under subsection (6), shall make a record in writing —

(i) of the grounds for the search; and

(ii) of the nature of the evidence that was sought.

(9) If the person who was in occupation or control of the premises at the time of the search is in police detention at the time the record is to be made, the officer shall make the record as part of his custody record.

#### *Seizure etc*

#### **General power of seizure etc<sup>21</sup>**

20.—(1) The powers conferred by subsections (2), (3) and (4) are exercisable by a police officer who is lawfully on any premises.

(2) The police officer may seize anything which is on the premises if he has reasonable grounds for believing —

(a) that it has been obtained in consequence of the commission of an offence; and

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

(3) The police officer may seize anything which is on the premises if he has reasonable grounds for believing —

(a) that it is evidence in relation to an offence which he is investigating or any other offence; and

(b) that it is necessary to seize it in order to prevent the evidence being concealed, lost, altered or destroyed.

(4) The police officer may require any information which is contained in a computer and is accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible if he has reasonable grounds for believing —

---

<sup>21</sup> This clause corresponds to section 19 of PACE

(a) that —

(i) it is evidence in relation to an offence which he is investigating or any other offence;  
or

(ii) it has been obtained in consequence of the commission of an offence; and

(b) that it is necessary to do so in order to prevent it being concealed, lost, tampered with or destroyed.

(5) The powers conferred by this section are in addition to any power otherwise conferred.

(6) No power of seizure conferred on a police officer under any enactment (including an enactment passed after this Ordinance) is to be taken to authorise the seizure of an item to which the police officer exercising the power has reasonable grounds for believing to be subject to legal privilege.

#### **Extension of powers of seizure to computerised information<sup>22</sup>**

**21.—**(1) Every power of seizure which is conferred by an enactment to which this section applies on a police officer who has entered premises in the exercise of a power conferred by an enactment shall be construed as including a power to require any information contained in a computer and accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible.

(2) This section applies —

(a) to any enactment passed before this Ordinance;

(b) to sections 9 and 19 of this Ordinance;

(c) to paragraph 13 of Schedule 1 to this Ordinance; and

(d) to any enactment passed after this Ordinance.

#### **Access and copying<sup>23</sup>**

**22.—**(1) A police officer who seizes anything in the exercise of a power conferred by any enactment, including an enactment passed after this Ordinance, shall, if so requested by a person showing himself —

(a) to be the occupier of premises on which it was seized; or

(b) to have had custody or control of it immediately before the seizure,

---

<sup>22</sup> This section corresponds to section 20 of PACE

<sup>23</sup> This clause corresponds to section 21 PACE. Subclause (9) reflects the new subsection (9) of section 21 PACE 1984 inserted by Schedule 1, paragraph 1,3 CJA 2003.

provide that person with a record of what he seized.

(2) The officer shall provide the record within a reasonable time from the making of the request for it.

(3) Subject to subsection (8), if a request for permission to be granted access to anything which—

(a) has been seized by a police officer; and

(b) is retained by the police for the purpose of investigating an offence,

is made to the officer in charge of the investigation by a person who had custody or control of the thing immediately before it was so seized or by someone acting on behalf of such a person, the officer shall allow the person who made the request access to it under the supervision of a police officer.

(4) Subject to subsection (8), if a request for a photograph or copy of any such thing is made to the officer in charge of the investigation by a person who had custody or control of the thing immediately before it was so seized, or by someone acting on behalf of such a person, the officer shall —

(a) allow the person who made the request access to it under supervision of a police officer for the purposes of photographing it or copying it; or

(b) photograph or copy it or cause it to be photographed or copied.

(5) A police officer may also photograph or copy, or have photographed or copied, anything which he has power to seize, without a request being made under subsection (4).

(6) Where anything is photographed or copied under subsection (4)(b), the photograph or copy shall be supplied to the person who made the request.

(7) The photograph or copy shall be so supplied within a reasonable time from the making of the request.

(8) There is no duty under this section to grant access to, or to supply a photograph or copy of, anything if the officer in charge of the investigation for the purposes of which it was seized has reasonable grounds for believing that to do so would prejudice —

(a) that investigation;

(b) the investigation of an offence other than the offence for the purposes of investigating which the thing was seized; or

(c) any criminal proceedings which may be brought as a result of —

(i) the investigation of which he is in charge; or

(ii) any such investigation as is mentioned in paragraph (b).

(9) The references to a police officer in subsections (1), (2), (3)(a) and (5) include a person authorised under section 17(2) to accompany a police officer executing a warrant.

### **Retention<sup>24</sup>**

**23.—**(1) Subject to subsection (4), anything which has been seized by a police officer or taken away by a police officer following a requirement made by virtue of section 20 or 21 may be retained so long as is necessary in all the circumstances.

(2) Without prejudice to the generality of subsection (1) —

(a) anything seized for the purposes of a criminal investigation may be retained, except as provided in subsection (4) —

(i) for use as evidence at a trial for an offence; or

(ii) for forensic examination or for investigation in connection with an offence; and

(b) anything may be retained in order to establish its lawful owner where there are reasonable grounds for believing that it has been obtained in consequence of the commission of an offence.

(3) Nothing seized on the ground that it may be used —

(a) to cause physical injury to any person,

(b) to damage property;

(c) to interfere with evidence; or

(d) to assist in escape from police detention or lawful custody,

may be retained when the person from whom it was seized is no longer in police detention or the custody of a court or is in the custody of a court but has been released on bail.

(4) Nothing may be retained for either of the purposes mentioned in subsection (2)(a) if a photograph or copy would be sufficient for the purpose.

(5) Nothing in this section affects the power of a court to make an order under section 51 of the Police Ordinance.

---

<sup>24</sup> This clause corresponds to section 22 of PACE

(6) The reference in subsection (1) to anything seized by a police officer includes anything seized by a person authorised under section 17(2) to accompany a police officer executing a warrant.<sup>25</sup>

### *Supplementary*

#### **Meaning of “premises” etc<sup>26</sup>**

**24.** In this Part —

“premises” includes any place and, in particular, includes —

- (a) any vehicle, vessel, aircraft or hovercraft;
- (b) any offshore installation; and
- (c) any tent or moveable structure; and

“offshore installation” has the meaning given to it by the Offshore Minerals Ordinance.

### **Chapter 3** **Arrest**

#### **Arrest without warrant: police officers<sup>27</sup>**

**25.**—(1) A police officer may arrest without warrant—

- (a) anyone who is about to commit an offence;
- (b) anyone who is in the act of committing an offence;
- (c) anyone whom he has reasonable grounds for suspecting to be about to commit an offence;
- (d) anyone whom he has reasonable grounds for suspecting to be committing an offence.

---

<sup>25</sup> This subclause reflects the new section 22(7) PACE 1984 inserted by section 12 and Schedule 1 paragraph 4 CJA 2003

<sup>26</sup> This clause corresponds to section 23 PACE

<sup>27</sup> This clause corresponds to the new section 24 inserted in PACE by section 110(1), (4) Serious Organised Crime and Police Act 2005 and replaces the previous sections 24 and 26 of PACE. Under the previous section 24, the power of arrest without warrant applied to (a) offences for which the sentence is fixed by law; (b) offences for which a person aged 21 years and over (not previously convicted) might be sentenced to imprisonment for a term of 5 years (or might be so sentenced but for the restrictions imposed by section 33 of the Magistrates' Courts Act 1980) and the offences listed in Schedule 1A of PACE. That Schedule contained a long list of offences and it was a feat of memory for a police officer to recall them. The new power of arrest is related to the *circumstances* rather than the identity of the offence.



(2) If a police officer has reasonable grounds for suspecting that an offence has been committed, he may arrest without warrant anyone he has reasonable grounds to suspect of being guilty of it.

(3) If an offence has been committed, a police officer may arrest without a warrant—

(a) anyone who is guilty of the offence;

(b) anyone whom he has reasonable grounds for suspecting to be guilty of it.

(4) The power of summary arrest conferred by subsections (1), (2) or (3) is exercisable only if the police officer has reasonable grounds for believing that for any of the reasons mentioned in subsection (5) it is necessary to arrest the person in question.

(5) The reasons are —

(a) to enable the name of the person to be ascertained (in the case where the police officer does not know, and cannot readily ascertain, the person's name or has reasonable grounds for doubting whether a name given by a person as his name is his real name);

(b) correspondingly as regards the person's address;

(c) to prevent the person in question—

(i) causing physical injury to himself or any other person;

(ii) suffering physical injury;

(iii) causing loss of or damage to property;

(iv) committing an offence against public decency (subject to subsection (6)); or

(v) causing an unlawful obstruction of the highway;

(d) to protect a child or other vulnerable person from the person in question;

(e) to allow the prompt or effective investigation of the offence or of the conduct of the person in question;

(f) to prevent any prosecution for the offence being hindered by the disappearance of the person in question.

(6) Subsection (5)(c)(iv) applies only where members of the public going about their normal business cannot reasonably be expected to avoid the person in question.

**Arrest without warrant: other persons<sup>28</sup>**

**26.—**(1) A person other than a police officer may arrest without a warrant—

(a) anyone who is in the act of committing an offence punishable by imprisonment, in the case of a person aged 21 years or over by imprisonment for two years or more;

(b) anyone whom he has reasonable grounds for suspecting to be committing such an offence.

(2) Where such an offence has been committed, a person other than a police officer may arrest without a warrant—

(a) anyone who is guilty of the offence;

(b) anyone he has reasonable grounds for suspecting to be guilty of it.

(3) The power of summary arrest conferred by subsections (1) or (2) is exercisable only if —

(a) the person making the arrest has reasonable grounds for believing that for any of the reasons mentioned in subsection (4) it is necessary to arrest the person in question; and

(b) it appears to the person making the arrest that it is not reasonably practicable for a police officer to make it instead.

(4) The reasons are to prevent the person in question —

(a) causing physical injury to himself or any other person;

(b) suffering physical injury;

(c) causing loss of or damage to property; or

(d) making off before a police officer can assume responsibility for him.

**Repeal of statutory powers of arrest without warrant or order<sup>29</sup>**

**27.—**(1) Subject to subsection (2), so much of any enactment passed before 1<sup>st</sup> January 1990 (that is to say, the date on which section 200 (repealed by this Ordinance) of the Criminal Justice Ordinance came into force) as would enable a police officer —

(a) to arrest a person for an offence without a warrant; or

(b) to arrest a person otherwise than for an offence without a warrant or an order of the court;

---

<sup>28</sup> This clause corresponds to section 24A PACE which was also inserted as per the immediately foregoing footnote. It replaces the former section 24(4) and (5) of PACE which dealt with the “citizen’s power of arrest”

<sup>29</sup> This clause corresponds with section 26 of PACE

no longer forms part of the law of the Falkland Islands.

(2) Nothing in subsection (1) affects the enactments specified in Schedule 2 to this Ordinance.

**Use of force in making arrest etc<sup>30</sup>**

**28.**—(1) A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large.

(2) Subsection (1) shall replace the rules of the common law on the question of when force used for a purpose mentioned in the subsection is justified for that purpose.

**Information to be given on arrest<sup>31</sup>**

**29.**—(1) Subject to subsection (5), where a person is arrested, otherwise than by being informed that he is under arrest, the arrest is not lawful unless the person arrested is informed that he is under arrest as soon as is practicable after this arrest.

(2) Where a person is arrested by a police officer, subsection (1) applies regardless of whether the fact of the arrest is obvious.

(3) Subject to subsection (5), no arrest is lawful unless the person arrested is informed of the ground for the arrest at the time of, or as soon as is practicable after, the arrest.

(4) Where a person is arrested by a police officer, subsection (3) applies regardless of whether the ground for the arrest is obvious.

(5) Nothing in this section is to be taken to require a person to be informed —

(a) that he is under arrest; or

(b) of the ground for the arrest,

if it was not reasonably practicable for him to be so informed by reason of his having escaped from arrest before the information could be given.

**Voluntary attendance at police station etc<sup>32</sup>**

**30.** Where for the purpose of assisting with an investigation a person attends voluntarily at a police station or at any other place where a police officer is present or accompanies a police officer to a police station or any such other place without having been arrested —

(a) he shall be entitled to leave at will unless he is placed under arrest;

---

<sup>30</sup> This clause corresponds with section 5 of the Criminal Law Act 1967.

<sup>31</sup> This clause corresponds with section 28 PACE

<sup>32</sup> This clause corresponds with section 29 PACE

(b) he shall be informed at once that he is under arrest if a decision is taken by a police officer to prevent him from leaving at will.

**Arrest elsewhere than at a police station<sup>33</sup>**

31.—(1) Subsection (2) applies where a person is, at any place other than a police station —

(a) arrested by a police officer for an offence; or

(b) taken into custody by a police officer after being arrested for an offence by a person other than a police officer.

(2) The person must be taken by a police officer to a police station as soon as practicable after the arrest.

(3) Subsection (2) has effect subject to section 32 (release on bail) and subsection (5) of this section (release without bail).

(4) Subsection (2) does not apply where —

(a) the person arrested is a member of Her Majesty's armed forces;

(b) he has been arrested or taken into custody by a member of the Joint Services Police;

(c) the offence for which he has been arrested or taken into custody is not an offence in respect of which the courts of the Falkland Islands have jurisdiction to try him; and

(d) he is taken by the police officer to a place in the occupation of Her Majesty's armed forces set aside for the keeping in custody of members of those forces who are under arrest.

(5) A person arrested by a police officer at any place other than a police station must be released without bail if the condition in subsection (6) is satisfied.

(6) The condition is that, at any time before the person arrested reaches a police station, a police officer is satisfied that there are no grounds for keeping him under arrest or releasing him on bail under section 32.

(7) A police officer who releases a person under subsection (5) shall record the fact that he has done so.

(8) Nothing in subsection (2) or section 32 prevents a police officer delaying taking a person to a police station or releasing him on bail if the condition in subsection (9) is satisfied.

(9) The condition is that the presence of the person at a place (other than a police station) is necessary in order to carry out such investigations as it is reasonable to carry out immediately.

---

<sup>33</sup> This corresponds with section 30 PACE

(10) Where there is any such delay the reasons for the delay must be recorded when the person first arrives at the police station or (as the case may be) is released on bail.

**Bail elsewhere than at police station<sup>34</sup>**

**32.—**(1) A police officer may release on bail a person who is arrested or taken into custody in the circumstances mentioned in section 31(1).

(2) A person may be released on bail under subsection (1) at any time before he arrives at a police station.

(3) A person released on bail under subsection (1) must be required to attend a police station.

(4) No other requirement may be imposed on the person as a condition of bail.

(5) The police station which the person is required to attend may be any police station.

**Bail under section 32: notices**

**33.—**(1) Where a police officer grants bail to a person under section 32, he must give that person a notice in writing before he is released.

(2) The notice must state —

(a) the offence for which he was arrested; and

(b) the ground on which he was arrested.

(3) The notice must inform him that he is required to attend a police station.

(4) It may also specify the police station which he is required to attend and the time when he is required to attend.

(5) If the notice does not include the information mentioned in subsection (4), the person must subsequently be given a further notice in writing which contains that information.

(6) The person may be required to attend a different police station from that specified in the notice under subsection (1) or (5) or to attend at a different time.

(7) He must be given notice in writing of any such change as is mentioned in subsection (6) but more than one such notice may be given to him.

---

<sup>34</sup> This clause corresponds with section 30A PACE which, along with section 30B (to which clause 33 corresponds) were inserted by s4(1),(7) CJA 2003. Clause 34 corresponds to section 30C(1) PACE which and clause 35 corresponds to section 30D PACE which were also so inserted. There are no corresponding provisions in CJO.

**Bail under section 32: supplemental**

34. A person who has been required to attend a police station is not required to do so if he is given notice in writing that his attendance is no longer required.

**Failure to answer bail under section 32**

35.—(1) A police officer may arrest without warrant a person who —

(a) has been released on bail under section 32 subject to a requirement to attend a specified police station, but

(b) fails to attend the police station at the specified time.

(2) A person arrested under subsection (1) must be taken to a police station (which may be the specified police station or any other police station) as soon as practicable after the arrest.

(3) In subsection (1) “specified” means specified in a notice under subsection (1) or (5) of section 33 or, if notice has been given under subsection (7) of that section, in that notice.

(4) For the purposes of —

(a) section 31 (subject to the obligation contained in subsection (2)), and

(b) section 36,

an arrest under this section is to be treated as an arrest for an offence.

**Arrest for further offence<sup>35</sup>**

36. Where —

(a) a person —

(i) has been arrested for an offence; and

(ii) is at a police station in consequence of that arrest; and

(b) it appears to a police officer that, if he were released from that arrest, he would be liable to arrest for some other offence,

he shall be arrested for that other offence.

**Search upon arrest<sup>36</sup>**

37.—(1) A police officer may search an arrested person, in any case where the person to be searched has been arrested at a place other than a police station if the police officer has

---

<sup>35</sup> This clause corresponds to section 31 PACE

<sup>36</sup> This clause corresponds to section 32 PACE

reasonable grounds for believing that the arrested person may present a danger to himself or others.

(2) Subject to subsections (3) to (5), a police officer shall also have power in any such case —

(a) to search the arrested person for anything —

(i) which he might use to assist him to escape from lawful custody; or

(ii) which might be evidence relating to an offence; and

(b) to enter and search any premises in which he was when arrested or immediately before he was arrested for evidence relating to the offence for which he has been arrested.

(3) The power to search conferred by subsection (2) is only a power to search to the extent that is reasonably required for the purpose of discovering any such thing or any such evidence.

(4) The powers conferred by this section to search a person are not to be construed as authorising a police officer to require a person to remove any of his clothing in public other than an outer coat, jacket or gloves.

(5) A police officer may not search a person in exercise of the power conferred by subsection (2)(a) unless he has reasonable grounds for believing that the person to be searched may have concealed on him anything for which a search is permitted under that paragraph.

(6) A police officer may not search premises in the exercise of the power conferred by subsection (2)(b) unless he has reasonable grounds for believing that there is evidence on the premises for which a search is permitted under that paragraph.

(7) In so far as the power of search conferred by subsection (2)(b) relates to premises consisting of two or more separate dwellings, it is limited to a power to search —

(a) any dwelling in which the arrest took place or in which the person arrested was immediately before his arrest; and

(b) any parts of the premises which the occupier of any such dwelling uses in common with the occupiers of any other dwellings comprised in the premises.

(8) A police officer searching a person in the exercise of the power conferred by subsection (1) may seize and retain anything he finds, if he has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or any other person.

## Chapter 4 Detention

### *Detention – conditions and duration*

#### **Limitations on police detention<sup>37</sup>**

38.—(1) A person arrested for an offence shall not be kept in police detention except in accordance with the provisions of this Chapter.

(2) Subject to subsection (4), if at any time the responsible officer —

(a) becomes aware, in relation to any person in police detention, that the grounds for the detention of that person have ceased to apply;

(b) is not aware of any other grounds on which the continued detention of that person could be justified under the provisions of this Chapter,

it shall be the duty of the responsible officer, subject to subsection (4), to order his immediate release from custody.

(3) No person in police detention shall be released except on the authority of the responsible officer.

(4) A person who appears to the responsible officer to have been unlawfully at large when he was arrested is not to be released under subsection (2).

(5) A person whose release is ordered under subsection (2) shall be released without bail unless it appears to the responsible officer —

(a) that there is a need for further investigation of any matter in connection with which he was detained at any time during the period of his detention; or

(b) that proceedings may be taken against him in respect of any such matter,

and, if it so appears, he should be released on bail.

(6) For the purposes of this Chapter, a person is arrested for an offence who is arrested under any provision of the law of the Falkland Islands corresponding to section 6D of the Road Traffic Act 1988 (preliminary breath tests).

(7) For the purposes of this Chapter a person who —

(a) attends a police station to answer bail granted under section 31;

---

<sup>37</sup> Clause 40 corresponds to section 34 PACE. Subclause (7) reflects the substituted section 34(7) PACE inserted by section 12 and Schedule 1 paragraph 5 CJA 2003.



(b) returns to a police station to answer to bail granted under this Chapter, or

(c) is arrested under section 35 or 55

is to be treated as arrested for an offence and that offence is the offence in connection with which he was granted bail.

### **Responsible officers<sup>38</sup>**

39.—(1) In this Part “responsible officer” means the chief police officer or such other police officer on duty at the time in question who has been designated by the chief police officer to be the responsible officer in respect of the time in question.

(2) The chief police officer may designate a police officer to be the responsible officer for the purposes of subsection (1), but unless he has under the foregoing provisions of the subsection designated another police officer to be the responsible officer for the purposes of subsection (1), he shall be deemed to have designated the most senior police officer on duty in Stanley for the time being to be the responsible officer for the purposes of subsection (1).

(3) Notwithstanding the foregoing provisions of this section where the police officer who at the time in question would, under the foregoing provisions of this section, be the responsible officer—

(a) is not of the rank of sergeant or above; and

(b) is involved in the investigation of an offence for which a person is in police detention,

he shall not for the purposes of this Chapter in relation to that person be the responsible officer and the chief police officer shall be the responsible officer in relation to that person.

### **Duties of responsible officers before charge<sup>39</sup>**

40.—(1) Where —

(a) a person is arrested for an offence —

(i) without a warrant; or

(ii) under a warrant not endorsed for bail; or

(b) a person returns to a police station,

<sup>38</sup> This clause corresponds to section 151 of CJO. Like that section, it covers the same ground as section 36 PACE but does so in a highly modified form (e.g. “responsible officers” as against “custody officers” and somewhat different duties).

<sup>39</sup> This clause corresponds to section 152 of CJO and reflects section 37 of PACE 1984 (which it follows, with the substitution of “responsible officer” for “custody officer”) and incorporates the amendments made to section 37(1) and (7) by section 29(1)(4(a), 168(3) and Schedule 1 Criminal Justice and Public Order Act 1994 and section 28 and Schedule 2 CJA 2003, respectively.

the responsible officer shall determine whether he has before him sufficient evidence to charge that person with the offence for which he was arrested and may detain him at the police station for such a period as is necessary to enable him to do so.

(2) If the responsible officer determines that he does not have such evidence before him, the person arrested shall be released either on bail or without bail, unless the responsible officer has reasonable grounds for believing that his detention without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him.

(3) If the responsible officer has reasonable grounds for so believing, he may authorise the person arrested to be kept in police detention.

(4) Where the responsible officer authorises a person who has not been charged to be kept in police detention, he shall, as soon as is practicable, make a written record of the grounds for the detention.

(5) Subject to subsection (6), the written record shall be made in the presence of the person arrested who shall at that time be informed by the responsible officer of the grounds for his detention.

(6) Subsection (5) shall not apply where the person arrested is, at the time when the written record is made —

(a) incapable of understanding what is said to him;

(b) violent or likely to become violent; or

(c) in urgent need of medical attention.

(7) Subject to section 49(6), if the responsible officer determines that he has before him sufficient evidence to charge the person arrested for the offence for which he was arrested, the person arrested —

(a) shall be released without charge, and on bail for the purpose of enabling the Attorney General to make a decision under section 42,

(b) shall be released without charge and on bail but not for that purpose;

(c) shall be released without charge and without bail, or

(d) shall be charged.

(8) The decision as to how a person is to be dealt with under subsection (7) shall be that of the responsible officer.

(9) Where a person is released under subsection (7)(a), it shall be the duty of the responsible officer to inform him that he is being released to enable the Attorney General to make a decision under section 42.

(10) Where —

(a) a person is released under subsection (7)(b or (c)); and

(b) at the time of his release a decision whether he should be prosecuted for the offence for which he was arrested has not been taken,

it shall be the duty of the responsible officer so to inform him.

(11) If the person arrested is not in a fit state to be dealt with under subsection (7), he may be kept in police detention until he is.

(12) The duty imposed on the responsible officer under subsection (1) shall be carried out by him as soon as practicable after the person arrested arrives at the police station or, in the case of a person arrested at the police station, as soon as practicable after the arrest.

(13) It shall be the duty of the responsible officer —

(a) to take such steps as are practicable to ascertain the identity of a person responsible for the welfare of an arrested juvenile; and

(b) if —

(i) he ascertains the identity of any such person; and

(ii) it is practicable to give that person the information which subsection (10) requires the custody officer to give to the arrested juvenile,

to give that person the information as soon as it is practicable to do so.

(14) For the purposes of subsection (13) the persons who may be responsible for the welfare of an arrested juvenile are —

(a) his parent or guardian; and

(b) any other person who has for the time being assumed responsibility for his welfare.

(15) In this Chapter—

“arrested juvenile” means a person arrested with or without a warrant who appears to be under the age of 17;

“endorsed for bail” means endorsed with a direction for bail in accordance with section 117(2) of the Magistrates’ Courts Act 1980.

#### **Guidance<sup>40</sup>**

**41.—**(1) The Attorney General may issue guidance —

(a) for the purpose of enabling responsible officers to decide how persons should be dealt with under section 40(7) or section 43(2);

(b) as to the information to be sent to the Attorney General under section 42(1).

(2) The Attorney General may from time to time revise guidance issued under this section.

(3) Responsible officers are to have regard to guidance under this section in deciding how persons should be dealt with under section 40(7) or 43(2).

(4) The Attorney General must publish in such manner as he thinks fit —

(a) any guidance issued under this section, and

(b) any revisions made to such guidance.

(5) Guidance under this section may make different provision for different cases or circumstances.

#### **Consultation with Attorney General**

**42.—**(1) Where a person is released on bail under section 40(7)(a), an officer involved in the investigation of the offence shall, as soon as practicable, send to the Attorney General such information as may be specified in guidance under section 41.

(2) The Attorney General shall decide whether there is sufficient evidence to charge the person with an offence.

(3) If he decides that there is sufficient evidence to charge the person with an offence, he shall decide —

(a) whether or not the person should be charged and, if so, the offence with which he should be charged, and

(b) whether or not the person should be given a caution and, if so, the offence in respect of which he should be given a caution.

---

<sup>40</sup> Clauses 41 to 44 reflect sections 37A to 37C PACE 1984 which were inserted by section 28 and Schedule 2 CJA 2003. There is no corresponding provision in CJO. The guidance is likely to be modelled on the guidance given by the Director of Public Prosecutions under section 37A PACE, the corresponding provision in England.

(4) The Attorney General shall give written notice of his decision to an officer involved in the investigation of the offence.

(5) If his decision is —

(a) that there is not sufficient evidence to charge the person with an offence, or

(b) that there is sufficient evidence to charge the person with an offence but that the person should not be charged with an offence or given a caution in respect of an offence,

a responsible officer shall give the person notice in writing that he is not to be prosecuted.

(6) If the decision of the Attorney General is that the person should be charged with an offence, or given a caution in respect of an offence, the person shall be charged or cautioned accordingly.

(7) But if his decision is that the person should be given a caution in respect of an offence and it proves not to be possible to give the person such a caution, he shall instead be charged with that offence.

(8) For the purposes of this section, a person is to be charged with an offence either —

(a) when he is in police detention after returning to a police station to answer bail or otherwise in police detention at a police station; or

(b) by summons issued as the result of an information having been laid before a justice of the peace.

(9) In this section “caution” includes a conditional caution and warning or reprimand given under the authority of any written law.

**Breach of bail following release under section 40(7)(a)**

**43.—**(1) This section applies where —

(a) a person released on bail under section 40(7)(a) or subsection (2)(b) of this section is arrested under section 55 in respect of that bail; and

(b) at the time of his detention following that arrest at the police station mentioned in section 55, notice under section 42(4) has not been given.

(2) The person arrested —

(a) shall be charged; or

(b) shall be released without charge, either on bail or without bail.

(3) The decision as to how a person is to be dealt with under subsection (2) shall be that of a responsible officer.

(4) A person released on bail under subsection (2)(b) shall be released on bail subject to the same conditions (if any) which applied immediately before his arrest.

**Release under section 40(7)(a): further provision**

44.—(1) Where a person is released on bail under section 40(7)(a) or section 43(2)(b), a responsible officer may subsequently appoint a different time, or an additional time, at which the person is to attend at the police station to answer bail.

(2) The responsible officer shall give the person notice in writing of the exercise of the power under subsection (1).

(3) The exercise of the power under subsection (1) shall not affect the conditions (if any) to which bail is subject.

(4) Where a person released on bail under section 40(7)(a) or 43(2)(b) returns to a police station to answer bail or is otherwise in police detention at a police station, he may be kept in police detention to enable him to be dealt with in accordance with section 42 or 43 or to enable the power under subsection (1) of this section to be exercised.

(5) If the person is not in a fit state to enable him to be so dealt with or to enable that power to be exercised, he may be kept in police detention until he is.

(6) Where a person is kept in police detention by virtue of subsection (4) or (5) of this section, section 40(1) to (3) and (7) (and section 47(8) so far as it relates to section 40(1) to (3)) shall not apply to the offence in connection with which he was released on bail under section 40(7)(a) or 43(2)(b).

**Duties of responsible officer after charge<sup>41</sup>**

45.—(1) Where a person arrested for an offence otherwise than under a warrant endorsed for bail is charged with an offence, the responsible officer shall, subject to any law of the Falkland Islands corresponding to section 25 of the Criminal Justice and Public Order Act 1994<sup>42</sup> for the time being in force, order his release from police detention, either on bail or without bail, unless—

(a) if the person arrested is not an arrested juvenile —

---

<sup>41</sup> This clause corresponds to section 38 PACE in a modified form and is an amended version of section 153 CJO.

<sup>42</sup> Section 25 of the Criminal Justice and Public Order Act 1994 provides that a person who in any proceedings been charged with or convicted of an offence listed in subsection (2) (murder, manslaughter and a number of serious sexual offences) and has previously been convicted of an offence so listed (in the case of manslaughter if he was then sentenced to imprisonment for life) shall not be granted bail except in exceptional circumstances). There is at present no corresponding provision in Falkland Islands law.

(i) his name or address cannot be ascertained, or the responsible officer has reasonable grounds for doubting whether a name or address can be ascertained, or the responsible officer has reasonable grounds for doubting whether a name or address furnished by him as his name or address is his real name or address;

(ii) the responsible officer has reasonable grounds for believing that the person arrested will fail to appear in court to answer to bail;

(iii) in the case of a person arrested for an imprisonable offence, the responsible officer has reasonable grounds for believing that the detention of the person arrested is necessary to prevent him from committing an offence;

(iv) in the case of a person arrested for an offence which is not an imprisonable offence, the responsible officer has reasonable grounds for believing that the detention of the person arrested is necessary to prevent him from causing physical injury to any other person or from causing loss of or damage to property;

(v) the responsible officer has reasonable grounds for believing that the detention of the person arrested is necessary to prevent him from interfering with the administration of justice or with the investigation of offences or a particular offence; or

(vi) the responsible officer has reasonable grounds for believing that the detention of the person concerned is necessary for his own protection,

(b) if he is an arrested juvenile —

(i) any of the requirements of paragraph (a) is satisfied; or

(ii) the responsible officer has reasonable grounds for believing that he ought to be detained in his own interests.

(2) If the release of a person arrested is not required by subsection (1) the responsible officer may authorise him to be kept in police detention.

(3) Where a responsible officer authorises a person who has been charged to be kept in police detention, he shall, as soon as practicable, make a written record of the grounds for the detention.

(4) Subject to subsection (5), the written record shall be made in the presence of the person charged who shall at that time be informed by the responsible officer of the grounds for his detention.

(5) Subsection (4) shall not apply when the person charged is, at the time when the written record is made —

(a) incapable of understanding what is said to him;

(b) violent or likely to become violent; or

(c) in urgent need of medical attention.

(6) In this section the question of whether an offence is an “imprisonable offence” shall be determined without regard to any enactment prohibiting or restricting the imprisonment of young offenders or first offenders.

**Responsibilities in relation to persons detained<sup>43</sup>**

46.—(1) Subject to subsections (2) and (4), it shall be the duty of the responsible officer to ensure —

(a) that all persons in police detention are treated in accordance with this Part and any code of practice issued under it and relating to the treatment of persons in police detention; and

(b) that all matters relating to such persons which are required by this Part or by such code of practice to be recorded are recorded in the custody records relating to such persons.

(2) If the responsible officer, in accordance with any code of practice issued under this Part transfers or permits the transfer of a person in police detention —

(a) to the custody of a police officer investigating an offence for which that person is in police detention; or

(b) to the custody of an officer who has charge of that person outside the police station,

the responsible officer shall cease in relation to that person to be subject to the duty imposed on him by subsection (1)(a); and it shall be the duty of the officer to whom the transfer is made to ensure that he is treated in accordance with the provisions of this Part and of any such code of practice as is mentioned in subsection (1).

(3) If the person detained is subsequently returned to the custody of the responsible officer, it shall be the duty of the officer investigating the offence to report to the responsible officer as to the manner in which this section and the code of practice have been complied with while that person was in his custody.

(4) Where—

(a) an officer of higher rank than the responsible officer gives directions relating to a person in police detention; and

(b) the directions are at variance with any decision made or action taken by the responsible officer in the performance of a duty imposed on him under this Part; or at variance with

---

<sup>43</sup> This clause corresponds to section 39 PACE and to section 154 CJO.



any decision or action which would but for the directions have been made or taken by him in the performance of such a duty;

the responsible officer shall refer the matter at once to the chief police officer.

**Review of police detention<sup>44</sup>**

47.—(1) Reviews of the detention of each person in police detention in connection with the investigation of an offence shall be carried out periodically in accordance with the following provisions of this section by the chief police officer or such other police officer as may have been designated by the chief police officer and who is of at least the rank of sergeant.

(2) The officer to whom it falls to carry out a review is referred to in this section as a “review officer”.

(3) Subject to subsection (4) —

(a) the first review shall be not later than six hours after the detention was first authorised;

(b) the second review shall be not later than nine hours after the first;

(c) subsequent reviews shall be at intervals of not more than nine hours.

(4) A review may be postponed —

(a) if, having regard to all the circumstances prevailing at the latest time for it specified in subsection (3), it is not practicable to carry out the review at that time;

(b) without prejudice to the generality of paragraph (a) —

(i) if at that time the person in detention is being questioned by a police officer and the responsible officer is satisfied that an interruption of the questioning for the purpose of carrying out the review would prejudice the investigation in connection with which he is being questioned; or

(ii) if at that time no review officer is readily available.

(5) If the review is postponed under subsection (4) it should be carried out as soon as practicable after the latest time specified for it in subsection (3).

(6) If the review is carried out after postponement under subsection (4), the fact that it was so carried out shall not affect any requirement of this section as to the time at which any subsequent review is to be carried out.

---

<sup>44</sup> This clause corresponds to section 40 of PACE, in a modified form, and to section 155 CJO.

(7) The responsible officer shall record the reasons for any postponement of a review in the custody record.

(8) Subject to subsection (9), where the person whose detention is under review has not been charged before the time of the review section 40(1) to (6) shall have effect in relation to him, with the substitution —

(a) of references to the person whose detention is under review for references to the person arrested; and

(b) of references to the responsible officer for references to the responsible officer.

(9) Where a person has been kept in police detention by virtue of section 40(9) or 44(5), section 40(1) to (6) shall not have effect in relation to him but it shall be the duty of the review officer to determine whether he is yet in a fit state.

(10) Where the person whose detention is under review has been charged before the time of the review, section 45(1) to (5) shall have effect in relation to him, with the substitution of references to the person whose detention is under review for any reference to the person arrested or to the person charged.

(11) Where —

(a) an officer of higher rank than the responsible officer gives directions relating to a person in police detention; and

(b) the direction are at variance —

(i) with any decision made or action taken by the responsible officer in the performance of a duty imposed on him under this Chapter; or

(ii) with any decision or action which would but for the directions have been made or taken by him in the performance of such a duty,

the responsible officer shall refer the matter at once to the chief police officer.

(12) Before determining whether to authorise a person's continued detention the responsible officer shall give —

(a) that person (unless he is asleep); or

(b) any legal practitioner representing him who is available at the time of the review,

an opportunity to make representations to him about the detention.

(13) Subject to subsection (14), the person whose detention is under review or his legal practitioner may make representations under subsection (12) either orally or in writing.

(14) The responsible officer may refuse to hear oral representations from the person whose detention is under review if he considers that he is unfit to make such representations by reason of his condition or behaviour.

**Use of telephone for review hearings<sup>45</sup>**

48.—(1) A review under section 47(1) may be conducted by means of a discussion, conducted by telephone, with one or more persons at the police station where the arrested person is held.

(2) The review may be carried out by an officer of at least the rank of sergeant who has access to a means of communications by telephone to persons in the police station where the arrested person is held.

(3) Where any review is carried out under this section by an officer who is not present at the station where the arrested is held —

(a) any obligation of that officer to make a record in connection with the carrying out of the review shall have effect as an obligation to cause another officer to make the record;

(b) any requirement for the record to be made in the presence of the arrested person shall apply to the making of that record by that other officer; and

(c) the requirements under section 47(12) and (13) for —

(i) the arrested person; or

(ii) a legal practitioner representing him,

to be given any opportunity to make representations (whether in writing or orally) to that officer shall have effect as a requirement for that person, or such a legal practitioner, to be given an opportunity to make representations in a manner authorised by subsection (4).

(4) Representations are made in a manner authorised by this subsection —

(a) in a case where facilities exist for the immediate transmission of written representations to the officer carrying out the review, if they are made either —

(i) orally by telephone to that officer; or

(ii) in writing to that officer by means of those facilities; and

---

<sup>45</sup> This clause corresponds with section 40A PACE which was inserted by section 73(1), (2) Criminal Justice and Police Act 2001. There is no equivalent provision in CJO.

(b) in any other case, if they are made orally by telephone to that officer.

**Limits on period of detention without charge<sup>46</sup>**

49.—(1) Subject to the following provisions of this section and to sections 50 and 51, a person shall not be kept in police detention for more than 24 hours without being charged.

(2) The time from which the period of detention of a person is to be calculated (in this Part referred to as “the relevant time”)—

(a) in the case of a person to whom this paragraph applies, shall be—

(i) the time at which that person arrives at the relevant police station; or

(ii) the time 24 hours after the time of that person’s arrest

whichever is the earlier,

(b) in the case of a person arrested more than 5 miles from the relevant police station the time referred to in paragraph (a) shall, provided the person is not questioned during the journey, be extended by such time as the period of the journey reasonably exceeds half an hour,

(c) in the case of a person who—

(i) attends voluntarily at a police station; or

(ii) accompanies a police officer to a police station without having been arrested,

and is arrested at the police station, the time of his arrest,

(d) in the case of a person who attends a police station to answer bail granted under section 32, the time when he arrives at the police station.

(3) Subsection (2) shall have effect in relation to a person arrested under section 36 (arrest for further offence) as if every reference in it to his arrest or his being arrested were a reference to his arrest or being arrested for the offence for which he was originally arrested.

(4) When a person who is in police detention is removed to hospital because he is in need of medical treatment, any time during which he is being questioned in hospital or on the way back by a police officer for the purpose of obtaining evidence in relation to an offence shall be included in the period which falls to be calculated for the purposes of this Chapter, but any other time while he is in hospital or on his way there or back shall not be so included.

---

<sup>46</sup> Clauses 50 to 52 correspond to sections 41 to 43 PACE (in a highly modified form) and to sections 156 to 158 CJO.

(5) Subject to subsection (6), a person who has been arrested and who at the expiry of 24 hours after his arrest is still in police detention and has not been charged shall be released at that time either on bail or without bail.

(6) Subsection (5) does not apply to a person who is detained for more than 24 hours after the relevant time has been authorised or is otherwise permitted in accordance with section 51 or 52.

(7) A person released under subsection (5) shall not be re-arrested without a warrant for the offence for which he was previously arrested unless new evidence justifying a further arrest has come to light since his release, but this subsection does not prevent an arrest under section 55.

#### **Authorisation of continued detention**

**50.—**(1) Where the chief police officer has reasonable grounds for believing that —

(a) the detention of that person without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him; and

(b) the investigation is being conducted diligently and expeditiously,

he may authorise the keeping of that person in police detention for a period expiring at or before 36 hours after the relevant time.

(2) Where the chief police officer authorises the keeping of a person in police detention under subsection (1), it shall be his duty —

(a) to inform that person of the grounds for his continued detention; and

(b) to record the grounds in that person's custody record.

(3) Before determining whether to authorise the keeping of a person in detention under subsection (1), the chief police officer shall give —

(a) that person; or

(b) any legal practitioner representing him who is available at the time when it falls to the chief police officer to determine whether to give the authorisation,

an opportunity to make representations to him about the detention.

(4) Subject to subsection (5), the person in detention or his legal practitioner may make representations under subsection (3) either orally or in writing.

(5) The chief police officer may refuse to hear oral representations from the person in detention if he considers that he is unfit to make such representations by reason of his condition or behaviour.

(6) Where —

(a) the chief police officer authorises the keeping of a person in detention under subsection (1); and

(b) at the time of the authorisation he has not yet exercised a right conferred on him by section 64 or 65, the chief police officer —

(i) shall inform him of that right;

(ii) shall permit the person to exercise that right if he wishes to do so; and

(iii) shall record in his custody record the time at which he was informed of the right in accordance with sub-paragraph (i), and whether or not he exercised that right, and if he exercised that right, the time at which he exercised it.

(7) Where the chief police officer has authorised the keeping of a person who has not been charged in detention under subsection (1), he shall be released from detention, either on bail or without bail not later than 36 hours after the relevant time unless —

(a) he has been charged with an offence; or

(b) the continued detention is authorised or otherwise permitted in accordance with section 51.

(8) A person released under subsection (7) shall not be re-arrested without a warrant for the offence for which he was previously arrested unless new evidence justifying a further arrest has come to light since his release.

### **Warrants of further detention**

**51.—**(1) Where, on an application made on oath by a police officer and supported by an information, a court of summary jurisdiction is satisfied that there are reasonable grounds for believing that the further detention of the person to whom the application relates is justified, it may issue a warrant of further detention authorising the keeping of that person in police detention.

(2) A court may not hear an application for a warrant of further detention unless the person to whom the application relates —

(a) has been furnished with a copy of the information, and

(b) has been brought before the court for the hearing.

(3) The person to whom the application relates shall be entitled to be legally represented at the hearing and, if he is not so represented but wishes to be so represented —

- (a) the court shall adjourn the hearing to enable him to obtain representation, and
  - (b) he may be kept in police detention during the adjournment.
- (4) A person's further detention is only authorised for the purposes of this section or section 52 if —
  - (a) his detention without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him; and
  - (b) the investigation is being conducted diligently and expeditiously.
- (5) Subject to subsection (7), an application for a warrant of further detention may be made —
  - (a) at any time before the expiration of 36 hours from the relevant time; or
  - (b) in a case where —
    - (i) it is not practicable for the court of summary jurisdiction to which the application will be made to sit at the expiry of 36 hours after the relevant time; but
    - (ii) the court will sit during the 6 hours following the end of that period,at any time before the expiry of the said 6 hours.
- (6) In a case to which subsection (5)(b) applies —
  - (a) the person to whom the application relates may be kept in police detention until the application is heard; and
  - (b) the responsible officer shall make a note in that person's custody record —
    - (i) of the fact that he was kept in police detention for more than 36 hours after the relevant time; and
    - (ii) of the reason why he was so kept.
- (7) If —
  - (a) an application for a warrant of further detention is made after the expiry of 36 hours after the relevant time; and
  - (b) it appears to the court of summary jurisdiction that it would have been reasonable for the police to make it before the expiry of that period,the court shall dismiss the application.

(8) Where on an application such as is mentioned in subsection (1) the court is not satisfied that there are reasonable grounds for believing that the further detention of the person to whom the application relates is justified, it shall be its duty —

(a) to refuse the application; or

(b) to adjourn the hearing of it until a time not later than 36 hours after the relevant time.

(9) The person to whom the application relates may be kept in police detention during the adjournment.

(10) A warrant of further detention shall —

(a) state the time at which it was issued;

(b) authorise the keeping in police detention of the person to whom it relates for the period stated in it.

(11) Subject to subsection (12), the period stated in a warrant of further detention shall be such a period as the court thinks fit, having regard to the evidence before it.

(12) The period shall not be longer than 36 hours.

(13) Any information submitted in support of an application under this section shall state —

(a) the nature of the offence for which the person to whom the application relates has been arrested;

(b) the general nature of the evidence on which that person was arrested;

(c) what enquiries relating to the offence have been made by the police and what further enquiries are proposed by them;

(d) the reasons for believing the continued detention of that person to be necessary for the purposes of such further enquiries.

(14) Where an application under this section is refused, the person to whom the application relates shall forthwith be charged or released, either on bail or without bail.

(15) Where a warrant of further detention is issued, the person to whom it relates shall be released from police detention, either on bail or without bail, upon or before the expiry of the warrant unless he is charged.

(16) A person released under subsection (15) shall not be re-arrested without a warrant for the offence for which he was previously arrested unless new evidence justifying a further arrest has come to light since his release.



### **Extension of warrants of further detention<sup>47</sup>**

**52.—**(1) On an application on oath made by a police officer and supported by an information a court of summary jurisdiction may extend a warrant of further detention issued under section 51 if it is satisfied that there are reasonable grounds for believing that the further detention of the person to whom the application relates is justified.

(2) The period for which a warrant of further detention may be extended shall be such period as the court thinks fit, not being longer than a period of 36 hours nor ending later than 96 hours after the relevant time.

(3) A warrant of further detention shall, if extended under this section, be endorsed with a note of the period of the extension.

(4) Subsections (2), (3) and (13) of section 51 shall apply to an application made under this section as they apply to an application made under that section.

(5) Where an application under this section is refused, the person to whom the application relates shall forthwith be charged or released either on bail or without bail.

### **Detention before charge – supplementary<sup>48</sup>**

**53.—**(1) In this Part “court of summary jurisdiction” means the Senior Magistrate sitting as the Magistrate’s Court otherwise than in open court or the Summary Court consisting of two or more justices of the peace sitting otherwise than in open court.

(2) Any reference in this Chapter to a period of time or a time of day is to be treated as approximate only.

### *Detention – miscellaneous*

### **Detention after charge<sup>49</sup>**

**54.—**(1) Where a person is charged with an offence and after being charged is kept in police detention, he shall be brought before a court of summary jurisdiction in accordance with the provisions of this section.

(2) The period within which a person is to be brought before a court in accordance with subsection (1) is a period expiring not later than 24 hours from the time at which he was charged unless that time would expire on a Saturday, Sunday or public holiday in which case the person concerned is to be brought before a court not later than the earliest convenient time at which he can be brought before a court on the first day following the day on which he was charged which is not a Saturday, Sunday or public holiday.

---

<sup>47</sup> This clause corresponds to section 44 PACE and to section 159 CJO

<sup>48</sup> This clause corresponds to section 45 PACE. Subclause (1) corresponds to section 160 CJO.

<sup>49</sup> This clause corresponds to section 46 PACE and section 161 CJO.

(3) Nothing in this section requires a person who is in hospital to be brought before a court if he is not well enough.

**Power of arrest for failure to answer to police bail<sup>50</sup>**

**55.—**(1) A police officer may arrest without a warrant any person who, having been released on bail under this Part subject to a duty to attend at a police station fails to attend at that police station at the time appointed for him to do so.

(2) A person who is arrested under this section shall be taken to the police station appointed as the place at which he is to surrender to custody as soon as practicable after the arrest.

(3) For the purposes of —

(a) section 31 (subject to the obligation in subsection (2)), and

(b) section 32,

an arrest under this section shall be treated as an arrest for an offence.

**Bail after arrest**

**56.—**(1) Subject to subsection (3), a release on bail of a person under this Chapter shall be a release on bail granted in accordance with the provisions of written law in relation to the granting of bail as they apply to bail granted by a police officer.

(2) The normal powers to impose conditions of bail shall be available to him where the responsible officer orders the release of a person on bail under section 40(7)(a) or section 45(1) but not in any other cases.

(3) Nothing in any enactment relating to bail shall prevent the re-arrest without warrant of a person released on bail subject to a duty to attend at a police station if new evidence justifying a further arrest has come to light since his release.

(4) Subject to subsection (5), in this Part references to “bail” are references to bail subject to a duty —

(a) to appear before a court of summary jurisdiction at such time and such place; or

(b) to attend at a police station at such time,

as the responsible officer may appoint.

(5) Where the responsible officer has granted bail to a person subject to a duty to appear at a police station, the responsible officer may give notice in writing to that person that his attendance at the police station is not required.

---

<sup>50</sup> This clause makes new provision corresponding to that made by section 46A PACE.

(6) Where a person arrested for an offence who was released on bail subject to a duty to attend at a police station so attends, he may be detained without charge in connection with that offence only if the responsible officer has reasonable grounds for believing that his detention is necessary—

(a) to secure or preserve evidence relating to the offence; or

(b) to obtain such evidence by questioning him.

(7) Where a person is detained under subsection (6), any time during which he was in police detention prior to being granted bail shall be included as part of any period which falls to be calculated under this Chapter.

(8) Where a person who is released on bail subject to a duty to attend at a police station is re-arrested, the provisions of this Part shall apply to him as they apply to a person arrested for the first time.

#### **Records of detention<sup>51</sup>**

**57.—**(1) The chief police officer shall maintain records showing on an annual basis —

(a) the number of persons kept in police detention for more than 24 hours and subsequently released without charge;

(b) the number of applications for warrants of further detention and the results of the applications;

(c) in relation to each warrant of further detention —

(i) the period of further detention authorised by it;

(ii) the period which the person named in it spent in police detention on its authority; and

(iii) whether he was charged or released without charge.

(2) The chief police officer shall not later than 1 February in each year submit to the Governor a report in writing containing information about the matters mentioned in subsection (1) in respect of the previous calendar year and the Governor shall cause the same to be laid before the Police Committee.

#### **Savings<sup>52</sup>**

**58.** Nothing in this Chapter shall affect —

---

<sup>51</sup> This clause makes new provision and corresponds section 50 PACE

<sup>52</sup> Paragraphs (b) and (c) of this clause are new, but equivalents appear in s.51 PACE 1984 as amended.

(a) any powers conferred by or by virtue of Ordinance of the Falkland Islands relating to the control of immigration upon any police officer or immigration officer to detain any person for any purpose associated with the control of immigration;

(b) any powers of arrest or detention conferred by or by virtue of any enactment of the United Kingdom relating to terrorism or terrorist activities and having effect in the Falkland Islands;

(c) any duty of a police officer or other person under any enactment of the United Kingdom in relation to Her Majesty's armed forces having effect in the Falkland Islands which requires or empowers him to arrest, detain or take into custody any member of Her Majesty's armed forces;

(d) any right of a person in police detention to apply for a writ of habeas corpus or other prerogative remedy.

### **Children**

59. This Chapter does not apply to a child who is arrested without a warrant otherwise than for homicide and to whom section 30 of the Children Ordinance 1994 applies.

## **Chapter 5**

### **Questioning and treatment of persons by police**

#### **Abolition of certain powers of police officers to search persons<sup>53</sup>**

60. There shall continue not to have effect any Ordinance passed before 1 January 1990<sup>54</sup> in so far as it authorises —

(a) any search by a police officer of a person in police detention at a police station; or

(b) any intimate search of a person by a police officer;

and the abolition of any rule of common law which would authorise a search such as is mentioned in (a) or (b) continues.

#### **Searches of detained persons<sup>55</sup>**

61.—(1) The responsible officer at a police station shall ascertain<sup>56</sup> everything which a person has with him when he is —

---

<sup>53</sup> This clause corresponds to section 53 PACE and to section 165 CJO.

<sup>54</sup> This was the date on which section 165 of CJO (the effect of which this clause continues) came into force.

<sup>55</sup> This clause corresponds to section 54 PACE.

<sup>56</sup> The words in section 166(1) of the repealed Ordinance "and record or cause to be recorded" are here omitted. This follows the amendment to section 54(1) PACE 1984 which was made by section 8(1) of the Criminal Justice Act 2003.

- (a) brought to the station after being arrested elsewhere or after being committed to custody by an order or sentence of the court;
  - (b) arrested at the station or detained there, as a person falling within section 40(7), under section 40.<sup>57</sup>
- (2) The responsible officer may record or cause to be recorded all or any of the things which he ascertains under subsection (1).
- (3) In the case of an arrested person, any such record may be made as part of his custody record.<sup>58</sup>
- (4) Subject to subsection (5), the responsible officer may seize and retain any such thing or cause any such thing to be seized and retained.
- (5) Clothes and personal effects may only be seized if the responsible officer —
- (a) believes that the person from whom they are seized may use them —
    - (i) to cause physical injury to himself or any other person;
    - (ii) to damage property;
    - (iii) to interfere with evidence; or
    - (iv) to assist him to escape; or
  - (b) has reasonable grounds to believing that they may be evidence relating to an offence.
- (6) Where anything is seized the person from whom it is seized shall be told the reason for the seizure unless he is —
- (a) violent or likely to become violent; or
  - (b) incapable of understanding what is said to him.
- (7) Subject to subsection (11), a person may be searched if the responsible officer considers it necessary to enable him to carry out his duty under subsection (1) and to the extent that the responsible officer considers it necessary for that purpose.

---

<sup>57</sup> This paragraph replaces paragraph (b) of section 166 of the repealed Ordinance and follows the wording of section 54(1)(b) PACE 1984 as substituted by section 147(a) Criminal Justice Act 1988 and subsequently amended by section 168(2) and Schedule 10, paragraph 55 Criminal Justice and Public Order Act 1994.

<sup>58</sup> Subclauses (2) and (3) replace section 166(2) of the repealed Ordinance and reflect section 54(2) and (2A) PACE 1984 as amended by section 8(2) Criminal Justice Act 2003.

(8) A person who is in custody at a police station or is in police detention otherwise than at a police station may at any time be searched in order to ascertain whether he has with him anything which he could use for the purposes specified in subsection (5)(a)<sup>59</sup>.

(9) Subject to subsection (10), a police officer may seize and retain, or cause to be seized and retained, anything found on such a search.

(10) A police officer may only seize clothes and personal effects in the circumstances specified in subsection (5).

(11) An intimate search may not be conducted under this section.

(12) A search under this section shall be carried out by a police officer.

(13) The police officer carrying out a search shall be of the same sex as the person searched.

#### **Searches and examination to ascertain identity<sup>60</sup>**

**62.—**(1) If an officer of at least the rank of inspector authorises it, a person who is detained in a police station may be searched or examined, or both —

(a) for the purpose of ascertaining whether he has any mark that would tend to identify him as a person involved in the commission of an offence; or

(b) for the purpose of facilitating the ascertainment of his identity.

(2) An officer may only give an authorisation under subsection (1) for the purpose mentioned in paragraph (a) of that subsection if —

(a) the appropriate consent to a search or examination that would reveal whether the mark or question exists has been withheld; or

(b) it is not practicable to obtain such consent.

(3) An officer may only give an authorisation under subsection (1) in a case in which subsection (2) does not apply if —

(a) the person in question has refused to identify himself;

(b) the officer has reasonable grounds for suspecting that the person is not who he claims to be.

<sup>59</sup> This subsection and subsections (10) and (11) do not appear in section 166 of the repealed Ordinance and represent provisions corresponding to subsections (6A), (6B) and (6C) of section 54 of PACE 1984 as amended by section 147(b) of the Criminal Justice and Public Order Act 1994.

<sup>60</sup> This clause makes new provision and corresponds to section 54A of PACE 1984 which was inserted by section 90(1) Anti-terrorism, Crime and Security Act 2001.

(4) An officer may give an authorisation under subsection (1) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(5) Any identifying mark found on a search or examination under this section may be photographed —

(a) with the appropriate consent; or

(b) if the appropriate consent is withheld or it is not practicable to obtain it, without it.

(6) Where a search or examination may be carried out under this section, or a photograph may be taken under this section, the only persons entitled to carry out the search or examination or take the photograph are police officers.<sup>61</sup>

(7) A person may not under this section carry out a search or examination of a person of the opposite sex or take a photograph of a part of the body of a person of the opposite sex.

(8) An intimate search may not be carried out under this section.

(9) A photograph taken under this section —

(a) may be used by, or disclosed to, any person for any purpose related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution; and

(b) after being so used or disclosed, may be retained but may not be used or disclosed except for a purpose so related.

(10) In subsection (9) —

(a) the reference includes a reference to any conduct which —

(i) constitutes one or more criminal offences (whether under the law of the Falkland Islands or of a country or territory outside the Falkland Islands); or

(ii) is, or corresponds to any conduct which, if it all took place in the Falkland Islands would constitute one or more criminal offences;

(b) the references to an investigation and to a prosecution include references, respectively, to any investigation outside the Falkland Islands of any crime or suspected crime and to a prosecution brought in respect of a crime or suspected crime outside the Falkland Islands.

(11) In this section —

---

<sup>61</sup> This subclause incorporates amendments made to section 54A(6) PACE 1984 by section 107(1) Schedule 7 paragraph 9(2) Police Reform Act 2002

(a) references to ascertaining a person's identity include references to showing that he is not a particular person; and

(b) references to taking a photograph include references to using any process by means of which a visual image may be produced, and references to photographing a person shall be construed accordingly.

(12) In this section "mark" includes features and injuries; and a mark is an identifying mark for the purposes of this section if its existence in any person's case facilitates the ascertainment of his identity or his identification as a person involved in the commission of an offence.

### **Intimate searches<sup>62</sup>**

**63.—(1)** Subject to the provisions of this section, if the chief police officer has reasonable grounds for believing —

(a) that a person who has been arrested and is in police detention may have concealed on him anything which —

(i) he could use to cause physical injury to himself or others; and

(ii) he might so use it while he is in police detention or in the custody of a court; or

(b) that such a person —

(i) may have a Class A drug concealed on him; and

(ii) was in possession of it with the appropriate criminal intent before his arrest,

he may authorise an intimate search<sup>63</sup> of that person.

(2) The chief police officer may not authorise an intimate search of a person unless he has reasonable grounds for believing that it cannot be found without his being intimately searched.

(3) The chief police officer may give an authorisation under subsection (1) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as possible.

(4) An intimate search which is only a drug offence search shall be way of examination by a suitably qualified person.

---

<sup>62</sup> This clause corresponds to section 55 PACE and section 167 CJO

<sup>63</sup> "intimate search" was substituted for "such a search" in section 56(1) PACE 1984 (which the corresponding section (section 167) of the repealed Ordinance follows) by section 170(1) and Schedule 15 paragraphs 97 and 99 of the Criminal Justice Act 1988, so correcting a drafting error. The amendment has therefore been incorporated in the subclause.



- (5) Except as provided by subsection (4), an intimate search shall be by way of examination by a suitably qualified person unless the chief police officer considers that this is not practicable.
- (6) An intimate search which is not carried out as mentioned in subsection (5) shall be carried out by a police officer.
- (7) A police officer shall not carry out an intimate search of a person of the opposite sex.
- (8) No intimate search shall be carried out except —
- (a) at a police station;
  - (b) at a hospital; or
  - (c) at some other place used for medical purposes.
- (9) An intimate search which is only a drug offence search may not be carried out at a police station.
- (10) If an intimate search of a person is carried out, the custody record relating to him shall state —
- (a) which parts of his body were searched; and
  - (b) why they were searched.
- (11) The information required to be recorded by subsection (11) shall be recorded as soon as possible after completion of the search.
- (12) The responsible officer may seize and retain anything which is found on an intimate search of a person, or cause any such thing to be seized and retained —
- (a) if he believes that the person from whom it was seized may use it —
    - (i) to cause harm to himself or any other person;
    - (ii) to damage property;
    - (iii) to interfere with evidence; or
    - (iv) to assist him to escape; or
  - (b) if he has reasonable grounds to believe that it may be evidence relating to an offence.
- (13) Where anything is seized under this section, the person from whom it is seized shall be told the reason for the seizure unless he is —

(a) violent or likely to become violent; or

(b) incapable of understanding what is said to him.

(14) The chief police officer shall not later than 1 February in each year submit to the Governor a report in writing containing information about searches authorised under this section during the previous calendar year and the Governor shall cause the same to be laid before the Police Committee.

(15) The information about such searches shall include —

(a) the total number of such searches;

(b) the number of searches conducted by way of examination by a suitably qualified person;

(c) the number of searches not so conducted but conducted in the presence of such a person; and

(d) the result of the searches carried out.

(16) The information shall also include, as separate items —

(a) the total number of drug offence searches; and

(b) the result of those searches.

(17) In this section —

“the appropriate criminal intent” means an intent to commit an offence under —

(a) section 5(2) of the Misuse of Drugs Ordinance (possession of controlled drug with intent to supply another);

(b) section 60(2) of the Customs Ordinance (exportation etc with intent to evade a prohibition or restriction);

“Class A drug” has the same meaning as it has under the Misuse of Drugs Ordinance;

“drug offence search” means an intimate search for a Class A drug which the chief police officer has authorised by virtue of subsection (1)(b); and

“suitably qualified person” means —

(a) a registered medical practitioner; or

(b) a registered nurse.

### **Right to have someone informed when arrested<sup>64</sup>**

64.—(1) When a person has been arrested and is being held in custody in a police station or other premises, he shall be entitled, if he so requests, to have one friend, relative or other person who is known to him or who is likely to take an interest in his welfare told, as soon as is practicable except to the extent that delay is permitted by this section that he has been arrested and is being detained there.

(2) Delay is only permitted —

(a) in the case of a person who is in police detention for an offence for which a person of 21 years or over may be imprisoned for two years or more;

(b) if an officer of at least the rank of inspector authorises it.

(3) In any case the person in custody must be permitted to exercise the right conferred by subsection (1) within 36 hours from the relevant time, as defined in section 51(2).

(4) An officer may give an authorisation under subsection (2) orally or in writing but, if he gives it orally, he shall confirm in writing as soon as is practicable.

(5) Subject to subsection (6) an officer may only authorise delay where he has reasonable grounds for believing that telling the named person of the arrest —

(a) will lead to interference with or harm to evidence connected with the offence or interference with or physical injury to another person;

(b) will lead to the alerting of another person suspected of having committed such an offence but not yet arrested for it; or

(c) will hinder the recovery of any property obtained as a result of such an offence.

(6) An officer may also authorise delay where the person arrested has been arrested for an offence punishable on conviction in the case of a person of 21 years of age by imprisonment for two years or more where he has reasonable grounds for believing that —

(a) the person detained for the offence has benefited from his criminal conduct, and

(b) the recovery of the value of the property constituting the benefit will be hindered by telling the named person of the arrest.<sup>65</sup>

---

<sup>64</sup> This section corresponds to section 56 PACE and section 171 CJO

<sup>65</sup> Subclause (6) corresponds to section 56(5A) PACE 1984 as substituted by section 456 of and Schedule 11 paragraph 14(1) and (2) to Proceeds of Crime Act 2002.

(7) For the purposes of subsection (6) the question whether a person has benefited from his criminal conduct is to be decided in accordance with section 6 of the Proceeds of Crime Act 2002.

(8) If a delay is authorised —

(a) the detained person shall be told the reason for it; and

(b) the reason shall be noted in his custody record.

(9) The duties imposed by subsection (8) shall be performed as soon as practicable.

(10) The rights conferred by this section on a person detained at a police station or other premises are exercisable whenever he is transferred from one place to another, and this section applies to each subsequent occasion on which they are exercisable as it applies to the first such occasion.

(11) There may be no further delay in permitting the exercise of the right conferred by subsection (1) once the reason for authorising the delay ceases to subsist.

#### **Access to legal advice<sup>66</sup>**

**65.—**(1) A person arrested and held in custody in a police station or other premises shall be entitled, if he so requests, to consult a legal practitioner privately at any time.

(2) Subject to subsection (3), a request under subsection (1), and the time at which it was made, shall be recorded in the custody record.

(3) Such a request need not be recorded in the custody record of a person who makes it at a time while he is at court after being charged with an offence.

(4) If a person makes such a request, he must be permitted to consult a legal practitioner as soon as is practicable except to the extent that delay is permitted by this section.

(5) In any case he must be permitted to consult a legal practitioner within 36 hours from the relevant time, as defined in section 49(2).

(6) Delay in compliance with a request is only permitted —

(a) in the case of a person who is in police detention for an offence punishable on conviction in the case of a person of 21 years of age with imprisonment for two years or more; and

(b) if the chief police officer authorises it.

---

<sup>66</sup> This clause corresponds to section 58 PACE and section 172 CJO

(7) The chief police officer may give an authorisation under subsection (6) orally or in writing, but if he gives it orally, he shall confirm it in writing as soon as is practicable.

(8) The chief police officer may only authorise delay where he has reasonable grounds for believing that the exercise of the right conferred by subsection (1) at the time when the person detained desires it —

(a) will lead to interference with or harm to evidence connected with the offence or interference with or physical injury to another person;

(b) will lead to the alerting of another person suspected of having committed such an offence but not yet arrested for it; or

(c) will hinder the recovery of any property obtained as a result of such an offence.

(9) The chief police officer may also authorise delay where he has reasonable grounds for believing that —

(a) the person detained for the offence has benefited from his criminal conduct, and

(b) the recovery of the value of the property constituting the benefit will be hindered by the exercise of the right conferred by subsection (1).

(10) For the purposes of subsection (9) the question of whether a person has benefited from his criminal conduct is to be decided in accordance with section 63 of the Criminal Justice Ordinance (Title 24.1) <sup>67</sup>.

(11) If delay is authorised —

(a) the detained person shall be told the reason for it; and

(b) the reason shall be noted in his custody record.

(12) The duties imposed by subsection (11) shall be performed as soon as is practicable.

(13) There may be no further delay in permitting the exercise of the right conferred by subsection (1) once the reason for authorising delay ceases to exist.

---

<sup>67</sup> Subclauses (9) and (10) correspond to section 58(8A) and (8B) of PACE 1984 as substituted by the Proceeds of Crime Act 2002

### **Tape-recording of interviews<sup>68</sup>**

66. It shall be the duty of the Governor —

- (a) to issue a code of practice in connection with the tape-recording of interviews of persons suspected of the commission of criminal offences which are held by police officers at police stations; and
- (b) to make an order requiring the tape-recording of interviews of persons suspected to the commission of criminal offences, or of such descriptions of criminal offences as may be specified in the order, which are so held, in accordance with the code as it has effect for the time being.

### **Visual recording of interviews<sup>69</sup>**

67.—(1) The Governor shall have power —

- (a) to issue a code of practice for the visual recording of interviews held by police officers at police stations; and
- (b) to make an order requiring the visual recording of interviews so held, and requiring the visual recording to be in accordance with the code for the time being in force under this section.

(2) In this section —

- (a) references to any interview are references to an interview of a person suspected of a criminal offence; and
- (b) references to a visual recording include references to a visual recording in which an audio recording is comprised.

### **Fingerprinting<sup>70</sup>**

68.—(1) Except as provided by this section no person's fingerprints may be taken without the appropriate consent.

---

<sup>68</sup> While the RFIP have tape-recorded interviews with suspects for a number of years, a provision equivalent to this clause, which corresponds to section 60 of PACE 1984, does not appear in the present Criminal Justice Ordinance. A code of practice was prepared by the former Chief Police Officer in relation to the tape-recording of interviews but it now needs to be replaced.

<sup>69</sup> This clause is new and corresponds to section 60A PACE 1984 which was inserted by section 76(1) of the Criminal Justice and Police Act 2001.

<sup>70</sup> This clause corresponds to section 173 CJO, which was based on section 61 PACE 1984 and incorporates the extensive amendments to that provision by the Criminal Justice and Public Order Act 1994, the Criminal Justice and Police Act 2001, the Police Reform Act 2002, the Extradition Act 2003 and the Criminal Justice Act 2003.

(2) Consent to the taking of a person's fingerprints must be in writing if it is given at a time when he is at a police station.

(3) The fingerprints of a person detained at a police station may be taken without the appropriate consent if —

(a) he is detained in consequence of his arrest for a recordable offence; and

(b) he has not had his fingerprints taken in the course of the investigation of the offence by the police.

(4) The fingerprints of a person detained at a police station may be taken without the appropriate consent if —

(a) he has been charged with a recordable offence or informed that he will be reported for such an offence; and

(b) he has not had his fingerprints taken in the course of the investigation of the offence by the police.

(5) Where a person mentioned in paragraph (a) of subsection (3) or (4) has already had his fingerprints taken in the course of the investigation of the offence by the police that fact shall be disregarded for the purposes of subsection (3)(b) if —

(a) the fingerprints taken on the previous occasion do not constitute a complete set of his fingerprints; or

(b) some or all of the fingerprints taken on the previous occasion are not of sufficient quality to allow satisfactory analysis, comparison or matching (whether in the case in question or generally).

(6) The fingerprints of a person who has answered to bail at a court or police station may be taken without the appropriate consent at the court or police station if —

(a) the court; or

(b) an officer of at least the rank of inspector,

authorises them to be taken.

(7) A court or officer may only give an authorisation under subsection (5) if —

(a) the person who has answered to bail has answered to it for a person whose fingerprints were taken on a previous occasion and there are reasonable grounds for believing that he is not the same person; or

(b) the person who has answered to bail claims to be a different person from a person whose fingerprints were taken on a previous occasion.

(8) An officer may give an authorisation under subsection (6) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(9) Any person's fingerprints may be taken without the appropriate consent if —

(a) he has been convicted of a recordable offence; or

(b) he has been given a caution for a recordable offence, which, at the time of the caution, he has admitted.

(10) A police officer may take a person's fingerprints without the appropriate consent if—

(a) the police officer reasonably suspects that the person is committing or attempting to commit an offence; and

(b) either of the two conditions mentioned in subsection (11) are satisfied.

(11) The conditions are that—

(a) the name of the person is unknown to, and cannot be readily ascertained by, the police officer; and

(b) the police officer has reasonable grounds for doubting whether a name furnished by the person as his name is his real name.

(12) The taking of fingerprints by virtue of subsection (11) does not count for any of the purposes of this Ordinance as taking them in the course of an investigation of an offence by the police.

(13) In a case where by virtue of subsection (3), (4), (9) or (10) a person's fingerprints are taken without the appropriate consent —

(a) he shall be told before the fingerprints are taken; and

(b) the reason shall be recorded as soon as is practicable after the fingerprints are taken.

(14) If a person's fingerprints are taken at a police station or by virtue of subsection (10) at a place other than a police station, whether with or without the appropriate consent —

(a) before the fingerprints are taken a police officer of the rank of sergeant or above (or in a subsection (10) case the police officer) shall inform him that they may be the subject of a speculative search; and



(b) the fact that the person has been informed of this possibility shall be recorded as soon as is practicable after the fingerprints are taken.

(15) If he is detained at a police station when the fingerprints are taken, the reason for taking them shall be recorded in his custody record.

(16) The power to take the fingerprints of a person detained at the police station shall be exercisable by any police officer.

(17) Nothing in this section affects any power conferred by the Immigration Ordinance 1999 to take a person's fingerprints.

(18) Nothing in this section applies to a person arrested under an extradition arrest power.

### **Intimate samples<sup>71</sup>**

**69.—**(1) An intimate sample<sup>72</sup> may be taken from a person in police detention only —

(a) if a police officer of at least the rank of inspector authorises it to be taken; and

(b) if the appropriate consent is given.

(2) An intimate sample may be taken from a person who is not in police detention but from whom, in the course of the investigation of the offence, two or more non-intimate samples suitable for the same means of analysis have been taken which have proved insufficient —

(a) if a police officer of at least the rank of inspector authorises it to be taken; and

(b) if the appropriate consent is given.

(3) An officer may only give an authorisation under subsection (1) or (2) if he has reasonable grounds —

(a) for suspecting the involvement of the person from whom the sample is to be taken in a recordable offence; and

(b) for believing that the sample will tend to confirm or disprove his involvement.

(4) An officer may give an authorisation under subsection (1) or (2) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(5) The appropriate consent must be given in writing.

---

<sup>71</sup> This section corresponds to section 174 CJO which was based on section 62 PACE and incorporates the amendments to that provision inserted by the Criminal Justice and Court Services Act 2000, the Criminal Justice and Police Act 2001, the Criminal Justice and Public Order Act 1994 and the Police Reform Act 2002

<sup>72</sup> "intimate sample" is defined in clause 76.

(6) Where —

(a) an authorisation has been given; and

(b) it is proposed that an intimate sample shall be taken in pursuance of the authorisation,

an officer shall inform the person from whom the sample is to be taken —

(i) of the giving of the authorisation; and

(ii) of the grounds for giving it.

(7) The duty imposed by subsection (6)(ii) includes a duty to state the nature of the offence in which it is suspected that the person from whom the sample is to be taken has been involved.

(8) If an intimate sample is taken from a person —

(a) the authorisation by virtue of which it was taken;

(b) the grounds for giving the authorisation; and

(c) the fact that the appropriate consent was given,

shall be recorded as soon as is practicable after the sample is taken.

(9) If an intimate sample is taken from a person detained at a police station, the matters required to be recorded by subsection (8) shall be recorded in his custody record.

(10) In the case of an intimate sample which is a dental impression, the sample may only be taken by a registered dentist.

(11) In the case of any other form of intimate sample, except in the case of a sample of urine, the sample may be taken from a person only by —

(a) a registered medical practitioner; or

(b) a registered nurse.

(12) Where the appropriate consent to the taking of an intimate sample was refused without good cause, in any proceedings against that person for an offence —

(a) the court, in determining —

(i) whether to commit that person for trial; or

(ii) whether there is a case to answer, and

(b) the court or jury, in determining whether that person is guilty of the offence charged, may draw such inferences from the refusal as appear proper.

(11) Nothing in this section applies to the taking of a specimen for the purposes of any provision of the Road Traffic Ordinance.

**Other samples<sup>73</sup>**

70.—(1) Except as provided by this section, a non-intimate sample<sup>74</sup> may not be taken from a person without the appropriate consent.

(2) Consent to the taking of a non-intimate sample must be given in writing.

(3) A non-intimate sample may be taken from a person without the appropriate consent if two conditions are satisfied.

(4) The first is that the person is in police detention in consequence of his arrest for a recordable offence.

(5) The second is that —

(a) he has not had a non-intimate sample of the same type and from the same part of the body taken in the course of the investigation of the offence by the police, or

(b) he has had such a sample taken but it proved insufficient.

(6) A non-intimate sample may be taken from a person without appropriate consent if —

(a) he is being held in custody by the police on the authority of a court; and

(b) an officer of at least the rank of inspector authorises it to be taken without the appropriate consent.

(7) A non-intimate sample may be taken from a person (whether or not he is in police detention or held in custody by the police on the authority of a court) without the appropriate consent if —

(a) he has been charged with a recordable offence or informed that he will be reported for such an offence; and

---

<sup>73</sup> This clause corresponds to section 175 CJO which was based on section 63 PACE and incorporates the amendments made to that provision by the Criminal Justice Act 2003, the Criminal Justice and Police Act 2001, the Criminal Justice and Public Order Act 1994, the Criminal Evidence (Amendment) Act 1997, the Police Reform Act 2002 and the Extradition Act 2003.

<sup>74</sup> “non-intimate sample” is defined in clause 77

(b) either he has not had a non-intimate sample taken from him in the course of the investigation of the offence by the police or he has had a non-intimate sample taken from him but either it was not suitable for the same means of analysis or, though so suitable, the sample proved insufficient.

(8) A non-intimate sample may be taken from a person without appropriate consent if he has been convicted of a recordable offence.

(9) A non-intimate sample may also be taken from a person without appropriate consent if he is a person to whom section 2 of the Criminal Evidence (Amendment) Act 1997 applies (persons detained following acquittal on grounds of insanity or finding of unfitness to plead).

(10) An officer may only give an authorisation under subsection (6) if he has reasonable grounds—

(a) for suspecting the involvement of the person from whom the sample is to be taken in a recordable offence; and

(b) for believing that the sample will tend to confirm or disprove his involvement.

(11) An officer may give an authorisation under subsection (3) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(12) Where —

(a) an authorisation has been given; and

(b) it is proposed that a non-intimate sample shall be taken in pursuance of the authorisation,

a police officer of the rank of inspector or above shall inform the person from whom the sample is to be taken —

(i) of the giving of the authorisation; and

(ii) of the grounds for giving it.

(13) The duty imposed by subsection (12)(ii) includes a duty to state the nature of the offence in which it is suspected that the person from whom the sample is to be taken has been involved.

(14) If a non-intimate sample is taken from a person by virtue of subsection (6) —

(a) the authorisation by virtue of which it was taken; and

(b) the grounds for giving the authorisation,

shall be recorded as soon as is practicable after the sample is taken.

(15) In a case where by virtue of subsection (3), (7), (8) or (9) a sample is taken from a person without the appropriate consent —

(a) he shall be told the reason before the sample is taken; and

(b) the reason shall be recorded as soon as practicable after the sample is taken.

(16) If a non-intimate sample is taken from a person at a police station, whether with or without the appropriate consent —

(a) before the sample is taken, an officer shall inform him that it may be the subject of a speculative search; and

(b) the fact that the person has been informed of his possibility shall be recorded as soon as practicable after the sample has been taken.

(17) If a non-intimate sample is taken from a person detained at a police station, the matters required to be recorded by subsection (14), (15) or (16) shall be recorded in his custody record.

(18) Subsection (8) shall not apply to any person convicted before the commencement of this Part.

#### **Fingerprints and samples: supplementary provisions<sup>75</sup>**

71.—(1) Where a person has been arrested on suspicion of being involved in a recordable offence or has been charged with such an offence or has been informed that he will be reported for such an offence, fingerprints or samples or the information derived from samples taken under any power conferred by this Part from the person may be checked against —

(a) other fingerprints or samples to which the person seeking to check has access and which are held by or on behalf of any one or more relevant law-enforcement authorities or which are held in connection with or as a result of an investigation of an offence;

(b) information derived from other samples if the information is contained in records to which the person seeking to check has access and which are held as mentioned in paragraph (a).

(2) In subsection (1) “relevant law-enforcement authority” means —

(a) a United Kingdom and Islands police force<sup>76</sup>;

(b) the United Kingdom National Criminal Intelligence Service;

---

<sup>75</sup> There is no provision corresponding to this clause in CJO. The clause corresponds (with modifications) to section 63A PACE (which was inserted by section 56 of the Criminal Justice and Public Order Act 1994 as amended by the Criminal Justice and Police Act 2001 and the Criminal Evidence (Amendment) Act 1997.

<sup>76</sup> Defined in subclause (3) of this clause

(c) the United Kingdom National Crime Squad;

(d) a public authority (not falling within paragraphs (a) to (c)) with functions in any part of the British Islands which consist of or include the investigation of crimes or the charging of offenders;

(e) any other person or authority with functions in any country or territory outside the Falkland Islands which —

(i) correspond to those of a police force; or

(ii) otherwise consist of or include the investigation of conduct contrary to the law of that country or territory, or the apprehension of persons guilty of such conduct;

(f) any person with functions under any international agreement which consist of or include the investigation of conduct which is —

(i) unlawful under the law of one or more places;

(ii) prohibited by such an agreement; or

(iii) contrary to international law,

or the apprehension of persons guilty of such conduct.

(3) The reference in subsection (2)(a) to a United Kingdom and Islands police force is a reference to any of the following —

(a) any police force maintained under section 2 of the Police Act 1996 (c 16) (polices forces in England and Wales outside London);

(b) the Metropolitan police force, London;

(c) the City of London police force;

(d) any police force maintained under or by virtue of section 1 of the Police (Scotland) Act 1967 (c 77);

(e) the Police Service of Northern Ireland;

(f) the Police Service of Northern Ireland Reserve;

(g) the Ministry of Defence Police;

(h) the Royal Navy Regulating Branch;

- (i) the Royal Military Police;
- (j) the Royal Air Force Police;
- (k) the Royal Marines Police;
- (l) the British Transport Police;
- (m) the States of Jersey Police Force;
- (n) the salaried police force of the Island of Guernsey; and
- (o) the Isle of Man Constabulary.

(4) Where —

(a) fingerprints or samples have been taken from any person in connection with the investigation of an offence but otherwise than in circumstances to which subsection (1) applies, and

(b) that person has given his consent in writing to the use in a speculative search of the fingerprints or of the samples and of information derived from them,

the fingerprints or, as the case may be, those samples and that information may be checked against any of the fingerprints, samples or information mentioned in paragraph (a) or (b) of that subsection.

(5) A consent given for the purposes of subsection (4) shall not be capable of being withdrawn.

(6) Where a sample of hair other than pubic hair is to be taken the sample may be taken either by cutting hairs or by plucking hairs with their roots so long as no more are plucked than the person taking the sample reasonably considers to be necessary for a sufficient sample.

(7) Where any power to take a sample is exercisable in relation to a person the sample may be taken in a prison or other institution to which the Prison Ordinance applies.

(8) Where the power to take a non-intimate sample under section 70(8) is exercisable in relation to a person detained in pursuance of directions of the Governor under any law of the Falkland Islands corresponding to section 92 of the Powers of Criminal Courts (Sentencing) Act 2000 the sample may be taken at the place where he is so detained.

(9) Any police officer may, within the allowed period, require a person who is neither in police detention nor held in custody by the police on the authority of a court to attend a police station in order to have a sample taken where —

(a) the person has been charged with a recordable offence or informed that he will be reported for such an offence and either he has not had a sample taken from him in the course of the investigation of the offence by the police or he has had a sample so taken from him but either it was not suitable for the same means of analysis or, though so suitable, the sample proved insufficient; or

(b) the person has been convicted of a recordable offence and either he has not had a sample taken from him since the conviction or he has had a sample taken from him (before or after his conviction) but either it was not suitable for the same means of analysis or, though so suitable, the sample proved insufficient.

(10) The period allowed for requiring a person to attend a police station for the purpose specified in subsection (9) is —

(a) in the case of a person falling within paragraph (a), one month beginning with the date of the charge or of his being informed as mentioned in that paragraph or one month beginning with the date on which the appropriate officer is informed of the fact that the sample is not suitable for the same means of analysis or has proved insufficient, as the case may be;

(b) in the case of a person falling within paragraph (b), one month beginning with the date of the conviction or one month beginning with the date on which the appropriate officer is informed of the fact that the sample is not suitable for the same means of analysis or has proved insufficient, as the case may be.

(11) A requirement under subsection (9) —

(a) shall give the person at least 7 days within which he must so attend; and

(b) may direct him to attend at a specified time of day or between specified times of day.

(12) Any police officer may arrest without a warrant a person who has failed to comply with a requirement under subsection (9).

(13) In this section “the appropriate officer” is —

(a) in the case of a person falling within subsection (9)(a), the officer investigating the offence with which that person has been charged or as to which he was informed that he would be reported;

(b) in the case of a person falling within subsection (9)(b), the officer in charge of the police station from which the investigation of the offence of which he was convicted was conducted.

(14) Information obtained from a sample taken under this section may be disclosed —



(a) for the purpose of informing any decision about granting bail in criminal proceedings to the person concerned;

(b) where the person concerned is in police detention or is remanded in or committed to custody by an order of a court or has been granted such bail, for the purpose of informing any decision about his supervision;

(c) where the person concerned is convicted of an offence, for the purpose of informing any decision about the appropriate sentence to be passed by a court and any decision about his supervision or release;

(d) for the purpose of ensuring that appropriate advice and treatment is made available to the person concerned.

(15) A person who fails without good cause to give any sample which may be taken from him under this section commits an offence and is liable on conviction to a term of imprisonment not exceeding six months and a fine not exceeding the maximum of level 4 on the standard scale.

(16) In this section —

“appropriate adult”, in relation to a person who has not attained the age of 17, means —

(a) his parent or guardian;

(b) a social worker in the employment of the Falkland Islands Government; or

(c) if no person falling within (a) or (b) is available, any responsible person aged 18 or over who is not a police officer or a public officer employed as part of the police support staff.

### **Destruction of fingerprints and samples<sup>77</sup>**

**72.—**(1) Where —

(a) fingerprints, impressions of footwear, or samples are taken from a person in connection with the investigation of an offence; and

(b) subsection (3) does not require them to be destroyed,

the fingerprints or samples may be retained after they have fulfilled the purposes for which they were taken but shall not be used by any person except for purposes related to the prevention or detection of crime, the investigation of an offence, the conduct of a prosecution or the identification of a deceased person or of the person from whom a body part came.

(2) In subsection (1) —

---

<sup>77</sup> This clause corresponds with section 176 CJO and section 64 PACE and incorporates amendments to that provision made by the Criminal Justice and Police Act 2001 and the Serious Organised Crime and Police Act 2005

(a) the reference to using a fingerprint or an impression of footwear includes a reference to allowing any check to be made against it under section 67(1) or (4) and to disclosing it to any person;

(b) the reference to using a sample includes a reference to allowing any check to be made under section 67(1) or (4) against it or against information derived from it and to disclosing it or any such information to any person;

(c) the reference to a crime includes a reference to any conduct which —

(i) constitutes one or more criminal offences (whether under the law of the Falkland Islands or of a country or territory outside the Falkland Islands); or

(ii) is or corresponds to any conduct which, if it all took place in the Falkland Islands would constitute one or more criminal offences; and

(d) the references to an investigation and to a prosecution include references, respectively, to any investigation outside the Falkland Islands of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside the Falkland Islands.

(3) If —

(a) fingerprints, impressions of footwear or samples are taken from a person in connection with the investigation of an offence; and

(b) that person is not suspected of having committed the offence,

they must, except as provided in the following provisions of this section be destroyed as soon as they have fulfilled the purpose for which they were taken.

(4) Samples are not required to be destroyed under subsection (3) if —

(a) they were taken for the purposes of the investigation of an offence of which a person has been convicted; and

(b) a sample was also taken from the convicted person for the purposes of that investigation.

(5) Subject to subsection (6) where a person is entitled under subsection (3) to the destruction of any fingerprint or sample taken from him (or would be but for subsection (4)), neither the fingerprint nor the sample, nor any information derived from the sample, shall be used—

(a) in evidence against the person who is or would be entitled to the destruction of that fingerprint or sample; or

(b) for the purposes of the investigation of any offence;

and subsection (2) applies for the purposes of this subsection as it applies for the purposes of subsection (1).

(6) Where a person from whom a fingerprint, impression of footwear or sample has been taken consents in writing to its retention —

(a) that fingerprint, impression of footwear or sample need not be destroyed under subsection (3);

(b) subsection (5) shall not restrict the use that may be made of the fingerprint, impression of footwear or sample or, in the case of a sample, of any information derived from it;

and a consent given for the purpose of this subsection shall not be capable of being withdrawn.

(7) For the purposes of subsection (6) it shall be immaterial whether the consent is given at, before or after the time when the entitlement to the destruction of the fingerprint, impression of footwear or sample arises.

(8) If fingerprints or impressions of footwear are destroyed any copies of the fingerprints shall also be destroyed.

(9) A person who asks to be allowed to witness the destruction of his fingerprints or copies of them shall have a right to witness it.

(10) Nothing in this section prevents the disclosure of information in relation to fingerprints for use by the Principal Immigration Officer for immigration purposes.

### **Photographing of suspects etc<sup>78</sup>**

73.—(1) A person who is detained at a police station may be photographed —

(a) with the appropriate consent; or

(b) if the appropriate consent is withheld or it is not practicable to obtain it, without it.

(2) A person proposing to take a photograph of any person under this section —

(a) may, for the purpose of doing so, require the removal of any item or substance worn on or over the whole or any part of the head or face of the person to be photographed; and

(b) if the requirement is not complied with, may remove the item or substance himself.

---

<sup>78</sup> There is no provision corresponding to this clause contained in CJO. It corresponds to section 64A PACE (which was inserted by the Anti-terrorism, Crime and Security Act 2001) Serious Organised Crime and Police Act 2005 and the Extradition Act 2003.

(3) Where a photograph may be taken under this section, the only persons entitled to take the photograph are police officers.

(4) A photograph taken under this section —

(a) may be used by, or disclosed to, any person for any purpose related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution; and

(b) after being so used or disclosed, may be retained but may not be used or disclosed except for a purpose so related;

(c) the reference to crime includes a reference to any conduct which —

(i) constitutes one or more criminal offences (whether under the law of the Falkland Islands or of a country or territory outside the Falkland Islands; or

(ii) is, or corresponds to, any conduct which, if it all took place in the Falkland Islands, would constitute one or more criminal offences.

(5) In subsection (4) —

(a) the reference to crime includes a reference to any conduct which —

(i) constitutes one or more criminal offences (whether under the law of a part of the Falkland Islands or of a country or territory outside the Falkland Islands; or

(ii) is, or corresponds to, any conduct which, if it all took place in the Falkland Islands, would constitute one or more criminal offences; and

(b) the references to an investigation and to a prosecution include references respectively, to any investigation outside the Falkland Islands of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside the Falkland Islands.

(6) References in this section to taking a photograph include references to using any process by means of which a visual image may be produced; and references to photographing a person shall be construed accordingly.

#### **Fingerprinting of certain offenders<sup>79</sup>**

**74.**—(1) If a person—

(a) has been convicted of a recordable offence;

(b) has not at any time been in police detention for the offence;

---

<sup>79</sup> This clause corresponds to s.27 PACE 1984 as amended by s.78(1) Criminal Justice and Police Act 2001.

(c) has not had his fingerprints taken—

(i) in the course of the investigation of the offence by the police; or

(ii) since the conviction,

any police officer may at any time not later than one month after the date of the conviction require him to attend a police station in order that his fingerprints may be taken.

(2) Where a person convicted of a recordable offence has already had his fingerprints taken as mentioned in paragraph (c) of subsection (1), that fact (together with any time when he has been in police detention for the offence) shall be disregarded for the purposes of that subsection if—

(a) the fingerprints taken on the previous occasion do not constitute a complete set of his fingerprints; or

(b) some or all of the fingerprints taken on the previous occasion are not of sufficient quality to allow satisfactory analysis, comparison or matching.

(3) Subsections (1) and (2) apply—

(a) where a person has been given a caution in respect of a recordable offence which, at the time of the caution, he has admitted, or

(b) where, under any provision of the law of the Falkland Islands, a person has been warned or reprimanded for a recordable offence,

as they apply where a person has been convicted of that offence, and references in this section to a conviction shall be construed accordingly.

(4) A requirement under subsection (1)—

(a) shall give the person a period of at least 7 days within which he must so attend; and

(b) may direct him to so attend at a specified time of day or between specified times of day

(5) Any police officer may arrest without warrant a person who has failed to comply with a requirement under subsection (1).

## **Chapter 5 – supplementary<sup>80</sup>**

**75.—(1)** In this Chapter —

---

<sup>80</sup> This clause corresponds to section 177 CJO and section 65 PACE as amended by the Criminal Justice and Police Act 2001, the Serious Organised Crime and Police Act 2005, the Criminal Justice and Public Order Act 1994 and the Criminal Justice and Public Order Act 1994.

“appropriate consent” means —

- (a) in relation to a person who has attained the age of 17 years, the consent of that person;
- (b) in relation to a person who has not attained that age but has attained the age of 14 years, the consent of that person and his parent or guardian; and
- (c) in relation to a person who has not attained the age of 14 years, the consent of his parent or guardian;

“drug trafficking” and “drug trafficking offence” have the same meaning as in the Drug Trafficking Ordinance 1997;

“extradition arrest power” means any power of arrest conferred by any legislation relating to extradition for the time being in force in the Falkland Islands;

“fingerprints”, in relation to any person, means a record in any form and produced by any method, of the skin pattern and other physical characteristics and features of —

- (a) any of that person’s fingers; or
- (b) either of his palms;

“intimate sample” means —

- (a) a sample of blood, semen or any other tissue fluid, urine or pubic hair;
- (b) a dental impression;
- (c) a swab taken from a person’s body orifice other than the mouth;

“intimate search” means a search which consists of the physical examination of a person’s body orifices other than the mouth;

“non-intimate sample” means —

- (a) a sample of hair other than pubic hair;
- (b) a sample taken from a nail or under a nail;
- (c) a swab taken from any part of a person’s body, other than a part from which a swab taken would be an intimate sample;
- (c) saliva;

“recordable offence” has the meaning given by section 74(5):

“registered dentist” means any dentist registered under the Health Professions Ordinance 2006;

“speculative search”, in relation to a person’s fingerprints or samples means such a check against other fingerprints or samples or against information derived from other samples as is referred to in section 71;

“sufficient” and “insufficient” in relation to a sample, means sufficient or insufficient (in point of quantity or quality) for the purpose of enabling information to be produced by means of analysis used or to be used in the sample; and

references to any person’s proceeds of drug trafficking are to be construed in accordance with the Drug Trafficking Offences Ordinance 1997.

(2) References in this Chapter to a sample’s proving insufficient include references to where, as a consequence of—

- (a) the loss, destruction or contamination of the whole or any part of the sample,
- (b) any damage to the whole or any part of the sample, or
- (c) the use of the whole or part of the sample for an analysis which produced no results or which produced results some or all of which must be regarded, in the circumstances, as unreliable,

the sample has become unavailable or insufficient for the purpose of enabling information, or information of a particular description, to be obtained by means of analysis of the sample.

## **Chapter 6**

### **Codes of practice – general**

#### **Codes of practice<sup>81</sup>**

**76.** The Governor shall issue codes of practice in connection with —

- (a) the exercise by police officers of statutory powers —
  - (i) to search a person without first arresting him;
  - (ii) to search a vehicle without making an arrest; or
  - (iii) to arrest a person.
- (b) the detention, treatment, questioning and identification of persons by police officers;
- (c) searches of premises by police officers; and

---

<sup>81</sup> This clause corresponds to section 66 PACE as amended by the Serious Organised Crime and Police Act 2005

(d) the seizure of property found by police officers on persons or premises.

**Codes of practice – supplementary<sup>82</sup>**

77.—(1) This section applies to a code of practice under section 66, 67 or 76.

(2) An Order bringing a code of practice into operation may contain such transitional provisions or savings as appear to the Governor to be necessary or expedient in connection with the code of practice thereby brought into operation.<sup>83</sup>

(3) The Governor may from time to time revise the whole or any part of a code of practice to which this section applies and issue that revised code; and the foregoing provisions of this section shall apply (with appropriate modifications) to such a revised code as they apply to the first issue of a code.

(4) Subject to subsection (5), the Governor may by Order provide that a code of practice provide that a code of practice for the time being in force is to be treated as having effect with such modifications as are set out in the Order.

(5) The effect of the modifications made by an Order under subsection (4) must be confined to one or both of the following —

(a) the effect of the code during such period, not exceeding two years, as may be specified in the Order;

(b) the effect of the code in relation to such offences or descriptions of offenders as may be so specified.

(6) Persons other than police officers, such as fisheries officers and customs officers, who are charged with the duty of investigating offenders shall in the discharge of that duty have regard to any relevant provision of such a code.

(7) A failure on the part —

(a) of a police officer to comply with any provision of such a code; or

(b) of any person other than a police officer who is charged with the duty of investigating offences or charging offenders to have regard to any relevant provision of such a code in the discharge of that duty,

shall not of itself render him liable to any criminal or civil proceedings.

---

<sup>82</sup> This clause corresponds to section 67 PACRE as amended by the Criminal Justice Act 2003, the Police Act 1996 and the Police Reform Act 2002

<sup>83</sup> Transitional provisions may well be necessary in relation to the Codes of Practice issued some years ago by the Chief Police Officer under the CJO



(8) In all criminal and civil proceedings any such code shall be admissible in evidence; and if any provision of such a code appears to the court or tribunal conducting the proceedings to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.

### **PART III: EVIDENCE IN CRIMINAL PROCEEDINGS**

#### **Chapter 1 General**

##### *Convictions and acquittals*

##### **Proof of convictions and acquittals<sup>84</sup>**

**78.—**(1) Where in any proceedings the fact that a person has in the Falkland Islands been convicted or acquitted of an offence otherwise than by a Service court is admissible in evidence, it may be proved by producing a certificate of conviction or, as the case may be, of acquittal relating to that offence, and proving that the person named in the certificate as having been convicted or acquitted of the offence is the person whose conviction or acquittal of the offence is to be proved.

(2) For the purposes of this section a certificate of conviction or of acquittal —

(a) shall, as regards a conviction or acquittal on indictment, consist of a certificate, signed by the Courts Administrator giving the substance and effect (omitting the formal parts) of the indictment and of the conviction or acquittal; and

(b) shall, as regards a conviction or acquittal on summary trial, consist of a copy of the conviction or of the dismissal of the information, signed by the Courts Administrator of the court where the conviction or acquittal took place,

and a document purporting to be a duly signed certificate of conviction or acquittal under this section shall be taken to be such a certificate unless the contrary is proved.

(3) The method of proving a conviction or acquittal authorised by this section shall be in addition to and not to the exclusion of any other authorised manner proving a conviction or acquittal.

##### **Conviction as evidence of commission of an offence<sup>85</sup>**

**79.—**(1) In any proceedings the fact that a person other than the accused has been convicted of an offence by or before any court in the Falkland Islands or by a Service court outside the Falkland Islands shall be admissible in evidence for the purpose of proving, that that person committed that offence, where evidence of his having done so is admissible is given.

---

<sup>84</sup> This clause corresponds to section 100 CJO and section 73 PACE

<sup>85</sup> This clause corresponds to section 101 CJO and section 74 PACE

(2) In any proceedings in which by virtue of this section a person other than the accused is proved to have been convicted of an offence by or before any court in the Falkland Islands or by a Service court within the Falkland Islands or elsewhere he shall be taken to have committed that offence unless the contrary is proved.

(3) In any proceedings where evidence is admissible of the fact that the accused has committed an offence, if the accused is proven to have been convicted of the offence —

(a) by or before any court in the Falkland Islands; or

(b) by a Service court,

he shall be taken to have committed that offence unless the contrary is proved.

(4) Nothing in this section shall prejudice —

(a) the admissibility in evidence of any conviction which would be admissible apart from this section; or

(b) the operation of any enactment whereby a conviction or a finding of fact in any proceedings is for the purposes of any other proceedings made conclusive evidence of any fact.

#### **Provisions supplementary to section 79<sup>86</sup>**

80.—(1) Where evidence that a person has been convicted of an offence is admissible by virtue of section 72, then without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the conviction was based —

(a) the contents of any document which is admissible as evidence of the conviction; and

(b) the contents of the information, complaint, indictment or charge-sheet on which the person in question was convicted,

shall be admissible in evidence for that purpose.

(2) Where in any proceedings the contents of any documents are admissible in evidence by virtue of subsection (1), a copy of that document, or of the material part of it, purporting to be certified or otherwise authenticated by or on behalf of the court or authority having custody of that document shall be admissible in evidence and shall be taken to be a true copy of that document or part unless the contrary is shown.

(3) Nothing in any provision of the law of the Falkland Islands under which a conviction leading to a supervision order, probation or discharge is to be disregarded except as mentioned in that section shall affect the operation of section 79.

---

<sup>86</sup> This clause corresponds to section 102 CJO and section 75 PACE

(4) Nothing in section 79 shall be construed as rendering admissible in any proceedings evidence of any conviction other than a subsisting one.

### *Confessions*

#### **Confessions<sup>87</sup>**

**81.—**(1) In any proceedings a confession made by an accused person may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this section.

(2) If, in any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained —

(a) by oppression of the person who made it; or

(b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof;

the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained as aforesaid.

(3) In any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, the court may of its own motion require the prosecution, as a condition of allowing it to do so, to prove that the confession was not obtained as mentioned in subsection (2).

(4) The fact that a confession is wholly or partly excluded in pursuance of this section shall not affect the admissibility in evidence —

(a) of any facts discovered as a result of the confession; or

(b) where the confession is relevant as showing that the accused speaks, writes or expresses himself in a particular way, of so much of the confession as is necessary to show that he does so.

(5) Evidence that a fact to which this subsection applies was discovered as a result of a statement made by an accused person shall not be admissible unless evidence of how it was discovered is given by him or on his behalf.

(6) Subsection (5) applies —

---

<sup>87</sup> This section corresponds to section 103 CJO and section 76 PACE

(a) to any fact discovered as a result of a confession which is wholly excluded in pursuance of this section; and

(b) to any fact discovered as a result of a confession which is partly so excluded, if the fact is discovered as a result of the excluded part of the confession.

(7) In this section “oppression” includes torture, inhuman or degrading treatment, and the use or threat of violence (whether or not amounting to torture).

(8) 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 —

(a) in subsection (1) the words “and is not excluded by the court in pursuance of this section”; and

(b) subsections (2) to (6) and (8).

**Confessions may be given in evidence for co-accused<sup>88</sup>**

82.—(1) In any proceedings a confession made by an accused person may be given in evidence for another person charged in the same proceedings (a co-accused) in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this section.

(2) If, in any proceedings where a co-accused proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained —

(a) by oppression of the person who made it; or

(b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof,

the court shall not allow the confession to be given in evidence for the co-accused except in so far as it is proved to the court on the balance of probabilities that that the confession (notwithstanding that it may be true) was not so obtained.

(3) Before allowing a confession made by an accused person to be given in evidence for a co-accused in any proceedings, the court may of its own motion require the fact that the confession was not obtained as mentioned in subsection (2) to be proved in the proceedings on the balance of probabilities.

---

<sup>88</sup> This clause corresponds to section 76A PACE which was inserted by the Criminal Justice Act 2003. There is no equivalent provision in CJO

(4) The fact that a confession is wholly or partly excluded in pursuance of this section shall not affect the admissibility in evidence —

(a) of any facts discovered as a result of the confession; or

(b) where the confession is relevant as showing that the accused speaks, writes or expresses himself in a particular way, of so much of the confession as is necessary to show that he does so.

(5) Evidence that a fact to which this subsection applies was discovered as a result of a statement made by an accused person shall not be admissible unless evidence of how it was discovered is given by him or on his behalf.

(6) Subsection (5) applies —

(a) to any fact discovered as a result of a confession which is wholly excluded in pursuance of this section; and

(b) to any fact discovered as a result of a confession which is partly so excluded, if the fact is discovered as a result of the excluded part of the confession.

**Confessions by mentally handicapped persons<sup>89</sup>**

83.—(1) Without prejudice to the general duty of the court at a trial on indictment before a jury to direct the jury on any matter on which it appears to the court appropriate to do so, where at such a trial —

(a) the case against the accused depends wholly or substantially on a confession by him; and

(b) the court is satisfied —

(i) that he is mentally handicapped; and

(ii) that the confession was not made in the presence of an independent person,

the court shall warn the jury that there is special need for caution before convicting the accused in reliance on the confession, and shall explain that the need arises because of the circumstances mentioned in paragraphs (a) and (b).

(2) In any case where at the trial of a person on indictment before a judge sitting alone or the summary trial of a person for an offence it appears to the court that a warning under subsection (1) would be required if the trial were on indictment, the court shall treat the case as one in which there is a special need for caution before convicting the accused on his confession.

(3) In this section —

---

<sup>89</sup> This clause corresponds to section 104 CJO and section 77 PACE

“independent person” does not include a police officer or a person employed for, or engaged on, police purposes;

“mentally handicapped”, in relation to a person, means that he is in a state of arrested or incomplete development of mind which includes significant impairment of intelligence and social functioning; and

“police purposes” includes the purposes of —

- (a) reserve police officers;
- (b) persons undergoing training with a view to becoming police officers; and
- (c) civilians employed for the purposes of the Royal Falkland Islands Police force or any reserve police officers or persons undergoing training with a view to becoming police officers.

#### *Miscellaneous*

#### **Exclusion of unfair evidence<sup>90</sup>**

**84.—**(1) In any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.

(2) Nothing in this section shall prejudice any rule of law requiring a court to exclude evidence.

(3) This section shall not apply in the case of proceedings before a court of summary jurisdiction inquiring into an offence as examining justices.

#### **Time for taking accused’s evidence<sup>91</sup>**

**85.** If at the trial of any person for an offence —

- (a) the defence intends to call two or more witnesses to the facts of the case; and
- (b) those witnesses include the accused,

the accused shall be called before the other witness or witnesses unless the court in its discretion otherwise directs.

---

<sup>90</sup> This clause corresponds to section 105 CJO and section 78 PACE

<sup>91</sup> This clause corresponds to section 106 CJO and section 79 PACE

### **Compellability of accused's spouse<sup>92</sup>**

**86.—**(1) In any proceedings the spouse of a person charged in the proceedings shall, subject to subsection (4), be compellable to give evidence on behalf of that person.

(2) In any proceedings the spouse of a person charged in the proceedings shall, subject to subsection (4), be compellable —

(a) to give evidence on behalf of any other person charged in the proceedings but only in respect of any specified offence with which that other person is charged; or

(b) to give evidence for the prosecution but only in respect of any specified offence with which any person is charged in the proceedings.

(3) In relation to the spouse of a person charged in any proceedings, an offence is a specified offence for the purposes of subsection (2) if —

(a) it involves an assault on, or injury or a threat of injury to, the spouse or a person who was at the material time under the age of 16;

(b) it is a sexual offence alleged to have been committed in respect of a person who was at the material time under that age; or

(c) it consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, an offence falling within paragraph (a) or (b).

(4) No person who is charged in any proceedings shall be compellable by virtue of subsection (1) or (2) to give evidence in the proceedings.

(5) References in this section to a person charged in any proceedings do not include a person who is not, or is no longer, liable to be convicted of any offence in the proceedings (whether as a result of pleading guilty or for any other reason).

(6) In any proceedings a person who has been but is no longer married to the accused shall be compellable to give evidence as if that person and the accused had never been married.

(7) Where in any proceedings the age of any person at any time is material for the purposes of subsection (3) his age at the material time shall for the purposes of that provision be deemed to be or to have been that which appears to the court to be or to have been his age at that time.

(8) In subsection (3)(b) “sexual offence” means an offence under the Protection of Children Act 1978 or Part 1 of the Sexual Offences Act 2003.

---

<sup>92</sup> This clause corresponds to section 107 CJO and section 80 PACE. It does not contain the references to “civil partner” now contained in the latter provision by virtue of the Civil Partnership Act 2004.

**Rule where accused's spouse not compellable<sup>93</sup>**

87. The failure of the spouse of a person charged in any proceedings to give evidence in the proceedings shall not be made the subject of any comment by the prosecution.

**Advance notice of expert evidence in Supreme Court<sup>94</sup>**

88.—(1) Any Criminal Procedure Rules for the time being in force under section 81 of the Police and Criminal Evidence Act 1984 (advance notice of expert evidence in Crown Court) shall have effect, subject to any directions under subsection (2) in relation to trials on indictment before the Supreme Court.

(2) The Chief Justice may by directions in writing modify the application of the rules deferred in subsection (1) in such manner as he may consider necessary or expedient.

**Chapter 2  
Evidence of bad character**

*Introductory*

**“Bad character”<sup>95</sup>**

89.—(1) References in this Chapter to evidence of a person's “bad character” are to evidence of, or of a disposition towards, misconduct on his part, other than evidence which —

(a) has to do with the alleged facts of the offence with which the defendant is charged; or

(b) is evidence of misconduct in connection with the investigation or prosecution of that offence.

---

<sup>93</sup> This clause corresponds to section 80A PACE. There is no equivalent provision in CJO. It does not contain the reference to “civil partner” now contained in section 80A PACE by virtue of the Civil Partnership Act 2004.

<sup>94</sup> This clause corresponds to section 108 CJO and would make provision having the same effect as section 81 PACE

<sup>95</sup> This clause is a new provision in terms of Falkland Islands law. It reflects the provisions of section 98 of the Criminal Justice Act 2003 and must be read with clause 92 which reflects the provisions of section 99 of that Act. The two provisions, read together, will replace the Common Law rules. Under clause 92, if on a trial for burglary, the defendant is alleged to have smashed a window to gain entry, the fact the defendant is not charged with criminal damage does not prevent evidence of the smashing of the window being brought. Similarly, if a defendant is charged with robbing a bank, the fact that he is not charged with being in unlawful possession of a firearm will not prevent evidence that he was in unlawful possession of a firearm at the time of the robbery from being brought.



### **Abolition of common law rules<sup>96</sup>**

**90.—**(1) The common law rules governing the admissibility of evidence of bad character in criminal proceedings are abolished.

(2) Subsection (1) is subject to section 108(1) in so far as it preserves the rule under which in criminal proceedings a person's reputation is admissible for the purposes of proving his bad character.

### *Persons other than defendants*

### **Non-defendant's bad character<sup>97</sup>**

**91.—**(1) In criminal proceedings evidence of the bad character of a person other than the defendant is admissible if and only if —

(a) it is important explanatory evidence;

(b) it has substantial probative value in relation to a matter which —

---

<sup>96</sup> See also the footnote to clause 91. There is an overreaching principle for determining the admissibility of evidence in criminal matters. That is that all relevant evidence is *prima facie* admissible. To this, at common law, there is at present a long-standing exception which is that evidence of a defendant's bad character, other than that relating to the offence charged is inadmissible. This is so even if it can be shown (as it could have been in the trial at the Old Bailey, London, of Mr Shorters for manslaughter at the KEMH) that the defendant had a propensity to act in a particular way and notwithstanding that his propensity was relevant to the offence charged. However, that common law rule is not absolute. In cases where the evidence is not only relevant but possesses probative force "sufficiently great to make it show that he was guilty of another crime" then that evidence may be adduced. This is the so-called "similar fact rule" that encompasses evidence of misconduct whether proved by virtue of a conviction or otherwise, as well as a propensity to act in a particular way. Nevertheless the evidence sought to be adduced, under the present common law rules, must have probative value beyond the "forbidden type of reasoning". The trial judge under the present law has discretion to exclude evidence if its "prejudicial effect" exceeds its "probative value".

The present common law rules of evidence were criticised in England because of the way that witnesses (other than defendants) are liable to be treated during the course of a criminal trial. They have been open to have defendants impugning their character using evidence which was admitted subject to a requirement of bare relevance. However, Defendants are, under the present law, shielded from attacks on their character, whether or not they give evidence.

Clause 92 would abolish the common law rules governing the admissibility of evidence of bad character.

<sup>97</sup> This provision is new in the law of the Falkland Islands. It corresponds to section 100 of the Criminal Justice Act 2003. The object of the clause is to exclude evidence, and to disallow questions, that do not substantially advance the case of the party seeking to use evidence of bad character of a witness other than the defendant (whether called to give evidence on behalf of the prosecution or on behalf of the defence). Clause 101 would radically alter the present position. Under the present law, the cross-examination of witnesses in respect of conduct that might be viewed as "reprehensible", but which is barely or marginally relevant is a familiar feature of criminal trials. Under the clause, judges would be required to ensure that evidence of the "bad character" of a non-defendant witness meet the criteria for admissibility set out in clause 94(1). Other than for evidence admitted by agreement the leave of the court under clause 94(4) would have to be obtained. The object is to exclude evidence, and to disallow questions, that do not substantially advance the case of the party seeking to use evidence of bad character. If in the defence case in relation to a witness it is alleged that his evidence is mistaken, clause 101(1)(b) would disallow evidence of the conviction. If the allegation is that the witness is lying, and not merely mistaken, that evidence is likely under clause 101(1)(b) to be allowed.

- (i) is a matter in issue in the proceedings; and
  - (ii) is of substantial importance in the context of the case as a whole, or
  - (c) all parties to the proceedings agree to the evidence being admissible.
- (2) For the purposes of subsection (1)(a) evidence is important explanatory evidence if —
- (a) without it, the court or jury would find it impossible or difficult properly to understand other evidence in the case, and
  - (b) its value for understanding the case as a whole is substantial.
- (3) In assessing the probative value of evidence for the purposes of subsection (1)(b) the court must have regard to the following factors (and to any others it considers relevant) —
- (a) the nature and number of the events, or other things, to which the evidence relates;
  - (b) when those events or things are alleged to have happened or existed;
  - (c) where —
    - (i) the evidence is evidence of a person's misconduct, and
    - (ii) it is suggested that the evidence has probative value by reason of similarity between that misconduct and other alleged misconduct,the nature and extent of the similarities and the dissimilarities between each of the alleged instances of misconduct;
  - (d) where —
    - (i) the evidence is evidence of a person's misconduct,
    - (ii) it is suggested that that person is also responsible for the misconduct charged; and
    - (iii) the identity of the person responsible for the misconduct charged is disputed;the extent to which the evidence shows or tends to show that the same person was responsible each time.
- (4) Except where subsection (1)(c) applies, evidence of the bad character of a person other than the defendant must not be given without leave of the court.

## *Defendants*

### **Defendant's bad character<sup>98</sup>**

92.—(1) In criminal proceedings evidence of the defendant's bad character is admissible if, but only if—

- (a) all parties to the proceedings agree to the evidence being admissible,
- (b) the evidence is adduced by the defendant himself or is given in answer to a question asked by him in cross-examination and intended to elicit it,
- (c) it is important explanatory evidence,
- (d) it is relevant to an important matter in issue between the defendant and the prosecution,
- (e) it has substantial probative value in relation to an important matter in issue between the defendant and a co-defendant,
- (f) it is evidence to correct a false impression given by the defendant, or
- (g) the defendant has made an attack on another person's character.

(2) Sections 93 to 97 contain provision supplementing subsection (1).

---

<sup>98</sup> This clause would replace the present common law rules and make new provision in Falkland Islands law that evidence. The clause corresponds to section 101 of the Criminal Justice Act 2003. Clause 94(1)(a) and (b) are straightforward and are unlikely to occasion any difficulty. Clause 94(1)(c) (corresponding with section 101(1)(c) of the English Act) derives from the English Law Commission's conclusion that there were circumstances in which it would be appropriate for a jury to learn of a defendant's bad character if it had substantial explanatory value and the interests of justice require it to be admissible. It should be noted that rule 35.4 of the Criminal Procedure Rules 2005 (which would apply in relation to this provision if it is enacted) would require the prosecutor to give notice to the court and to the defendant if he wished to introduce evidence of the defendant's bad character. Within 7 days of receiving such notice the defendant could apply to the court for a ruling excluding such evidence from being given, or a witness being cross-examined to elicit such evidence. Clause 94(1)(d) would allow evidence to be adduced as to the defendant's character if it has substantive probative value as to a matter in issue between the defence and the prosecution. Again, rules 35.4 and 35.6 of the Criminal Procedure Rules 2005 would apply. The court could not admit evidence under clause 94(1)(d) if it appears to the court that the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it. Clause 94(1)(e) deals with the situation where a co-defendant wishes to adduce evidence of the defendant's bad character or cross-examine a witness as to the defendant's character. It should be noted that rule 35.5 of the Criminal Procedure Rules 2005 would require the co-defendant to give notice of his intention to do so and that rule 35.6 would enable the defendant within 7 days of that notice to apply to the court for a direction that such evidence or cross-examination shall not be permitted. Clause 98 would define what is meant by "evidence to correct a false impression". Clause 94(1)(f) must be read in conjunction with clause 98(1) under which a defendant may give a false impression as to his character expressly or by implication. An example given is of a defendant who appears in court dressed as a clergyman, when he is not a clergyman. Clause 102(1)(g) deals with the situation where the defendant has attacked the character of a witness or that of a co-defendant. Subject to 102(3) and (4), evidence of the defendant's own bad character is admissible in such circumstances.

(3) The court must not admit evidence under subsection (1)(d) or (g) if, on an application by the defendant to exclude it, it appears to the court that the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.

(4) On an application to exclude evidence under subsection (3) the court must have regard, in particular, to the length of time between the matters to which that evidence relates and the matters which form the subject of the offence charged.

**“Important explanatory evidence”<sup>99</sup>**

93. For the purposes of section 92(1)(c) evidence is important explanatory evidence if —

(a) without it, the court or jury would find it impossible or difficult properly to understand other evidence in the case, and

(b) its value for understanding the case as a whole is substantial.

**“Matter in issue between the defendant and the prosecution”<sup>100</sup>**

94.—(1) For the purposes of section 100(1)(d) the matters in issue between the defendant and the prosecution include —

(a) the question whether the defendant has a propensity to commit offences of the kind with which he is charged, except where his having such a propensity makes it no more likely that he is guilty of the offence;

(b) the question whether the defendant has a propensity to be untruthful, except where it is not suggested that the defendant’s case is untruthful in any respect.

---

<sup>99</sup> This is a new provision and is supplemental to the foregoing provisions dealing with “bad character”. It corresponds to section 102 of the Criminal Justice Act 2003. “Important explanatory evidence is intended to deal with matters so closely linked with the central facts that it would be a nonsense to exclude such evidence. Thus, the fact that the complainant assaulted the defendant would be highly relevant to the defendant’s claim that he acted in self defence, or that he was entitled to resist arrest.

<sup>100</sup> This clause corresponds to section 103 of the Criminal Justice Act 2003 and (see subclause (1)) deals with the situation in which the defendant is alleged by the prosecution to have a propensity (a) to commit offences of the kind he is alleged to have committed or (b) to be untruthful. Such a propensity may, without excluding any other way in which it may be done, (see subclause (2)), be evidence that the defendant has been convicted of the same description or category as the one with which he has been charged except (see subclause (3)) if the court is satisfied that due to the length of time since the last conviction or for any other reason that would be unjust. Under subclause (4) an offence is defined as being “of the same description” by reference to how the offence appears on an indictment or written charge or information. An offence will be of the same category as another offence if they both fall within the same category in an Order made by the Governor. An Order has been made under section 103(4)(b) of the Criminal Justice Act 2003, which corresponds to subclause (4): The Criminal Justice Act 2003 (Categories of Offences) Order 2004 (SI 2004/3346). It is intended that an order would, if this clause is enacted, be made modelled on that Order which groups into a category offences under the Theft Act 1968 (which applies in the Falkland Islands) and into another category a number of offences under the Sexual Offences Act 2003, which also applies in the Falkland Islands.

(2) Where subsection (1)(a) applies, a defendant's propensity to commit offences of the kind with which he is charged may (without prejudice to any other way of doing so) be established by evidence that he has been convicted of —

(a) an offence of the same description as the one with which he is charged, or

(b) an offence of the same category as the one with which he is charged.

(3) Subsection (2) does not apply in the case of a particular defendant if the court is satisfied, by reason of the length of time since the conviction or for any other reason, that it would be unjust for it to apply in his case.

(4) For the purposes of subsection (2) —

(a) two offences are of the same description as each other if the statement of the offence in a written charge or information or indictment would, in each case, be in the same terms;

(b) two offences are of the same category as each other if they belong to the same category of offences prescribed for the purposes of this subsection by an order made by the Governor.

(5) A category prescribed by an order under subsection (4)(b) must consist of offences of the same type.

(6) Only prosecution evidence is admissible under section 92(1)(d).

**“Matter in issue between the defendant and a co-defendant”<sup>101</sup>**

**95.—**(1) Evidence which is relevant to the question whether the defendant has a propensity to be untruthful is admissible on that basis under section 92(1)(e) only if the nature or conduct of his defence is such as to undermine the co-defendant's defence.

(2) Only evidence —

(a) which is to be (or has been) adduced by the co-defendant, or

(b) which a witness is to be invited to give (or has given) in cross-examination by the co-defendant,

is admissible under section 92(1)(e).

---

<sup>101</sup> This clause would define what is meant by “matter in issue between the defendant and a co-defendant” and corresponds to section 104 of the Criminal Justice Act 2003.

**“Evidence to correct a false impression”<sup>102</sup>**

96.—(1) For the purposes of section 92(1)(f) —

(a) the defendant gives a false impression if he is responsible for the making of an express or implied assertion which is apt to give the court or jury a false or misleading impression about the defendant;

(b) evidence to correct such an impression is evidence which has probative value in correcting it.

(2) A defendant is treated as being responsible for the making of an assertion if —

(a) the assertion is made by the defendant in the proceedings (whether or not in evidence given by him),

(b) the assertion was made by the defendant —

(i) on being questioned under caution, before charge, about the offence with which he is charged, or

(ii) on being charged with the offence or officially informed that he might be prosecuted for it,

and evidence of the assertion is given in the proceedings,

(c) the assertion is made by a witness called by the defendant,

(d) the assertion is made by any witness in cross-examination in response to a question asked by the defendant that is intended to elicit it, or is likely to do so, or

(e) the assertion was made by any person out of court, and the defendant adduces evidence of it in the proceedings.

(3) A defendant who would otherwise be treated as responsible for the making of an assertion shall not be so treated if, or to the extent that, he withdraws it or disassociates himself from it.

(4) Where it appears to the court that a defendant, by means of his conduct (other than the giving of evidence) in the proceedings, is seeking to give the court or jury an impression about himself that is false or misleading, the court may if it appears just to do so treat the defendant as being responsible for the making of an assertion which is apt to give that impression.

(5) In subsection (4) “conduct” includes appearance or dress.

---

<sup>102</sup> This clause corresponds to section 105 of the Criminal Justice Act 2005. “Conduct” is defined in subclause (5) of this clause, “defendant” and “prosecution evidence” are defined in clause 103(1) and “important explanatory evidence” is defined in clause 93.

(6) Evidence is admissible under section 92(1)(f) only if it goes no further than is necessary to correct the false impression.

(7) Only prosecution evidence is admissible under section 92(1)(f).

**“Attack on another person’s character”<sup>103</sup>**

**97.—**(1) For the purposes of section 92(1)(g) a defendant makes an attack on another person’s character if —

(a) he adduces evidence attacking the other person’s character,

(b) he (or any legal representative appointed under section 26(4) of the Criminal Justice (Evidence) Ordinance 2000 to cross-examine a witness in his interests) asks questions in cross-examination that are intended to elicit such evidence, or are likely to do so, or

(c) evidence is given of an imputation about the other person made by the defendant —

(i) on being questioned under caution, before charge, about the offence with which he is charged, or

(ii) on being charged with the offence or officially informed that he might be prosecuted for it.

(2) In subsection (1) “evidence attacking the other person’s character” means evidence to the effect that the other person —

(a) has committed an offence (whether a different offence from the one with which the defendant is charged or the same one); or

(b) has behaved, or is disposed to behave, in a reprehensible way;

and “imputation about the other person” means an assertion to that effect.

(3) Only prosecution evidence is admissible under section 92(1)(g).

**Stopping case where evidence contaminated<sup>104</sup>**

**98.—**(1) If on a defendant’s trial before a judge and jury for an offence —

<sup>103</sup> This clause corresponds to section 106 of the Criminal Justice Act 2003. See the previous footnote as to definitions of “bad character” “conduct”, “important explanatory evidence” and “prosecution evidence”. Subclause (2) of this clause defines “evidence attacking the other person’s character” and “imputation about the other person”.

<sup>104</sup> This clause corresponds to section 107 of the Criminal Justice Act 2003. It would apply only where evidence of the bad character of a defendant has been adduced under clause 92(1)(c) to (g). It therefore would not apply where all the parties agreed to the evidence being admitted, or where the evidence is adduced by the defendant himself or in answer to a question in cross-examination. Subclause (5) sets out the circumstances in which a person’s evidence is contaminated.

(a) evidence of his bad character has been admitted under any of paragraphs (c) to (g) of section 92(1); and

(b) the court is satisfied at any time after the close of the case for the prosecution that —

(i) the evidence is contaminated; and

(ii) the contamination is such that, considering the importance of the evidence to the case against the defendant, his conviction of the offence would be unsafe,

the court must either direct the jury to acquit the defendant of the offence or, if it considers that there ought to be a retrial, discharge the jury.

(2) Where —

(a) a jury is directed under subsection (1) to acquit a defendant of an offence; and

(b) the circumstances are such that, apart from this subsection, the defendant could if acquitted of that offence be found guilty of another offence,

the defendant may not be found guilty of that other offence if the court is satisfied as mentioned in subsection (1)(b) in respect of it.

(3) If —

(a) a jury is required to determine under section 4A(2) of the Criminal Procedure (Insanity) Act 1964 (c.84) whether a person charged on an indictment with an offence did the act or made the omission charged;

(b) evidence of the person's bad character has been admitted under any of paragraphs (c) to (g) of section 92(1); and

(c) the court is satisfied at any time after the close of the case for the prosecution that —

(i) the evidence is contaminated; and

(ii) the contamination is such that, considering the importance of the evidence to the case against the person, a finding that he did the act or made the omission would be unsafe,

the court must either direct the jury to acquit the defendant of the offence, or if it considers that there ought to be a rehearing, discharge the jury.

(4) This section does not prejudice any other power a court may have to direct a jury to acquit a person of an offence or to discharge a jury.

(5) For the purposes of this section a person's evidence is contaminated where —



(a) as a result of an agreement or understanding between the person and one or more others;  
or

(b) as a result of the person being aware of anything alleged by one or more others whose evidence may be, or has been, given in the proceedings,

the evidence is false or misleading in any respect, or is different from what it would otherwise have been.

**Offences committed by defendant when a child<sup>105</sup>**

99.—(1) Section 16(2) and (3) of the Children and Young Persons Act 1963 (offences committed by person under 14 disregarded for purposes of evidence relating to previous convictions) shall cease to have effect.

(2) In proceedings for an offence committed or alleged to have been committed by the defendant when aged 21 or over, evidence of his conviction for an offence when under the age of 14 is not admissible unless —

(a) both of the offences are punishable on conviction of an adult by a term of imprisonment of two years or more;

(b) the court is satisfied that the interests of justice require the evidence to be admissible.

(3) Subsection (2) applies in addition to section 92.

*General*

**Assumption of truth in assessment of relevance or probative value<sup>106</sup>**

100.—(1) Subject to subsection (2), a reference in this Chapter to the relevance or probative value of evidence is a reference to its relevance or probative value on the assumption that it is true.

(2) In assessing the relevance or probative value of an item of evidence for any purpose of this Chapter, a court need not assume that the evidence is true if it appears, on the basis of any material before the court (including any evidence it decides to hear on the matter), that no court or jury could reasonably find it to be true.

---

<sup>105</sup> Clause 99 corresponds to section 108 of the Criminal Justice Act 2003. Sections 16(2) and (3) of the Children and Young Persons Act 1933, which was repealed by section 332 and Schedule 37 of the Criminal Justice Act 2003, applied in the Falkland Islands until section 108 of the Criminal Justice Ordinance 2003 came into force on 15<sup>th</sup> December 2004. The provisions of section 108 of the 2003 Act as a result form part of the law of the Falkland Islands by virtue of Part XI of the Interpretation and General Clauses Ordinance. It is more helpful, however, that these provisions should form part of law made in the Falkland Islands, as they will then be less easily overlooked.

<sup>106</sup> This clause corresponds to section 109 of the Criminal Justice Act 2003. That section in effect repeats the common law rules as to “relevance” and “probative value” which at present apply in the Falkland Islands. The clause does not change the law but prevents a doubt arising as to whether the law on this point has changed.

### **Court's duty to give reasons for rulings<sup>107</sup>**

**101.—**(1) Where the court makes a relevant ruling —

- (a) it must state in open court (but in the absence of the jury, if there is one) its reasons for the ruling;
- (b) if it is a court of summary jurisdiction, it must cause the ruling and the reasons for it to be entered in the register of the court's proceedings.

(2) In this section "relevant ruling" means —

- (a) a ruling on whether an item of evidence is evidence of a person's bad character;
- (b) a ruling on whether an item of such evidence is admissible under section 91 or 92 (including a ruling on an application under section 92(3));
- (c) a ruling under section 98.

### **Rules of court<sup>108</sup>**

**102.—**(1) Subject to subsection (8), the Chief Justice may by rules of court made under this section make such provision as appears to him to be necessary or expedient for the purposes of this Chapter, but until he makes such rules, and to the extent that rules made by him under this subsection do not make provision in relation to any subject —

- (a) the rules of court for the time being having effect in the Crown Court in England and made under section 111 of the Criminal Justice Act 2003 shall have effect in relation to trials in the Supreme Court; and
- (b) the rules of court made under that provision and having effect in relation to magistrates courts in England shall have effect in relation to trials in courts of summary jurisdiction.

(2) Rules made under subsection (1) may, and, where the party in question is the prosecution, must, contain provision requiring a party who —

- (a) proposes to adduce evidence of a defendant's bad character; or
- (b) proposes to cross-examine a witness with a view to the eliciting such evidence,

to serve on the defendant such notice, and such particulars of or relating to the evidence, as may be prescribed.

---

<sup>107</sup> This clause corresponds to section 110 of the Criminal Justice Act 2003.

<sup>108</sup> This clause would confer power upon the Chief Justice to make rules for the purpose of this Chapter and would state that if he does not do so the rules in force under section 111 of the Criminal Justice Act 2003 in relation to it would apply. Such rules are contained in Part 35 of the Criminal Procedure Rules 2005.

(3) Rules made under subsection (1) may provide that the court or the defendant may, in such circumstances as may be prescribed, dispense with a requirement imposed by virtue of subsection (2).

(4) In considering the exercise of its powers with respect to costs, the court may taken into account any failure by a party to comply with a requirement imposed by virtue of subsection (2) and not dispensed with by virtue of subsection (3).

(5) Rules made under subsection (1) may —

(a) limit the application of any provision of the rules to prescribed circumstances;

(b) subject any provision of the rules to prescribed exceptions;

(c) make different provision for different cases or circumstances.

(6) Nothing in this section prejudices the generality of any enactment conferring power to make rules of court; and no particular provision of this section prejudices any general provision of it.

(7) In subsection (1) “rules of court” means —

(a) Supreme Court Rules;

(b) Criminal Appeal Rules; and

(c) rules in relation to courts of summary jurisdiction.

(8) In respect of the Court of Appeal, the power to make rules under subsection (1) is vested in the President of the Court of Appeal.

### **Interpretation<sup>109</sup>**

**103.—**(1) In this Chapter —

“bad character” is to be read in accordance with section 89;

“criminal proceedings” means criminal proceedings in relation to which the strict rules of evidence apply;

“defendant”, in relation to criminal proceedings, means a person charged with an offence in those proceedings; and “co-defendant”, in relation to a defendant, means a person charged with an offence in the same proceedings;

“important matter” means a matter of substantial importance in the context of the case as a whole;

---

<sup>109</sup> This clause corresponds to section 112 of the Criminal Justice Act 2003.

“misconduct” means the commission of an offence or other reprehensible behaviour;

“offence” includes a service offence;

“probative value”, and “relevant” (in relation to an item of evidence), are to be read in accordance with section 108;

“prosecution evidence” means evidence which is to be (or has been) adduced by the prosecution, or which a witness is to be invited to give (or has given) in cross-examination by the prosecution;

“service offence” means an offence under any United Kingdom Act for the time being in force in relation to Her Majesty’s armed forces; and

“written charge” means a document handed to a person by a police officer recording that he has been charged by that or another police officer with an offence, and includes an information.

(2) Where a defendant is charged with two or more offences in the same criminal proceedings, this Chapter (except section 92(3)) has effect as if each offence were charged in separate proceedings; and references to the offence with which the defendant is charged are to be read accordingly.

(3) Nothing in this Chapter affects the exclusion of evidence —

(a) under the rules in section 3 of the Criminal Procedure Act 1865 (c.18) against a party impeaching the credit of his own witnesses by general evidence of bad character;

(b) under section 28 of the Criminal Justice (Evidence) Ordinance (Title 24.3) (restriction on evidence or questions about complainant’s sexual history, or

(c) on grounds other than the fact that it is evidence of the complainant’s bad character.

### Chapter 3 Hearsay evidence<sup>110</sup>

#### *Hearsay evidence: main provisions*

#### **Admissibility of hearsay evidence<sup>111</sup>**

**104.—**(1) In criminal proceedings a statement not made in oral evidence in the proceedings is admissible as evidence of any matter stated if, but only if—

- (a) any provision of this Chapter or any other statutory provision makes it admissible;
- (b) any rule of law preserved by section 107 makes it admissible;
- (c) all parties to the proceedings agree to it being admissible; or
- (d) the court is satisfied that it is in the interests of justice for it to be admissible.

(2) In deciding whether a statement not made in oral evidence should be admitted under subsection (1)(d), the court must have regard to the following factors (and to any others it considers relevant)—

- (a) how much probative value the statement has (assuming it to be true) in relation to a matter in issue in the proceedings, or how valuable it is for the understanding of other evidence in the case;
- (b) what other evidence has been, or can be, given on the matter or evidence mentioned in paragraph (a);
- (c) how important the matter or evidence mentioned in paragraph (a) is in the context of the case as a whole;

<sup>110</sup> This Chapter contains provisions, the majority of which are entirely new to Falkland Islands statutory law (including English Acts applying in whole or in part), concerning the admissibility of “hearsay evidence”. The present rules of the Common Law which are in force in the Falkland Islands as to the admissibility of hearsay evidence are complex, difficult to understand and difficult to apply in practice. This Chapter would bring into Falkland Islands law provisions found in Chapter 2 of Part 11 of the Criminal Justice Act 2003, which were firmly based on recommendations of the English Law Commission made in a formal report to the British Government, which stated that it was of the view that evidence which ought to be admitted was being excluded with the result that guilty persons were being acquitted. It may be helpful to consider clauses 105 and 118 first. Clause 105 defines “statements” and “matters stated” while clause 118 is concerned with representations made “other than by a person” (i.e. representations produced by machines). However, in relation to a video recording, a photograph or a test performed electronically (e.g. a breathalyser test) are not hearsay. If a machine provides a statement that is an assertion of a fact based on information provided by any person, then the hearsay rule comes into play. “Representation” means an assertion that a fact or opinion is true. The representation may be made by a person by “whatever means” and including a sketch, photofit or other pictorial form.

<sup>111</sup> This clause corresponds to section 114 of the Criminal Justice Act 2003. Clause 104(1)(d) would reflect the English provision in giving the trial judge a discretion to admit a statement not made in oral evidence, even though it did not fit into any of the categories mentioned in clause 104(1)(a) to (c). In exercising his discretion one way or the other, the trial judge would be obliged to have regard to the factors mentioned in clause 104(2).

- (d) the circumstances in which the statement was made;
  - (e) how reliable the maker of the statement appears to be;
  - (f) how reliable the evidence of the making of the statement appears to be;
  - (g) whether oral evidence of the matter stated can be given and, if not, why it cannot;
  - (h) the amount of difficulty involved in challenging the statement;
  - (i) the extent to which that difficulty would be likely to prejudice the party facing it.
- (3) Nothing in this Chapter affects the exclusion of evidence of a statement on grounds other than the fact that it is a statement not made in oral evidence in the proceedings.

#### **Statements and matters stated<sup>112</sup>**

**105.**—(1) In this Chapter references to a statement or to a matter stated are to be read as follows.

- (2) A statement is any representation of fact or opinion made by a person by whatever means; and it includes a representation made in a sketch, photofit or other pictorial form.
- (3) A matter stated is one to which this Chapter applies if (and only if) the purpose, or one of the purposes, of the person making the statement appears to the court to have been —
  - (a) to cause another person to believe the matter; or
  - (b) to cause another person to act or a machine to operate on the basis that the matter is as stated.

#### *Principal categories of admissibility*

#### **Cases where a witness is unavailable<sup>113</sup>**

**106.**—(1) In criminal proceedings a statement not made in oral evidence in the proceedings is admissible as evidence of any matter stated if —

- (a) oral evidence given in the proceedings by the person who made the statement would be admissible as evidence of that matter;

<sup>112</sup> This clause reflects section 115 of the Criminal Justice Act 2003.

<sup>113</sup> This clause corresponds to section 116 of the Criminal Justice Act 2003. It would allow evidence to be admitted where a witness is unavailable for good reason. It would not operate to allow a chain of such statements. However, even where the rules in clause 108 prevent evidence being automatically admitted, it might be admitted in the judge's discretion under clause 105(1)(d). An underlying theme of the new statutory scheme is that the hearsay rule should allow hearsay statements to be received by a court if they are capable of being judged credible and reliable.

(b) the person who made the statement (the relevant person) is identified to the court's satisfaction; and

(c) any of the five conditions mentioned in subsection (2) is satisfied.

(2) The conditions are —

(a) that the relevant person is dead;

(b) that the relevant person is unfit to be a witness because of his bodily or mental condition;

(c) that the relevant person is outside the Falkland Islands and it is not reasonably practicable to secure his attendance;

(d) that the relevant person cannot be found although such steps as it is reasonably practicable to take to find him have been taken;

(e) that through fear the relevant person does not give (or does not continue to give) oral evidence in the proceedings, either at all or in connection with the subject matter of the statement, and the court gives leave for the statement to be given in evidence.

(3) For the purposes of subsection (2)(e) "fear" is to be widely construed and (for example) includes fear of death or injury of another person or of financial loss.

(4) Leave may be given under subsection (2)(e) only if the court considers that the statement ought to be admitted in the interests of justice, having regard —

(a) to the statement's contents;

(b) to any risk that its admission or exclusion will result in unfairness to any party to the proceedings (and in particular to how difficult it will be to challenge the statement if the relevant person does not give oral evidence);

(c) in appropriate cases, to the fact that a direction under any provision of written law special measures for the giving of evidence by fearful witnesses etc could be made in relation to the relevant person; and

(d) to any other relevant circumstances.

(5) A condition set out in any paragraph of subsection (2) which is in fact satisfied is to be treated as not satisfied if it is shown that the circumstances described in that paragraph are caused—

(a) by the person in support of whose case it is sought to give the statement in evidence; or

(b) by a person acting on his behalf,

in order to prevent the relevant person giving oral evidence in the proceedings (whether at all or in connection with the subject matter of the statement).

**Business and other documents<sup>114</sup>**

**107.—**(1) In criminal proceedings a statement contained in a document is admissible as evidence of any matter stated if —

- (a) oral evidence given in the proceedings would be admissible as evidence of that matter;
- (b) the requirements of subsection (2) are satisfied; and
- (c) the requirements of subsection (5) are satisfied, in a case where subsection (4) requires them to be.

(2) The requirements of this subsection are satisfied if —

- (a) the document or the part containing the statement was created or received by a person in the course of a trade, business, profession or other occupation, or as the holder of a paid or unpaid office;
- (b) the person who supplied the information contained in the statement (the relevant person) had or may reasonably be supposed to have had personal knowledge of the matters dealt with; and
- (c) each person (if any) through whom the information was supplied from the relevant person to the person mentioned in paragraph (a) received the information in the course of a trade, business, profession or other occupation, or as the holder of a paid or unpaid office.

(3) The persons mentioned in paragraphs (a) and (b) of subsection (2) may be the same person.

(4) The additional requirements of subsection (5) must be satisfied if the statement —

- (a) was prepared for the purposes of pending or contemplated criminal proceedings, or for a criminal investigation; but
- (b) was not obtained pursuant to a request under section 7 of the Crime (International Co-operation) Ordinance (c.32).

(5) The requirements of this subsection are satisfied if —

- (a) any of the five conditions mentioned in section 106(2) is satisfied (absence of relevant person etc); or

---

<sup>114</sup> This clause reflects section 117 of the Criminal Justice Act 2003 and replaced section 24 of the Criminal Justice Act 1988, which applied in the Falkland Islands.



(b) the relevant person cannot reasonably be expected to have any recollection of the matters dealt with in the statement (having regard to the length of time since he supplied the information and all other circumstances).

(6) A statement is not admissible under this section if the court makes a direction to that effect under subsection (7).

(7) The court may make a direction under this subsection if satisfied that the statement's reliability as evidence for the purpose for which it is tendered is doubtful in view of —

(a) its contents;

(b) the source of the information contained in it;

(c) the way in which or the circumstances in which the information was supplied or received;  
or

(d) the way in which or the circumstances in which the document concerned was created or received.

**Preservation of certain common law categories of admissibility<sup>115</sup>**

108.—(1) The following rules of law are preserved.

*Public information etc*

1. Any rule of law under which in criminal proceedings —

(a) published works dealing with matters of public nature (such as histories, scientific works, dictionaries and maps) are admissible as evidence of facts of a public nature stated in them;

(b) public documents (such as public registers, and returns made under public authority with respect to matters of public interest) are admissible as evidence of facts stated in them;

(c) records (such as the records of certain courts, treaties, Crown grants, pardons and commissions) are admissible as evidence of facts stated in them; or

(d) evidence relating to a person's age or date or place of birth may be given by a person without personal knowledge of the matter.

*Reputation as to character*

2. Any rule of law under which in criminal proceedings evidence of a person's reputation is admissible for the purpose of proving his good or bad character.

---

<sup>115</sup> This clause corresponds to section 118 CJA 2003

*Note*

The rule is preserved only so far as it allows the court to treat such evidence as proving the matter concerned.

*Reputation or family tradition*

3. Any rule of law under which in criminal proceedings evidence of reputation or family tradition is admissible for the purpose of proving or disproving —

- (a) pedigree or the existence of a marriage;
- (b) the existence of any public or general right; or
- (c) the identity of any person or thing.

*Note*

The rule is preserved only so far as it allows the court to treat such evidence as proving or disproving the matter concerned.

*Res gestae*

4. Any rule of law under which in criminal proceedings a statement is admissible as evidence of any matter stated if —

- (a) the statement was made by a person so emotionally overpowered by an event that the possibility of concoction or distortion can be disregarded;
- (b) the statement accompanied an act which can be properly evaluated as evidence only if considered in conjunction with the statement; or
- (c) the statement relates to a physical sensation or a mental state (such as intention or emotion).

*Confessions etc*

5. Any rule of law relating to the admissibility of confessions or mixed statements in criminal proceedings.

*Admissions by agents etc*

6. Any rule of law under which in criminal proceedings —

- (a) an admission made by an agent of a defendant is admissible against the defendant as evidence of any matter stated; or
- (b) a statement made by a person to whom a defendant refers a person for information is admissible against the defendant as evidence of any matter stated.

### *Common enterprise*

7. Any rule of law under which in criminal proceedings a statement made by a party to a common enterprise is admissible against another party to the enterprise as evidence of any matter stated.

### *Expert evidence*

8.—(1) Any rule of law under which in criminal proceedings an expert witness may draw on the body of expertise relevant to his field.

(2) With the exception of the rules preserved by this section, the common law rules governing the admissibility of hearsay evidence in criminal proceedings are abolished.

### **Inconsistent statements**<sup>116</sup>

109.—(1) If in criminal proceedings a person gives oral evidence and —

(a) he admits making a previous inconsistent statement; or

---

<sup>116</sup> This clause corresponds with section 119 of the Criminal Justice Act 2003. It would radically alter the present law under which previous inconsistent statements are just a tool to challenge a witness' credibility. Witnesses are frequently cross-examined on previous written or oral statements which are inconsistent with their testimony on oath.

The clause would have the effect that previous inconsistent statements might serve as exceptions to the rule against hearsay and not just as tools to challenge the credibility of a witness. Under the present law, if a witness accepts that he made the previous inconsistent statement and that that statement is true, it becomes evidence of the matters stated. If, on the other hand, he admits making the previous statement, but denies its truth, the statement is treated as "hearsay" and is not admissible in evidence. This clause would change that state of affairs. It will be for the court (the jury in a trial on indictment) to decide whether a previous inconsistent statement represents the truth notwithstanding the denials of the witness. The English Law Commission identified a number of practical consequences of this reform:

"The practical consequences of the reform...would be as follows—

- (1) a defendant could be convicted even where the complainant does not come up to proof" [i.e. he does not give evidence in accordance with the statement he has given to the police]" because the fact-finders could accept the complainant's out-of-court statement as true (even though he or she does not confirm it in the witness box) (but see (4) below).
- (2) When considering a submission of no case to answer, the court would have to take account of the previous inconsistent statement admitted in evidence.
- (3) Where the previous statement was relied upon by the prosecution section 78 PACE [to which clause 86 of this Bill above corresponds] would apply.
- (4) If the quality of the out-of-court statement were such that a conviction would be unsafe the court would under a duty [in the case of a jury trial] to direct an acquittal (or, on summary trial to dismiss the information.
- (5) [In a jury trial] the judge would have to treat the previous trial as evidence in the summing up.
- (6) Where a previous inconsistent statement was admitted in evidence although the witness maintained that it was untrue, a careful direction [to the jury, in the case of a jury trial] might be needed. Although the weight to be attached to the oral testimony and the out-of-court statement would be a matter for the fact-finders, it might help the jury if they were told that they are not obliged to accept either version of events as true, and if their attention were drawn to other items of evidence which might help them decide which parts of the evidence to believe and which to reject."

(b) a previous inconsistent statement made by him is proved by virtue of section 3, 4 or 5 of the Criminal Procedure Act 1865 (c.18),

the statement is admissible as evidence of any matter stated of which oral evidence by him would be admissible.

(2) If in criminal proceedings evidence of an inconsistent statement by any person is given under section 123(1)(c), the statement is admissible as evidence of any matter stated in it of which oral evidence by that person would be admissible.

**Other previous statements of witnesses<sup>117</sup>**

110.—(1) This section applies where a person (the witness) is called to give evidence in criminal proceedings.

(2) If a previous statement by the witness is admitted as evidence to rebut a suggestion that his oral evidence has been fabricated, that statement is admissible as evidence of any matter stated of which oral evidence by the witness would be admissible.

(3) A statement made by the witness in a document —

(a) which is used by him to refresh his memory while giving evidence;

(b) on which he is cross-examined; and

(c) which as a consequence is received in evidence in the proceedings;

is admissible as evidence of any matter stated of which oral evidence by him would be admissible.

(4) A previous statement by the witness is admissible as evidence of any matter stated of which oral evidence by him would be admissible, if —

(a) any of the following three conditions is satisfied; and

(b) while giving evidence the witness indicates that to the best of his belief he made the statement, and that to the best of his belief it states the truth.

---

<sup>117</sup> This clause corresponds to section 120 of CJA 2003. It is the tradition in the Falkland Islands, as it is in England, that witnesses must give evidence in person (subject to exceptions provided for by law). The British Government, in relation to consideration of section 120 CJA 2003, when it was being considered by Parliament, said that against that “so is the principle that relevant evidence should not arbitrarily be excluded in the search for truth” and that “it would help witnesses to give better evidence if their earlier statements were made more widely admissible to supplement the evidence that they give at trial.” In its consultation paper the English Law Commission proposed that a previous statement in writing made by a witness should be admissible as evidence of the proof of its contents (a) to rebut allegations of recent invention or afterthought (b) to prove previous identification or description (c) where the witness cannot remember details contained in a statement made when the details were fresh in a witness’ mind and the details are such that the witness cannot reasonably be expected to remember them.

- (5) The first condition is that the statement identifies or describes a person, object or place.
- (6) The second condition is that the statement was made by the witness when the matters stated were fresh in his memory but he does not remember them, and cannot reasonably be expected to remember them, well enough to give oral evidence of them in the proceedings.
- (7) The third condition is that —
- (a) the witness claims to be a person against whom an offence has been committed;
  - (b) the offence is one to which the proceedings relate;
  - (c) the statement consists of a complaint made by the witness (whether to a person in authority or not) about conduct which would, if proved, constitute the offence or part of the offence;
  - (d) the complaint was made as soon as could reasonably be expected after the alleged conduct;
  - (e) the complaint was not made as a result of a threat or a promise; and
  - (f) before the statement is adduced the witness gives oral evidence in connection with its subject matter.
- (8) For the purposes of subsection (7) the fact that the complaint was elicited (for example, by a leading question) is irrelevant unless a threat or a promise was involved.

### *Supplementary*

#### **Additional requirement for admission of multiple hearsay<sup>118</sup>**

**111.—(1)** A hearsay statement is not admissible to prove the fact that an earlier hearsay statement was made unless —

- (a) either of the statements is admissible under section 107, 109 or 110;
- (b) all parties to the proceedings so agree; or
- (c) the court is satisfied that the value of the evidence in question, taking into account how reliable the statements appear to be, is so high that the interests of justice require the later statement to be admissible for that purpose.

---

<sup>118</sup> This clause corresponds to s. 121 CJA 2003. Multiple hearsay arises where the declarant has no personal knowledge of the matter stated by him, but derived his information from another source. Thus where X observes a road traffic accident and tells Y about it, Y will not be permitted to give oral testimony of X's account unless a hearsay exception applies. Clause 111 sets out the exceptions.

(2) In this section “hearsay statement” means a statement, not made in oral evidence, that is relied on as evidence of a matter stated in it.

**Documents produced as exhibits<sup>119</sup>**

**112.—**(1) This section applies if on a trial before a judge and jury for an offence —

- (a) a statement made in a document is admitted in evidence under section 109 or 110; and
- (b) the document or a copy of it is produced as an exhibit.

(2) The exhibit must not accompany the jury when they retire to consider their verdict unless —

- (a) the court considers it appropriate; or
- (b) all the parties to the proceedings agree that it should accompany the jury.

**Capability to make statement<sup>120</sup>**

**113.—**(1) Nothing in sections 106, 109 or 110 makes a statement admissible as evidence if it was made by a person who did not have the required capability at the time when he made the statement.

(2) Nothing in section 107 makes a statement admissible as evidence if any person who, in order for the requirements of section 107(2) to be satisfied, must at any time have supplied or received the information concerned or created or received the document or part concerned —

- (a) did not have the required capability at that time; or
- (b) cannot be identified but cannot reasonably be assumed to have had the required capability at that time.

(3) For the purposes of this section a person has the required capability if he is capable of —

- (a) understanding questions put to him about the matters stated; and
- (b) giving answers to such questions which can be understood.

(4) Where by reason of this section there is an issue as to whether a person had the required capability when he made a statement —

- (a) proceedings held for the determination of the issue must take place in the absence of the jury (if there is one);

---

<sup>119</sup> This clause corresponds to section 122 CJA 2003.

<sup>120</sup> This clause corresponds to s. 123 CJA 2003. The tests as to capability are set out in subclause (3)

(b) in determining the issue the court may receive expert evidence and evidence from any person to whom the statement in question was made;

(c) the burden of proof on the issue lies on the party seeking to adduce the statement, and the standard of proof is the balance of probabilities.

### **Credibility<sup>121</sup>**

**114.—(1)** This section applies if in criminal proceedings —

(a) a statement not made in oral evidence in the proceedings is admitted as evidence of a matter stated; and

(b) the maker of the statement does not give oral evidence in connection with the subject matter of the statement.

**(2)** In such a case —

(a) any evidence which (if he had given such evidence) would have been admissible as relevant to his credibility as a witness is so admissible in the proceedings;

(b) evidence may with the court's leave be given of any matter which (if he had given such evidence) could have been put to him in cross-examination as relevant to his credibility as a witness but of which evidence could not have been adduced by the cross-examining party;

(c) evidence tending to prove that he made (at whatever time) any other statement inconsistent with the statement admitted as evidence is admissible for the purpose of showing that he contradicted himself.

**(3)** If as a result of evidence admitted under this section an allegation is made against the maker of a statement, the court may permit a party to lead additional evidence of such description as the court may specify for the purposes of denying or answering the allegation.

**(4)** In the case of a statement in a document which is admitted as evidence under section 107 each person who, in order for the statement to be admissible, must have supplied or received the information concerned or created or received the document or part concerned is to be treated as the maker of the statement for the purposes of subsections (1) to (3) of this section.

### **Stopping the case where the evidence is unconvincing**

**115.—(1)** If on a defendant's trial before a judge and jury for an offence the court is satisfied at any time after the close of the case for the prosecution that —

<sup>121</sup> This clause corresponds to section 124 CJA 2003. Clause 114(2) is intended to give parties affected by the statement the opportunity to adduce evidence relevant to the credibility of the declarant. In order to facilitate a balanced approach to all parties to the proceedings, a party may, under clause 114(3) be given permission to call evidence to repair or bolster the credibility of the declarant

(a) the case against the defendant is based wholly or partly on a statement not made in oral evidence in the proceedings; and

(b) the evidence provided by the statement is so unconvincing that, considering its importance to the case against the defendant, his conviction of the offence would be unsafe,

the court must either direct the jury to acquit the defendant of the offence or, if it considers that there ought to be a retrial, discharge the jury.

(2) Where —

(a) a jury is directed under subsection (1) to acquit a defendant of an offence; and

(b) the circumstances are such that, apart from this subsection, the defendant could if acquitted of that offence be found guilty of another offence,

the defendant may not be found guilty of that other offence if the court is satisfied as mentioned in subsection (1) in respect of it.

(3) If —

(a) a jury is required to determine under section 4A(2) of the Criminal Procedure (Insanity) Act 1964 whether a person charged on an indictment with an offence did the act or made the omission charged; and

(b) the court is satisfied as mentioned in subsection (1) above at any time after the close of the case for the prosecution that —

(i) the case against the defendant is based wholly or partly on a statement not made in oral evidence in the proceedings; and

(ii) the evidence provided by the statement is so unconvincing that, considering its importance to the case against the person, a finding that he did the act or made the omission would be unsafe,

the court must either direct the jury to acquit the defendant of the offence or, if it considers that there ought to be a rehearing, discharge the jury.

(4) This section does not prejudice any other power a court may have to direct a jury to acquit a person of an offence or to discharge a jury.



### **Court's general discretion to exclude evidence<sup>122</sup>**

**116.—**(1) In criminal proceedings the court may refuse to admit a statement as evidence of a matter stated if —

- (a) the statement was made otherwise than in oral evidence in the proceedings; and
  - (b) the court is satisfied that the case for excluding the statement, taking into account of the danger that to admit it would result in undue waste of time, substantially outweighs the case for admitting it, taking account of the value of the evidence.
- (2) Nothing in this Chapter prejudices —
- (a) any power of a court to exclude evidence under section 84 of this Ordinance (exclusion of unfair evidence); or
  - (b) any other power of a court to exclude evidence at its discretion (whether by preventing questions from being put or otherwise).

### *Miscellaneous*

### **Expert evidence: preparatory work<sup>123</sup>**

**117.—**(1) This section applies if —

- (a) a statement has been prepared for the purposes of criminal proceedings;
- (b) the person who prepared the statement had or may reasonably be supposed to have had personal knowledge of the matters stated;
- (c) notice is given under the appropriate rules that another person (the expert) will in evidence given in the proceedings orally or under section 9 of the Criminal Justice Act 1967 base an opinion or inference on the statement; and
- (d) the notice gives the name of the person who prepared the statement and the nature of the matters stated.

---

<sup>122</sup> This clause corresponds to s.127 CJA, which was enacted because s.78 PACE (clause 84 of this Bill) is not apt to deal with hearsay evidence that is either entirely superfluous or of minimal probative value.

<sup>123</sup> This clause corresponds with s.127 CJA 2003 and is concerned with hearsay issues arising in connection with preparatory work carried out by persons who would not ordinarily expect to be called as witnesses in a criminal trial but act on behalf of an expert who in turn bases an opinion or inference on the strength of their work. The strict legal position is that an expert is not entitled to give an opinion based on scientific tests carried out by assistants unless those assistants are called to give supporting evidence. The point is rarely taken by lawyers appearing for parties because insisting on all assistants being called to testify would be a waste of time. The purpose of this clause is to prevent a technical point being taken which is devoid of merit. Subclause (4) however provides that the exception will not apply if the court so orders following an application to that effect by a party to the proceedings.

(2) In evidence given in the proceedings the expert may base an opinion or inference on the statement.

(3) If evidence based on the statement is given under subsection (2) the statement is to be treated as evidence of what it states.

(4) This section does not apply if the court, on an application by a party to the proceedings, orders that it is not in the interests of justice that it should apply.

(5) The matters to be considered by the court in deciding whether to make an order under subsection (4) include —

(a) the expense of calling as a witness the person who prepared the statement;

(b) whether relevant evidence could be given by that person which could not be given by the expert;

(c) whether that person can reasonably be expected to remember the matters stated well enough to give oral evidence of them.

(6) Subsections (1) to (5) apply to a statement prepared for the purposes of a criminal investigation as they apply to a statement prepared for the purposes of criminal proceedings, and in such a case references to the proceedings are to criminal proceedings arising from the investigation.

(7) The appropriate rules are the provisions of the Criminal Procedure Rules 2005 requiring advance notice of expert evidence in the court in question.

### **Representations other than by a person<sup>124</sup>**

**118.—**(1) Where a representation of any fact —

(a) is made otherwise than by a person; but

(b) depends for its accuracy on information supplied (directly or indirectly) by a person,

the representation is not admissible in criminal proceedings as evidence of the fact unless it is proved that the information was accurate.

(2) Subsection (1) does not affect the operation of the presumption that a mechanical device has been properly set or calibrated.

---

<sup>124</sup> This clause corresponds to section 129 of CJA 2003 and should be read in conjunction with clause 104. Representations made by machine give rise to special problems. The process by which representations are made often require no human cerebral assistance (e.g. a photograph, a tape recording a measurement printout). Other results depend on information being input into the machine by a person, so that if the information is not separately proved, the representations made by the machine will be hearsay. However if the information input into the machine is not proved to be accurate then the evidence provided by the machine has no value at all.

### **Abolition of right of accused to make unsworn statement<sup>125</sup>**

119.—(1) Subject to subsections (2), in any criminal proceedings the accused shall not be entitled to make a statement without being sworn and, accordingly, if he gives evidence he shall do so on oath and be liable to cross-examination; but this section shall not affect the right of the accused, if not represented by a legal practitioner, to address the court otherwise than on oath on any matter which, if he were so represented, a legal practitioner could address the court or a jury on his behalf.

(2) Nothing in subsection (1) shall prevent the accused from making a statement without being sworn —

(a) if it is one which he is required by law to make personally;

(b) if he makes it by way of mitigation before the court passes sentence on him.

### *General*

### **Rules of court<sup>126</sup>**

120.—(1) Subject to subsection (11), the Chief Justice may make such provision as appears to him to be necessary or expedient for the purposes of this Chapter but, until such rules are made and thereafter to the extent that such rules do not make provision for any matter, the rules for the time being having effect under section 132 of the Criminal Justice Act 2003 shall have effect and so that rules applicable to the Crown Court shall apply to the Supreme Court, rules applicable to the English Court of Appeal shall apply to the Court of Appeal and rules applicable, to magistrate's courts in England shall apply to courts of summary jurisdiction in each case with such modifications and adaptations as are required by section 76 of the Interpretation and General Clauses Ordinance (Title 67.2).

(2) The rules may make provision about the procedure to be followed and other conditions to be fulfilled by a party proposing to tender a statement in evidence under any provision of this Chapter.

(3) The rules may require a party proposing to tender the evidence to serve on each party to the proceedings such notice, and such particulars of or relating to the evidence, as may be prescribed.

---

<sup>125</sup> This clause would re-enact subsections (1) and (2) of section 101A of the Criminal Justice Ordinance (which was inserted by section 3 and Schedule 2 Criminal Law (Miscellaneous Provisions) Ordinance 2003). Subsection (3) of section 101A CJO is a transitional provision which is now spent. If the witness testifies that the previous statement was true, it is evidence of the facts stated in it. If, on the other hand, the witness denies the truth of the previous statement, it is hearsay. Similarly if a witness fails to come up to proof (e.g. say on oath what he said in his statement to the police), and is treated as "hostile" (which permits him to be asked leading questions by the party calling him), the contents of a previous inconsistent statement is not evidence of the facts stated unless the witness testifies that the statement is true.

<sup>126</sup> This clause is based on s. 132 CJA 2003.

(4) The rules may provide that the evidence is to be treated as admissible by agreement of the parties if —

(a) a notice has been served in accordance with provision made under subsection (3); and

(b) no counter-notice in the prescribed form objecting to the admission of the evidence has been served by a party.

(5) If a party proposing to tender evidence fails to comply with a prescribed requirement applicable to it —

(a) the evidence is not admissible except with the court's leave;

(b) where leave is given the court or jury may draw such inferences from the failure as appear proper;

(c) the failure may be taken into account by the court in considering the exercise of its powers with respect to costs.

(6) In considering whether or how to exercise any of its powers under subsection (5) the court shall have regard to whether there is any justification for the failure to comply with the requirement.

(7) A person shall not be convicted of an offence solely on an inference drawn under subsection (5)(b).

(8) Rules under this section may —

(a) limit the application of any provision of the rules to prescribed circumstances;

(b) subject any provision of the rules to prescribed exceptions;

(c) make different provision for different cases or circumstances.

(9) Nothing in this section prejudices the generality of any enactment conferring power to make rules of court; and no particular provision of this section prejudices any general provision of it.

(10) In this section “prescribed “ means prescribed by rules of court.

(11) In respect of the Court of Appeal the powers under subsection (1) are exercisable by the President of the Court of Appeal.

### **Proof of statements in documents<sup>127</sup>**

**121.—**(1) Where a statement in a document is admissible as evidence in criminal proceedings, the statement may be proved by producing either —

(a) the document; or

(b) (whether or not the document exists) a copy of the document or of the material part of it,

authenticated in whatever way the court may approve.

### **Interpretation of this Chapter<sup>128</sup>**

**122.—**(1) In this Chapter —

“copy”, in relation to a document, means anything on to which information recorded in the document has been copied, by whatever means and whether directly or indirectly;

“criminal proceedings” means criminal proceedings in relation to which the strict rules of evidence apply;

“defendant”, in relation to criminal proceedings, means a person charged with an offence in those proceedings;

“document” means anything in which information of any description is recorded;

“oral evidence” includes evidence which, by reason of any disability, disorder or other impairment, a person called as a witness gives in writing or by signs or by way of any device;

“statutory provision” means any provision contained in, or in an instrument made under, this or any other enactment, including any enactment passed after this Ordinance.

(2) Section 105 (statements and matters stated) contain other interpretative provisions.

(3) Where a defendant is charged with two or more offences in the same criminal proceedings, this Chapter has effect as if each offence were charged in separate offences.

---

<sup>127</sup> This clause corresponds to s.133 CJA 2003

<sup>128</sup> This clause corresponds to section 134 CJA 2003.

## Chapter 4

### Miscellaneous and supplemental

#### **Evidence by video recording<sup>129</sup>**

**123.—**(1) This section applies where —

- (a) a person is called as a witness in proceedings for an offence punishable on conviction by a sentence of imprisonment for two years or more;
- (b) the person claims to have witnessed (whether visually or in any other way) —
  - (i) events alleged by the prosecution to include conduct constituting the offence or part of the offence; or
  - (ii) events closely connected with such events,
- (c) he has previously given an account of the events in question (whether in response to questions asked or otherwise);
- (d) the account was given at a time when those events were fresh in the person's memory (or would have been, assuming the truth of the claim mentioned in paragraph (b));
- (e) a video recording was made of the account;
- (f) the court has made a direction that the recording should be admitted as evidence in chief of the witness, and the direction has not been rescinded; and
- (g) the recording is played in the proceedings in accordance with the direction.

(2) If, or to the extent that, the witness in his oral evidence in the proceedings asserts the truth of the statements made by him in the recorded account, they shall be treated as if made by him in that evidence.

(3) A direction under subsection (1)(f) —

- (a) may not be made in relation to a recorded account given by the defendant;
- (b) may be made only if it appears to the court that —

---

<sup>129</sup> This clause is based on s. 137 CJA 2003. In subclause (1)(a) it departs from s.137(1)(a) CJA in that the clause is to apply in respect of offences punishable on conviction by two years imprisonment or more instead of, as in England, those triable on indictment and prescribed offences triable either way (either on indictment or summarily). Different provision is required, apart from anything else, because in the Falkland Islands there is no provision for offences to be "triable either way" and a much greater variety of offences is triable summarily. The provision is not limited to prosecution witnesses, but although defence witnesses can avail themselves of the facility, the defendant himself cannot do so.

(i) the witness's recollection of the events in question is likely to have been significantly better when he gave the recorded account than it will be when he gives oral evidence in the proceedings; and

(ii) it is in the interests of justice for the recording to be admitted, having regard in particular to the matters mentioned in subsection (4).

(4) Those matters are —

(a) the interval between the time of the events in question and the time when the recorded account was made;

(b) any other factors that might affect the responsibility of what the witness said in that account;

(5) For the purposes of subsection (2) it does not matter if the statements in the recorded account were not made on oath.

#### **Video evidence: further provisions<sup>130</sup>**

**124.—**(1) Where a video recording is admitted under section 123, the witness may not give evidence in chief otherwise than by means of the recording as to any matter which, in the opinion of the court, has been dealt with adequately in the recorded account.

(2) The reference in subsection (1)(f) of section 123 to the admission of a recording includes a reference to the admission of part of the recording; and references in that section and this one to the video recording or to the witness's recorded account shall, where appropriate, be read accordingly.

(3) In considering whether any part of a recording should be not admitted under section 123 the court must consider —

(a) whether admitting that part would carry a risk of prejudice to the defendant; and

(b) if so, whether the interests of justice nevertheless require it to be admitted in view of the desirability of showing the whole, or substantially the whole, of the recorded interview.

(4) Nothing in section 123 affects the admissibility of any video recording which would be admissible apart from that section.

---

<sup>130</sup> This clause corresponds to s. 138 CJA2003 and deals with the editing of a video recording to exclude prejudicial or irrelevant material. Note that a witness may not give evidence in chief otherwise than by means of the recording as to any matter which, in the opinion of the court, has been dealt with adequately in the recorded account.

### **Use of documents to refresh memory<sup>131</sup>**

**125.**—(1) A person giving oral evidence in criminal proceedings about any matter may, at any stage in the course of doing so, refresh his memory of it from a document made or verified by him at an earlier time if —

(a) he states in his oral evidence that the document records his recollection of the matter at that earlier time; and

(b) his recollection of the matter is likely to have been significantly better at that time than it is at the time of his oral evidence.

(2) Where —

(a) a person giving oral evidence in criminal proceedings about any matter has previously given an oral account, of which a sound recording was made, and he states in that evidence that the account represented his recollection of the matter at that time,

(b) his recollection of the matter is likely to have been significantly better at the time of the previous account than it is at the time of his oral evidence; and

(c) a transcript has been made of the sound recording,

he may, at any stage in the course of giving his evidence, refresh his memory of the matter from that transcript.

### **Interpretation of Chapter 4<sup>132</sup>**

**126.** In this Chapter —

“criminal proceedings” means criminal proceedings in relation to which the strict rules of evidence apply;

“defendant”, in relation to criminal proceedings, means a person charged with an offence in those proceedings;

“document” means anything in which information of any description is recorded, but not including any recording of sounds or moving images;

“oral evidence” includes evidence which, by reason of any disability, disorder or other impairment, a person called as a witness gives in writing or by signs or by way of any device;

“video recording” means any recording, on any medium, from which a moving image may by any means be produced, and includes the accompanying soundtrack.

---

<sup>131</sup> This clause corresponds with s. 139 CJA 2003

<sup>132</sup> This clause corresponds with s. 140CJA 2003



### **Saving<sup>133</sup>**

127. No provision of this Part has effect in relation to criminal proceedings begun before the commencement of that provision.

## **PART IV: GENERAL**

### **Partial repeal of Criminal Justice Ordinance**

128.—(1) Sections 99 to 108, 150 to 193, 198 to 205 of the Criminal Justice Ordinance (Title 24.1) and Schedules 4 to 6 to that Ordinance (which sections and Schedules are replaced by provisions of this Ordinance) are hereby repealed.

(2) In subsection (1) of this section, “the Criminal Justice Ordinance (Title 24.1)” means that Ordinance as it appeared in supplement number 1 of 2002 to the Revised Edition of the Laws of the Falkland Islands (that is to say in the form it was on 14<sup>th</sup> December 2001).

### **Continuity of law**

129.—(1) The substitution of the provisions of this Ordinance for the repealed provisions does not affect the continuity of the law.

(2) Anything done or having effect as if done under or for the purposes of a provision of the repealed provisions has effect, if it could be done under or for the purposes of the corresponding provision of this Ordinance, as if done under or for the purposes of that corresponding provision.

### **Amendment of Criminal Justice (International Co-operation) Ordinance**

130.—(1) The Criminal Justice (International Co-operation) Ordinance (Title 24.2) is amended by replacing section 9(1) with the following subsection —

“(1) Chapter 3 of Part II of the Police and Criminal Evidence Ordinance 2006 (powers of search and seizure) shall have effect as if references to offences in that Chapter, where the context so admits, included any conduct which is an offence under the law of a country or territory outside the Falkland Islands and would constitute an offence if it had occurred in the Falkland Islands.”

(2) In subsection (1) of this section, “the Criminal Justice (International Co-operation Ordinance (Title 24.2)” means that Ordinance as it appeared in supplement number 1 of 2002 to the Revised Edition of the Laws of the Falkland Islands (that is to say in the form it was on 14<sup>th</sup> December 2001).

### **Specified Acts partially to cease to have effect in the Falkland Islands**

131. Schedule 3 shall have effect.<sup>134</sup>

<sup>133</sup> This clause corresponds to s. 141 CJA 2003.

<sup>134</sup> Schedule 37 to CJA2003 repealed the provisions specified in Schedule 5, but was not brought into force until 4 April 2005. As a result the repeals of those provisions did not take effect in the Falkland Islands because the Interpretation and General Clauses (Amendment) Ordinance 2004 amended the operation of s.78 of the Interpretation and General Clauses Ordinance so that it does not give effect to repeals of provisions of Acts where

## SCHEDULES

### SCHEDULE 1 SPECIAL PROCEDURE

(section 10)

#### *Making of orders*

1. If on application by a police officer, a judge of the Supreme Court or the Senior Magistrate is satisfied that one or other sets of access conditions are fulfilled, he may make an order under paragraph 4.
2. The first set of access conditions is fulfilled if —
  - (a) there are reasonable grounds for believing —
    - (i) that a serious arrestable offence has been committed;
    - (ii) that there is material which consists of or includes special procedure material and does not also include excluded material on premises specified in the application;
    - (iii) that the material is likely to be of substantial value (whether by itself or together with other material) to the investigation in connection with which the application is made; and
    - (iv) that the material is likely to be relevant evidence;
  - (b) other methods of obtaining the material —
    - (i) have been tried without success; or
    - (ii) have not been tried because it appeared that they were bound to fail; and
  - (c) it is in the public interest, having regard —
    - (i) to the benefit likely to accrue to the investigation if the material is obtained; and
    - (ii) to the circumstances under which the person in possession of the material holds it,that the material should be produced or that access to it should be given.
3. The second set of access conditions is fulfilled if —

---

those repeals come into effect after 31<sup>st</sup> July 2004. The provisions mentioned in Part 1 of Schedule 5 are inconsistent with the provisions of the Bill in relation to evidence of bad character and those mentioned in Part 2 of that Schedule are inconsistent with the provisions of the Bill as to hearsay evidence. All the provisions mentioned in Schedule 5 at present have effect in the Falkland Islands without the amendments by way of partial repeal made by CPA2003.

(a) there are reasonable grounds for believing that there is material which consists of or includes excluded material or special procedure material on premises specified in the application;

(b) but for section 10(2) a search of the premises for that material could have been authorised by the issue of a warrant to a police officer under an enactment other than this Schedule; and

(c) the issue of such a warrant would have been appropriate.

4. An order under this paragraph is an order that the person who appears to the judge or the Senior Magistrate to be in possession of the material to which the application relates shall —

(a) produce it to a police officer for him to take away; or

(b) give a police officer access to it,

not later than the end of the period of seven days from the date of the order or the end of such longer period as the order may specify.

5. Where the material consists of information contained in a computer —

(a) an order under paragraph 4(a) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and

(b) an order under paragraph 4(b) shall have effect as an order to give a police officer access to the material in a form in which it is visible and legible.

6. For the purposes of sections 22 and 23 material produced in pursuance of an order under paragraph 4(a) shall be treated as if it were material seized by a police officer.

#### *Notice of applications for orders*

7. An application for an order under paragraph 4 shall be made *inter partes*.

8. Notice of an application for such an order may be served on a person either by delivering it to him or by leaving it at his proper address or by sending it by post to him in a registered letter or by the recorded delivery service.

9. Such a notice may be served —

(a) on a body corporate, by serving it on the body's secretary or clerk or other similar officer; and

(b) on a partnership, by serving it on one of the partners.

10. For the purposes of this Schedule, the proper address of a person, in the case of a secretary or clerk or other similar officer of a body corporate, shall be that of the registered or principal office of the firm, and in any other case shall be the last known address of the person to be served.

11. Where notice of an application for an order under paragraph 4 has been served on a person, he shall not conceal, destroy, alter or dispose of the material to which the application relates except —

- (a) with the leave of a judge of the Supreme Court or of the Senior Magistrate; or
- (b) with the written permission of a police officer of the rank of inspector or above, until —
  - (i) the application is dismissed or abandoned; or
  - (ii) he has complied with an order under paragraph 4 made on the application.

*Issue of warrants by judge of the Supreme Court or by the Senior Magistrate*

12. If on an application made by a police officer, a judge of the Supreme Court or the Senior Magistrate —

- (a) is satisfied —
  - (i) that either set of access conditions is fulfilled; and
  - (ii) that any of the further conditions set out in paragraph 14 is also fulfilled; or
- (b) is satisfied —
  - (i) that the second set of access conditions is fulfilled; and
  - (ii) that an order under paragraph 4 relating to the material has not been complied with,

he may issue a warrant authorising a police officer to enter and search the premises.

13. A police officer may seize and retain anything for which a search has been authorised under paragraph 12.

14. The further conditions mentioned in paragraph 12(a)(ii) are —

- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises to which the application relates;

(b) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the material;

(c) that the material contains information which —

(i) is subject to a restriction or obligation such as is mentioned in section 12(2)(b); and

(ii) is likely to be disclosed in breach of it if a warrant is not issued;

(d) that service of notice of an application for an order under paragraph 4 may seriously prejudice the investigation.

15.—(1) If a person fails to comply with an order under paragraph 4, a judge of the Senior Magistrate may deal with him as if he had committed a contempt of the Supreme Court.

(2) Any enactment relating to contempt of the Supreme Court shall have effect in relation to such a failure as if it were such contempt.

## **SCHEDULE 2 PRESERVED POWERS OF ARREST**

(section 27(2))

### **PART I**

#### **POWERS OF ARREST UNDER FALKLAND ISLANDS ORDINANCES IN FORCE ON 31<sup>st</sup> DECEMBER 1989**

Dangerous Goods Ordinance (Title 36.1)  
Firearms and Ammunition Ordinance (Title 23.2)  
Misuse of Drugs Ordinance (Title 49.3)  
Road Traffic Ordinance (Title 63.1)

### **PART II**

#### **POWERS OF ARREST UNDER UNITED KINGDOM OR ENGLISH STATUTES APPLYING IN THE FALKLAND ISLANDS ON 31<sup>st</sup> DECEMBER 1989**

Section 12(1) Protection of Animals Act 1911  
Section 186 and 190B of the Army Act 1955  
Section 186 and 190B of the Air Force Act 1955  
Sections 104 and 105 of the Naval Discipline Act 1957  
Section 32 of the Children and Young Persons Act 1969  
Sections 60(5) of the Animal Health Act 1981  
Section 5(5) of the Repatriation of Prisoners Act 1984

**SCHEDULE 3**  
**PROVISIONS OF ACTS WHOLLY OR PARTLY**  
**CEASING TO HAVE EFFECT IN THE FALKLAND ISLANDS**

The following provisions shall cease to have effect in the Falkland Islands to the extent specified in this Schedule —

**PART 1**  
**EVIDENCE OF BAD CHARACTER**

<i>Short title and chapter</i>	<i>Extent to which ceasing to have effect</i>
Criminal Procedure Act 1865 (c.18)	In section 6, the words “and upon being so questioned, if”.
Criminal Evidence Act 1898 (c.36)	Section 1(3).
Criminal Evidence Act 1979 (c.16)	The whole Act.

**PART 2**  
**HEARSAY EVIDENCE**

<i>Short title and chapter</i>	<i>Extent to which ceasing to have effect</i>
Criminal Justice Act 1988 (c.33)	Part 2 Schedule 2.
Civil Evidence Act 1995	In Schedule 1, paragraph 12.

## **Criminal Appeals Bill 2006**

(No:    of 2006)

### **ARRANGEMENT OF PROVISIONS**

Clause

#### **Part I Introductory**

1. Short title
2. Interpretation
3. Conditional and absolute discharges
4. Certain orders not to be treated as a sentence
5. Attorney General to be deemed to be prosecutor in Crown prosecutions

#### **Part II Appeals from and Cases stated by the Summary Court**

##### *Appeal*

6. Right of appeal from the Summary Court to the Magistrate's Court
7. Documents to be sent to the Magistrate's Court

##### *Abandonment of appeal*

8. Abandonment of appeal: notice
9. Abandonment of appeal: bail
10. Powers of Summary Court on abandonment of appeal

##### *Composition of Magistrate's Court for the purposes of an appeal*

11. Composition of Magistrate's Court for the purposes of appeal and procedure

##### *Grounds for allowing an appeal against conviction*

12. Grounds for allowing an appeal against conviction
13. Power to substitute conviction of alternative offence
14. Power to substitute conviction of alternative sentence after guilty plea
15. Sentence when appeal against conviction allowed in respect of one or more offences
16. Power to order retrial
17. Supplementary provisions as to retrial
18. Powers on appeal against sentence

##### *Case stated*

19. Statement of case by Summary Court
20. Effect of decision of Supreme Court on case stated by Summary Court

##### *Supplementary provisions as to appeal and case stated*

21. Bail on appeal or case stated
22. Recognizance and fees on case stated
23. Mode of application to state a case under section 19(1)

- 24. Consideration of draft case by Summary Court
- 25. Preparation and submission of final case to the Summary Court
- 26. Extension of time limits by the Courts Administrator
- 27. Service of documents where application made to the Summary Court
- 28. Content of case stated by the Summary Court

### **Part III**

#### **Appeals from and cases stated by Magistrate's Court**

- 29. Right of appeal from the Magistrate's Court to the Supreme Court
- 30. Application for purposes of this Part of certain provisions of Part II relating to appeals and cases stated under that Part

### **Part IV**

#### **References by the Attorney General on points of law following acquittal of indictable offence**

- 31. References to superior court following acquittal of an indictable offence
- 32. Mode of references under section 31
- 33. Registrar's notice to respondent
- 34. Withdrawal or amendment of reference
- 35. Anonymity of the respondent
- 36. Service of documents

### **Part V**

#### **Reference to Supreme Court of unduly lenient sentence passed by Summary Court or Magistrate's Court**

- 37. Reviews of sentencing
- 38. Applications for review of sentence
- 39. Court Administrator's notice to offender
- 40. Withdrawal or amendment of application or reference
- 41. Court Administrator's power to obtain information from court of trial
- 42. Supply of documentary and other exhibits
- 43. Service of documents
- 44. Time limits in respect of applications under section 37(4)
- 45. Time spent in custody pending review etc
- 46. Presence of offender in court
- 47. Time from which sentence passed by Supreme Court or Court of Appeal if to run
- 48. Offender's costs

### **Part VI**

#### **Repeals**

- 49. Repeals etc



## CRIMINAL APPEALS BILL 2006

(No:            of 2006)

A BILL

for

AN ORDINANCE

To make new provision in relation to appeals against conviction or sentence in criminal proceedings; to make provision for references by the Attorney General to the Court of Appeal of points of law arising in cases where a person has been acquitted of an indictable offence and the powers of the Court of Appeal in relation to such references; to make provision for references by the Attorney General to the Supreme Court of unduly lenient sentences in the Summary Court and the Magistrate's Court; and by the Attorney General or the offender to the Court of Appeal of points of law arising out of the determination by the Supreme Court of such references, and to make provision for purposes connected with the foregoing purposes.

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

### **PART I INTRODUCTORY**

#### **Short title**

1. This Ordinance may be cited as the Criminal Appeals Ordinance 2006

#### **Interpretation**

2. Except where the context otherwise requires, “appeal” where used in Part II or Part III of this Ordinance means appeal under that Part and “appellant” has a corresponding meaning.

#### **Conditional and absolute discharges**

3. For the purposes of this Ordinance, and notwithstanding any other provision of written law —
  - (a) a person in respect of whom on conviction by a court of an offence an order for conditional or absolute discharge has been made is not to be deemed not to have been convicted of that offence; and
  - (b) a conditional discharge shall be treated as a sentence passed in respect of that offence.

*(The purpose of this clause is to permit an appeal against a conviction resulting in an absolute discharge and an appeal against conviction and sentence where the accused has been conditionally discharged. The clause repeats the effect of the existing law)*

**Certain orders not to be treated as a sentence**

4. In this Ordinance “sentence” includes any order made on conviction, not being —

- (a) an order for the payment of costs;

*(The effect of this provision is that neither the accused nor the prosecutor has a right of appeal against an order or costs made against him. This can result in an injustice, but reflects the English law: section 108(3)(b) Magistrates Courts Act 1980 and the present law of the Falkland Islands)*

- (b) an order under section 2 of the Protection of Animals Act 1911 (which enables a court to order the destruction of an animal); or

*(This provision does not change the existing law and follows the English law (section 108(3)(b) Magistrates' Courts Act 1980. If there were to be a right of appeal, provision would have to be made as to keeping of the animal concerned, e.g. a dangerous dog, pending the appeal. If the appeal were to be against an order of the Magistrate's Court to the Supreme Court it could be some months before the appeal could be heard)*

- (c) an order made in pursuance of any enactment under which the court has no discretion as to the making of the order or its terms.

**Attorney General to be deemed to be prosecutor in Crown prosecutions**

5. For the purposes of the subsequent provisions of this Ordinance, the Attorney General shall be deemed to have been the prosecutor in all prosecutions where the information was laid by a police officer or other public officer acting in the course of his duty as such.

*(The reason for this provision is so that notice of appeal by the accused, and accompanying papers, are sent to the Attorney General's Chambers and do not linger in another department)*

**PART II**

**APPEALS FROM AND CASES STATED BY THE SUMMARY COURT**

*Appeal*

**Right of appeal from the Summary Court to the Magistrate's Court**

6.—(1) A person convicted by the Summary Court may appeal to the Magistrate's Court —

- (a) if he pleaded guilty, against sentence;

- (b) if he did not, against conviction or sentence;

- (c) with the leave of the Magistrate's Court, against conviction of an offence in respect of which he pleaded guilty.

*(Subclause (1) is modelled on section 108(1) Magistrates Courts Act 1980. Paragraph (c) is new, and does not appear in that provision. It is aimed in particular at the situation where an unrepresented defendant pleads guilty to an offence to which he should have pleaded not guilty to the offence with which he was charged.)*

(2) An appeal under this section shall be commenced by the appellant's giving notice of appeal in accordance with the following provisions of this section and where the appellant seeks to appeal against an offence to which he pleaded guilty, shall include an application for the leave of the Senior Magistrate to pursue that appeal.

(3) The notice required by the preceding paragraph shall be in writing and shall be given to the Courts Administrator on behalf of the Summary Court and to the prosecutor.

(4) Notice of appeal shall be given not later than 21 days after the day on which the decision appealed against is given and, for this purpose, where the court has adjourned the trial of an information after conviction, that day shall be the day on which the court sentences or otherwise deals with the offender:

Provided that, where the Summary Court exercises any power to defer sentence conferred by written law, that day shall, for the purposes of an appeal against conviction, be the day on which the court exercises that power.

(5) A notice of appeal shall state the grounds of appeal.

(6) The time for giving notice of appeal may be extended, either before or after it expires, by the Magistrate's Court, on an application made in accordance with subsection (7).

(7) An application for an extension of time shall be made in writing, specifying the grounds of the application and sent to Courts Administrator.

(8) Where the Magistrate's Court extends the time for giving notice of appeal, the Courts Administrator shall give notice of the extension to —

(a) the appellant; and

(b) the prosecutor;

and furnish a copy of it to the Summary Court.

*(Subclauses (2) to (7) are modelled upon rule 63.2 of the Criminal Procedure Rules 2005 of England. Rule 63.2 replaces rule 7 of the Crown Court Rules 1982 which previously applied in the Falkland Islands in relation to appeals against conviction or sentence from the Summary Court to the Supreme Court)*

### **Documents to be sent to the Magistrate's Court**

7.—(1) The Courts Administrator shall as soon as possible furnish to the Magistrate's Court any notice of appeal to the Magistrate's Court given to the Courts Administrator on behalf of the Summary Court.

(2) The Courts Administrator shall furnish to the Magistrate's Court, with the notice of appeal, a copy of the notes of evidence taken at the hearing in the Summary Court together with a copy of the extract of the Summary Court's register relating to the relevant decision of the Summary Court and of the last known or usual address of the parties to the appeal.

(3) Where any person, having given notice of appeal to the Magistrate's Court, has been granted bail for the purposes of the appeal, the Courts Administrator shall before the date fixed for hearing furnish to the Summary Court a copy of the record made in pursuance of section 144(1) of the Criminal Justice Ordinance (Title 24.1).

(4) Where a notice of appeal is given in respect of an appeal against conviction by the Summary Court, the Courts Administrator shall furnish to the Magistrate's Court any admission of facts made for the purpose of the summary trial under section 10 of the Criminal Justice Act 1967 (proof by formal admission).

(5) Where a notice of appeal is given in respect of an appeal against sentence by the Summary Court, and where that sentence was a custodial sentence, the Courts Administrator shall furnish to the Magistrate's Court with the notice of appeal a pre-sentence report before passing such sentence.

*(Clause 7 is based on rule 63.3 of the Criminal Procedure Rules 2005 which replaces rule 74 of the Magistrates' Court Rules 1981 of England, formerly in force in the Falkland Islands)*

### *Abandonment of appeal*

#### **Abandonment of appeal: notice**

8.—(1) Without prejudice to the power of the Magistrate's Court to give leave for the appeal to be abandoned, an appellant may abandon an appeal by giving notice in writing, in accordance with the following provisions of this rule, not later than seven days before the day fixed for the hearing of the appeal.

(2) The notice required by the preceding subsection shall be given —

(a) to the Courts Administrator;

(b) to the prosecutor; and

the Courts Administrator shall furnish a copy of the notice to the Summary Court.

(3) In subsection (1) of this section and in the following two sections, "appeal" includes an application for leave to appeal.

*(Clause 8 is modelled on rule 63.5 of the Criminal Procedure Rules 2005 of England and replaces rule 11 of the English Crown Court Rules which previously applied in the Falkland Islands)*

**Abandonment of appeal: bail**

9. Where notice of abandonment of appeal has been given by the appellant, any recognizance conditioned for the appearance of the appellant at the hearing shall have effect as if conditioned for the appearance of the appellant before the Summary Court on a day and at a time to be notified to the appellant by the Courts Administrator.

*(Clause 9 is modelled on rule 63.6 of the Criminal Procedure Rules 2005 of England and replaces rule 75 of the Magistrates' Court Rules of England which previously applied in the Falkland Islands)*

**Powers of Summary Court on abandonment of appeal**

10.—(1) Where notice to abandon an appeal to the Magistrate's Court has been duly given by the appellant —

(a) the Summary Court may issue process for enforcing the decision of the Summary Court, subject to anything already suffered or done under it by the appellant;

(b) the Summary Court may, on the application of the prosecutor, order the appellant to pay to that party such costs as appear to the court to be just and reasonable in respect of the expenses properly incurred by the prosecutor in connection with that appeal before notice of abandonment was given to the prosecutor.

(2) In the case of an appeal in which the Attorney General is or is deemed by virtue of section 5 to be the prosecutor the power of the Summary Court under paragraph (b) of subsection (1) to order the appellant to pay costs to the prosecutor in respect of expenses incurred by the prosecutor shall include power to order the appellant to pay a sum or sums to the Attorney General for the benefit of the Crown in respect of legal work done by him or any public officer on his behalf in connection with the abandoned appeal.

*(This clause is modelled on section 109 of the Magistrates' Court Act 1980)*

*Composition of Magistrate's Court for the purposes of an appeal*

**Composition of Magistrate's Court for the purposes of appeal and procedure**

11.—(1) For the purposes of the hearing of an appeal from the Summary Court under this Part the Magistrate's Court shall be constituted by the Senior Magistrate sitting alone.

(2) The Magistrate's Court shall not conduct the hearing of the appeal by rehearing the proceeding against the appellant from which the appeal derives.

*(Under the Administration of Justice Ordinance as it as present stands it is not clear whether appeals from the Magistrate's Court (presently to the Supreme Court) should proceed by way of rehearing, as is the case in England, or not but the Chief Justice on an appeal early in 2006*

*ruled that they should not. In subsequent discussions with the Attorney General, the Chief Justice suggested that the law should make it clear that such appeals should not proceed by way of rehearing. The above clause provides that the same shall apply in relation to appeals from the Summary Court to the Magistrate's Court. There are a number of reasons for taking this course—*

*(a) there appears to be no good reason for providing different procedures in appeals in summary criminal matters, dependent on which was the court of trial (Summary Court or Magistrate's Court) when the procedure at trial is identical;*

*(b) appeals by way of rehearing are likely to be more expensive in terms of legal fees;*

*(c) appeals by way of rehearing are more likely to be delayed by reason of problems with availability of witnesses;*

*(d) where any of the witnesses are vulnerable witnesses (e.g. young children) it is not desirable that they should be required to give evidence twice)*

#### *Grounds for allowing appeal and powers in relation to an appeal*

#### **Grounds for allowing an appeal against conviction**

**12.—(1)** Subject to the provisions of this Part, the Magistrate's Court —

(a) shall allow an appeal against conviction if it thinks that the conviction is unsafe; and

(b) shall dismiss such an appeal in any other case.

(2) In the case of an appeal against conviction the Magistrate's Court shall, if it allows the appeal, quash the conviction.

(3) An order of the Magistrate's Court quashing a conviction shall, except when under section 16 the appellant is ordered to be retried, operate as a direction to the Summary Court to enter, instead of the record of conviction, a record of acquittal.

*(This clause follows the corresponding provision in relation to appeals from the Supreme Court to the Court of Appeal)*

#### **Power to substitute conviction of alternative offence**

**13.—(1)** This section applies on an appeal against conviction, where the appellant has been convicted of an offence to which he did not plead guilty and the Summary Court could on the information have convicted him of some other offence, and on considering the record of the proceedings it appears to the Magistrate's Court that the Summary Court must have been satisfied of facts which proved him guilty of the other offence.

(2) The Magistrate's Court may, instead of allowing or dismissing the appeal, substitute for the finding of the Summary Court a finding of guilty of the other offence, and pass such sentence in

substitution for the sentence passed by the Summary Court as the Summary Court could by law have passed in respect of it, not being a sentence of greater severity.

**Power to substitute conviction of alternative sentence after guilty plea**

**14.—**(1) This section applies on an appeal against conviction where —

- (a) an appellant has been convicted of an offence to which he pleaded guilty;
- (b) if he had not so pleaded, he could have pleaded, or been found, guilty of some other offence, and
- (c) it appears to the Magistrate's Court that the plea of guilty indicates an admission by the appellant of facts which prove him guilty of the other offence.

(2) The Magistrate's Court may, instead of allowing or dismissing the appeal, substitute for the appellant's plea of guilty a plea of guilty of the other offence and pass such sentence in substitution for the sentence passed by the Summary Court as may be authorised by law for the other offence, not being a sentence of greater severity.

**Sentence when appeal against conviction allowed in respect of one or more offences**

**15.—**(1) This section applies where the appellant has appealed against conviction by the Summary Court in the same proceeding of two or more offences and the Magistrate's Court allows the appeal in respect of one or more of those offences, but not the other or all of them.

(2) For the purposes of this section, any two or more convictions are to be treated as having occurred in the same proceeding if —

(a) they occur on the same day, or

(b) the Summary Court in imposing sentence in respect of one or more of those convictions states, or it is clear by necessary implication (for example where a sentence of imprisonment is passed in respect of an offence and further sentences of imprisonment are imposed in respect of another offence or offences which are expressed to be concurrent with that sentence of imprisonment), that it is treating the sentence passed together with the other or others as substantially one sentence.

(3) Except as provided by subsection (4), the Magistrate's Court where this section applies may in respect of any offence in respect of which the appellant remains convicted pass such sentence, in substitution for any sentence passed by the Summary Court, as it thinks proper and is authorised by law for the offence of which he remains convicted.

(4) The Magistrate's Court shall not under this section pass any sentence such that the appellant's sentence as a whole will, in consequence of the appeal, be of greater severity than the sentence (taken as a whole) which was passed by the Summary Court in respect of convictions which occurred in the same proceeding.

**Power to order retrial**

16.—(1) Where the Magistrate's Court allows an appeal against conviction and it appears to the court that the interests of justice so require, it may order the information against the appellant to be retried.

(2) The Magistrate's Court shall not under this section order a person to be retried for any offence other than —

(a) the offence of which he was convicted and in respect of which the appeal is allowed; or

(b) an offence of which he could have been convicted at the original trial.

**Supplementary provisions as to retrial**

17.—(1) A person who is to be retried for an offence in pursuance of an order under section 16 shall be tried on a fresh information preferred by direction of the Magistrate's Court.

(2) Unless the Magistrate's Court on an application by the prosecutor by notice in writing, sent to the Court Administrator and to the appellant, grants leave for the information to be preferred within a greater time, an information preferred in pursuance of such a direction may not be preferred after the end of two months from the date of the order for retrial.

(3) The Magistrate's Court shall not grant leave on an application under subsection (2) unless it is satisfied —

(a) that the prosecution has acted with all due expedition; and

(b) there is good and sufficient reason for a retrial in spite of the lapse of time since the order under section 16 was made.

(4) Where a person has been ordered to be retried but an information cannot be preferred without leave, he may apply to the Magistrate's Court to set aside the order for retrial and make in its place an order quashing his conviction of the offence.

(5) On an application under subsection (2) the Magistrate's Court may set aside the order for retrial and make in its place an order quashing the applicant's conviction of the offence.

(6) The prosecutor may at any time by notice to the appellant and to the Courts Administrator notify that it is not intended to proceed to retrial of the appellant. The Courts Administrator shall furnish a copy of the notice to the Magistrate's Court, which shall thereupon set aside the order for retrial and make in its place an order quashing the applicant's conviction of the offence.

**Powers on appeal against sentence**

18. On an appeal against sentence the Magistrate's Court may, if it thinks that the appellant should be sentenced differently for the offence for which he was dealt with by the Summary Court, may —



(a) quash any sentence or order which is the subject of the appeal;

(b) in place of it pass such sentence or make such order as it thinks appropriate for the case and as the Summary Court had power to pass or make when dealing with him for the offence,

but the court shall so exercise its powers under this subsection that, taking the case as a whole, the appellant is not more severely dealt with on appeal than he was dealt with in the Summary Court.

#### *Case stated*

#### **Statement of case by Summary Court**

**19.**—(1) Any person who was a party to criminal proceedings before the Summary Court or is aggrieved by the conviction, order, determination or other proceeding of the court may question the proceeding on the ground that is wrong in law or is in excess of jurisdiction by applying to the justices composing the court to state a case for the opinion of the Supreme Court on the question of law or jurisdiction involved.

(2) An application under subsection (1) shall be made within 21 days after the day on which the decision of the Summary Court was given.

(3) For the purpose of subsection (2), the day on which the decision of the Summary Court is given shall, where the court has adjourned the trial of an information after conviction, be the day on which the court sentences or otherwise deals with the offender.

(4) On the making of an application under this section in respect of a decision any right of the applicant to appeal against the decision to the Magistrate's Court shall cease.

(5) If the justices are of opinion that an application under this section is frivolous, they may refuse to state a case, and if the applicant so requires, shall give him a certificate stating that the application has been refused; but the justices shall not refuse to state a case if the application is made by or under the direction of the Attorney General.

(6) Where justices refuse to state a case, the Supreme Court may, on the application of the person who applied for the case to be stated, make an order of mandamus requiring the justices to state a case.

*(This clause reflects section 111 of the Magistrates' Courts Act 1980)*

#### **Effect of decision of Supreme Court on case stated by Summary Court**

**20.** Any conviction, order determination or other proceedings of the Summary Court varied by the Supreme Court on an appeal by case stated, and any judgment or order of the Supreme Court on such an appeal, may be enforced as if it were a decision of the Summary Court.

*(This clause reflects section 112 of the Magistrates' Courts Act 1980)*

*Supplementary provisions as to appeal and case stated*

**Bail on appeal or case stated**

21.—(1) Where a person has given notice of appeal to the Magistrate's Court against the decision of the Summary Court or has applied to the Summary Court to state a case for the opinion of the Supreme Court, then, if he is in custody, the Summary Court may, subject to subsections (2) and (4), grant him bail.

(2) For the purposes of subsection (1), section 25 of the Criminal Justice and Public Order Act 1994 shall be deemed to apply as part of the law of the Falkland Islands.

*(Section 25 of the Criminal Justice and Public Order Act 1994 provides that bail may only exceptionally be granted to a person charged with or convicted certain offences if he has previously been convicted of any such offence. The offences concerned include murder, attempted murder, manslaughter and a number of serious sexual offences)*

(3) If a person is granted bail under subsection (1), the time and place at which he is to appear shall be —

(a) if he has given notice of appeal, the Magistrate's Court at the time appointed for the hearing of the appeal;

(b) if he has applied for the statement of a case, the Summary Court at such time within 10 days after the judgment of the High Court has been given as may be specified by the Summary Court.

(4) Subsection (1) shall not apply where the accused has been committed to the Magistrate's Court for sentence under section 14 or 15 of the Administration of Justice Ordinance (Title 22.1).

(5) Section 37(6) of the Criminal Justice Act 1948 and section 22 of the Criminal Justice Act 1967 are applied as law of the Falkland Islands with the replacement —

(a) of the words "High Court" wherever they appear in those provisions with the words "Supreme Court"; and

(b) of the words "magistrates' court" wherever they appear in those provisions with the words "court of summary jurisdiction".

(6) Section 37(6) of the Criminal Justice Act 1948 (which as applied by subsection (5) of this section relates to the currency of a sentence while a person is released on bail by the Supreme Court) shall apply to a person released on bail by the Summary Court under this section pending the hearing of a case stated as it applies to a person released on bail under section 22 of the Criminal Justice Act 1967 (which as applied by subsection (5) of this section enables the Supreme Court to grant or vary conditions bail in certain circumstances to grant bail or vary the conditions of bail which has been granted).

*(This clause is modelled, in part, on section 113 of the Magistrates' Courts Act 1980 of England)*

**Recognizance and fees on case stated**

**22.—**(1) Subject to subsection (2), justices to whom an application has been made to state a case for the opinion of the Supreme Court on any proceeding of the Summary Court shall not be required to state the case until the applicant has entered into a recognizance, with or without sureties, before the Summary Court, conditioned to prosecute the appeal without delay and to submit to the judgment of the Supreme Court and pay such costs as that court may award.

(2) Subsection (1) shall have not apply where the application to state a case has been made by, or by the direction of, the Attorney General.

*(This clause is modelled on section 114 of the Magistrates' Courts Act 1980)*

**Mode of application to state a case under section 19(1)**

**23.—**(1) An application under section 19(1) shall be made in writing and signed by or on behalf of the applicant and shall identify the question or questions of law or jurisdiction on which the opinion of the Supreme Court is sought.

(2) When one of the questions on which the opinion of the Supreme Court is sought is whether there was evidence on which the Summary Court could come to its decision, the particular finding of fact made by the Summary Court which it is claimed cannot be supported by the evidence before the Summary Court shall be specified in such application.

*(This clause is modelled on rule 64.1 of the Criminal Procedure Rules 2005 of England which replaces rule 76 of the Magistrates' Courts Rules 1981 of England which previously applied in the Falkland Islands)*

**Consideration of draft case by the Summary Court**

**24.—**(1) Within 21 days after receipt of an application made in accordance with section 23, the Courts Administrator shall, unless the justices refuse under section 19(5) to state a case, send a draft case in which are stated the matters required under section 28 (content of case stated) to the applicant or his legal practitioner and shall send a copy thereof to the respondent or his legal practitioner.

(2) Within 21 days after receipt of as case stated under subsection (1), each party may make representations thereon. Any such representations shall be in writing and signed by or on behalf of the party making them and shall be sent to the Courts Administrator.

(3) Where the justices under section 19(5) refuse to state a case and they are required by a mandatory order of the Supreme Court under section 19(6) to state a case subsection (1) of this section shall apply as if —

(a) the words “receipt of an application made in accordance with section 23” were replaced by the words “the date on which a mandatory order under section 19(6) is made”; and

(b) the words “unless the justices refuse under section 19(5) to state a case” were omitted.

*(This clause is modelled on rule 64.2 of the Criminal Procedure Rules 2005 of England which replaces rule 77 of the Magistrates’ Courts Rules 1981 of England which previously applied in the Falkland Islands)*

#### **Preparation and submission of final case to the Summary Court**

**25.—**(1) Within 21 days after the latest day on which representations may be made under section 24(2), the justices whose decision is questioned shall, after considering such representations, make such adjustments, if any, to the draft case prepared for the purposes of that rule as they think fit, and shall date and sign the case.

(2) A case may be stated on behalf of the justices whose decision is requested by any 2 or more of them and may, if the justices so direct, be signed on their behalf by the Courts Administrator.

(3) Forthwith after the case has been stated and signed the Courts Administrator shall send it to the applicant or his legal practitioner, together with any statement required by section 26(3).

*(This clause is modelled on rule 64.3 of the Criminal Procedure Rules 2005 of England which replaces rule 78 of the Magistrates’ Courts Rules 1981, which previously applied in the Falkland Islands)*

#### **Extension of time limits by the Courts Administrator**

**26.—**(1) If the Courts Administrator is unable to send to the applicant a draft case under section 24(1) within the time required by that subsection, he shall do so as soon as practicable thereafter and the provisions of that rule shall apply accordingly; but in that event the Courts Administrator shall attach to the draft case, and to the final case when it is sent under section 25(3) to the applicant or his legal practitioner, a statement of the delay and of the reasons for it.

(2) If the Courts Administrator receives an application in writing from or on behalf of the applicant or respondent for an extension of time within which representations on the draft case may be made under section 24(2), together with reasons in writing for it, the Courts Administrator may, by notice in writing sent to the applicant, or respondent as the case may be, extend the time and the provisions of section 24(2) and of section 25 shall apply accordingly; but in that event the Courts Administrator shall attach to the final case, when it is sent to the applicant or his legal practitioner under section 25(3), a statement of the delay and the reasons for it.

(3) If the justices are unable to state a case within the time required by section 25(1), they shall do so as soon as practicable thereafter and the provisions of section 25 shall apply accordingly, but in that event the Courts Administrator shall attach to the final case, when it is sent to the applicant or his legal practitioner under section 25(3), a statement of the delay and the reasons for it.

*(This clause is modelled on rule 64.5 of the Criminal Procedure Rules 2005 of England. This replaces rule 79 of the Magistrates' Courts Rules 1981, which previously applied in the Falkland Islands)*

**Service of documents where application made to the Summary Court**

27. Any document required by sections 23 to 26 to be sent to any person shall be either delivered to him or sent by post in a registered letter and, if sent by post to an applicant or respondent, shall be addressed to him at his last known or usual place of abode.

*(This clause is modelled on rule 64.5 of the Criminal Procedure Rules 2005, this replaces rule 80 of the Magistrate's Court Rules 1981, which previously applied in the Falkland Islands)*

**Content of case stated by the Summary Court**

28.—(1) A case stated by the Summary Court shall state the facts found by the court and the question or questions of law or jurisdiction on which the opinion of the Supreme Court is sought.

(2) Where one of the questions on which the opinion of the Supreme Court is sought is whether there was evidence on which the Summary Court could come to its decision, the particular finding of fact which it is claimed cannot be supported by the evidence before the Summary Court shall be specified in the case.

(3) Unless one of the questions on which the opinion of the Supreme Court is sought is whether there was evidence on which the Supreme Court could come to its decision, the case shall not contain a statement of evidence.

*(This clause is modelled on rule 64.6 of the Criminal Procedure Rules 2005 of England. This replaces rule 81 of the Magistrates' Courts Rules of England, which previously applied in the Falkland Islands)*

**PART III**

**APPEALS FROM AND CASES STATED BY MAGISTRATE'S COURT**

**Right of appeal from the Magistrate's Court to the Supreme Court**

29.—(1) A person convicted by the Magistrate's Court may appeal to the Supreme Court—

(a) if he pleaded guilty, against sentence;

(b) if he did not, against conviction or sentence; and

(c) with the leave of the Magistrate's Court or of the Supreme Court, against his conviction of an offence to which he pleaded guilty.

(2) An appeal under this section shall be commenced by the appellant's giving notice of appeal in accordance with the following provisions of this section and where the appellant seeks to appeal against an offence to which he pleaded guilty, shall include an application for leave to pursue that appeal.

(3) The notice required by the preceding paragraph shall be in writing and shall be given to the Courts Administrator on behalf of the Magistrate's Court and to the prosecutor.

(4) Notice of appeal shall be given not later than 21 days after the day on which the decision appealed against is given and, for this purpose, where the court has adjourned the trial of an information after conviction, that day shall be the day on which the court sentences or otherwise deals with the offender:

Provided that, where the Magistrate's Court exercises any power to defer sentence conferred by written law, that day shall, for the purposes of an appeal against conviction, be the day on which the court exercises that power.

(5) A notice of appeal shall state the grounds of appeal.

(6) The time for giving notice of appeal may be extended, either before or after it expires, by the Magistrate's Court or of the Supreme Court, on an application made in accordance with subsection (7).

(7) An application for an extension of time shall be made in writing, specifying the grounds of the application and sent to Courts Administrator.

(8) Where the Magistrate's Court extends the time for giving notice of appeal, the Courts Administrator shall give notice of the extension to —

(a) the appellant; and

(b) the prosecutor;

and furnish a copy of it to the Supreme Court.

(9) The Courts Administrator shall furnish to the Supreme Court any admission of facts made for the purpose of the summary trial under section 10 of the Criminal Justice Act 1967 (proof by formal admission).

**Application for purposes of this Part of certain provisions of Part II relating to appeals and cases stated under that Part**

30.—(1) With the modifications stated in subsection (2) of this section, sections 7 to 28, except section 11(1), shall apply in relation to appeals and cases stated to which this Part applies.

(2) Those modifications are —

(a) every reference in those sections to the justices shall be replaced by a reference to the Senior Magistrate;

(b) every reference in those sections to the Magistrate's Court shall be replaced by a reference to the Supreme Court; and

(c) every reference in those sections to the Summary Court shall be replaced by a reference to the Magistrate's Court.

#### PART IV REFERENCES BY THE ATTORNEY GENERAL ON POINTS OF LAW FOLLOWING ACQUITTAL OF INDICTABLE OFFENCE

##### **References to superior court following acquittal of an indictable offence**

**31.—**(1) Where a person has been acquitted of an indictable offence has been acquitted (whether in respect of the whole or part of the indictment), the Attorney General may, if he desires the opinion of the Court of Appeal on a point of law which has arisen in the case, refer that point to that court, and the court shall, in accordance with this section, consider the point and give its opinion on it.

(2) For the purpose of consideration of a point referred to a relevant superior court under this section that court shall hear argument —

(a) by, or by a legal practitioner on behalf of, the Attorney General; and

(b) if the acquitted person desires to present any argument to the court, by the acquitted person or by a legal practitioner on his behalf.

(3) Whenever a point is referred to the Court of Appeal under this section, the Court of Appeal shall consider the point and give its opinion on it accordingly.

(4) Where, on point being referred to the Court of Appeal under this section, the acquitted person appears by legal practitioner for the purpose of presenting any argument to the court, he shall be entitled to payment by the Crown of his costs in such amount as shall be fixed by the Senior Magistrate and for that purpose section 20(1) of the Prosecution of Offences Act 1985 and the regulations and scales made for the purposes of that provision shall apply in relation to this section as it and they apply in relation to Part II of that Act.

*(The provision made by this clause is new and is based on section 36 of the Criminal Justice Act 1972. There is no present provision of Falkland Islands law permitting the prosecution to challenge an acquittal on indictment in the Supreme Court. The clause would make limited inroads into that position and would enable the Attorney General to challenge a decision on a point of law which arose in the case. Where there is a jury, the challenge is of the judge, not the jury, and the acquittal could not be overturned, even in a case where the trial was before a judge sitting without a jury. The clause would not apply where the trial was in the Summary Court or Magistrate's Court. In relation to acquittals in such trials a decision on a point of law arising in the case in the Summary Court or Magistrate's Court could be challenged on case stated under the previous provisions of this Bill)*

### **Mode of references under section 31**

**32.**—(1) Every reference under section 31 shall be in writing and shall —

- (a) specify the point of law referred and, where appropriate, such facts of the case as are necessary for proper consideration of the point of law;
- (b) summarise the arguments intended to be put to the court; and
- (c) specify the authorities intended to be cited:

Provided that no mention shall be made in the reference of the proper name of any person or place which is likely to lead to the identification of the respondent.

(2) A reference shall be entitled “Reference under section 31 of the Criminal Appeals Ordinance 2006”.

*(This clause is modelled on rule 69.1 of the Criminal Procedure Rules 2005 of England)*

### **Registrar’s notice to respondent**

**33.**—(1) The Registrar of the Court of Appeal shall cause to be served on the respondent notice of the reference which shall also —

- (a) inform the respondent that the reference will not affect the trial in relation to which it is made or any acquittal in that trial; and
- (b) invite the respondent, within such period as may be specified in the notice (being not less than 28 days from the date of service of the notice), to inform the Registrar if he wishes to present any argument to the court and, if so, whether he wishes to present such argument in person or by legal practitioner on his behalf.

(2) The court shall not hear argument by or on behalf of the Attorney General until the period specified in the notice has expired unless the respondent agrees or has indicated that he does not wish to present any argument to the court.

*(This clause is modelled on rule 69.2 of the Criminal Procedure Rules 2005 of England)*

### **Withdrawal or amendment of reference**

**34.** The Attorney General may withdraw or amend the reference at any time before the court have begun the hearing, or, after that, until the court have given their opinion, may withdraw or amend the reference by leave of the court, and notice of such withdrawal shall be served on the respondent on behalf of the Attorney General.

*(This clause replicates rule 69.3 of the Criminal Procedure Rules 2005 of England)*



**Anonymity of the respondent**

35. The court shall ensure that the identity of the respondent is not disclosed during the proceedings on a reference except where the respondent has given his consent to the use of his name in the proceedings.

*(This clause replicates rule 69.4 of the Criminal Procedure Rules 2005 of England)*

**Service of documents**

36. For the purpose of this Part service of a document on the respondent may be effected —

(a) in the case of a document to be served on a body corporate by delivering it to the secretary or clerk to the body at its principal or registered address or sending it by post addressed to the secretary or clerk of that body at that office; and

(b) in the case of a document to be served on any other person by—

(i) delivering it to the person to whom it is directed;

(ii) leaving it for him with some person at his last known or usual place of abode, or

(iii) sending it to him by post addressed to him at his last known or usual place of abode.

*(This clause replicates rule 69.6(1) of the Criminal Procedure Rules 2005 of England)*

**PART V****REFERENCE TO SUPREME COURT OF UNDULY LENIENT SENTENCE  
PASSED BY SUMMARY COURT OR MAGISTRATE'S COURT****Reviews of sentencing**

37.—(1) If it appears to the Attorney General —

(a) that the sentencing of a person in a proceeding in the Summary Court or in the Magistrate's Court has been unduly lenient; and

(b) that the case is one to which this Part applies,

he may refer the case to the Supreme Court to review the sentencing of that person; and on such a reference the Supreme Court may —

(i) quash any sentence passed on him in the proceeding, and

(ii) in place of it pass such sentence as it thinks appropriate for the case and as the original sentencing court had power to pass when dealing with him.

(2) Without prejudice to the generality of subsection (1), the condition specified in paragraph (a) of that section may be satisfied if it appears to the Attorney General that the sentencing court —

(a) erred in law as his powers of sentencing; or

(b) failed to impose a sentence required by law.

(3) For the purposes of this Part any two or more sentences are to be treated as being imposed in the same proceeding if —

(a) they were passed on the same day;

(b) they were passed on different days but the court in passing any one of them stated that it was treating that one together with the other or others as substantially the one sentence.

(4) Where the Supreme Court has concluded its review of a case referred to it under this section the Attorney General or the offender may refer a point of law involved in any sentence passed on that person in that proceeding to the Court of Appeal for its opinion and the Court of Appeal shall consider the point and either remit the case to the Supreme Court or deal with it itself.

(5) A reference under subsection (4) shall only be made with the leave of the Supreme Court on an application made within 28 days of it delivering its decision on the review or of the Court of Appeal and such leave shall only be granted if the court is satisfied that the point is of general public importance.

(6) For the purpose of dealing with a case under this section the Court of Appeal may exercise any powers of the Supreme Court.

(7) For the purposes of subsection (5), the Supreme Court concludes its review when it delivers in writing the reasons for its decision.

*(This clause is based on section 36 of the Criminal Justice Act 1988, with modifications. Under the present law of the Falkland Islands, there is no method available to the prosecution of challenging a sentence which is unduly lenient. Section 36 of the 1988 Act enables the Attorney General of England to apply to the English Court of Appeal for review of a decision of the Crown Court. In England, trials on indictment take place before a judge and jury. In the Falkland Islands most offences which, in England, would only be triable on indictment take place before the Magistrate's Court utilising the same summary procedure as applies in the Summary Court. In general, the sentencing power of the Summary Court is much lower than that of the Magistrate's Court (and for that reason the Summary Court can commit a person it has convicted to the Magistrate's Court for sentence if a higher sentence than the Summary Court can impose could be imposed by the Magistrate's Court and the Summary Court believes that a greater sentence than it itself can impose may be appropriate). In fishery cases, however, the Summary Court has the same sentencing powers as the Magistrate's Court.*

*The clause would enable the Attorney General to ask the Supreme Court to review any sentence imposed by the Summary Court or Magistrate's Court which he considers to be unduly lenient. The English Court of Appeal has said that the purpose of section 36 of the Criminal Justice Act 1988, on which this clause is based, is the avoidance of gross error, the allaying of widespread public concern at what appears to be an "unduly" lenient sentence, and the preservation of public confidence in cases where a judge has departed to a substantial extent from the norms of sentencing generally applied, the distinction between a lenient sentence needs to be kept in mind, and careful consideration needs to be given to the individual circumstances before a decision is taken by the Attorney General to make the case the subject of a reference. In England, where a sentence is increased the Court of Appeal will allow some discount from what it considers to be the correct sentence on account of what is commonly referred to as "the double jeopardy principle" (i.e. that a person having dealt with by a court in respect of an offence should not again face conviction or sentence in respect of that offence). The English Court of Appeal gives greater weight to this factor where the offender did not face a custodial sentence in the first instance, or where he has been released from the sentence passed. Allowance will also be made for the fact that the offender has completed part or all of a community sentence)*

#### **Applications for review of sentence**

**38.—**(1) Every application for review of sentence under section 37 shall be in writing and shall be sent to the Courts Administrator within 28 days from the day on which the sentence, or the last of the sentences, in the case was passed.

(2) Each such application shall —

(a) specify —

(i) the name of the offender,

(ii) the date on which, and the offence with which, he was convicted,

(iii) the sentence passed on him in respect of that offence,

(iv) the date on which the sentence was passed (if later than the date under sub-paragraph (ii));

(v) the court by which the sentence was passed; and

(b) state the reason why it appears to the Attorney General that the sentencing of the offender was unduly lenient;

(c) if it contains the information required by paragraphs (a) and (b) constitute the reference to the Supreme Court.

(3) An application shall be entitled "Reference under section 37 of the Criminal Appeal Ordinance 2006" and shall be sent on behalf of the Attorney General to the Courts Administrator

who shall, as soon as practicable after receiving it, cause a copy of it to be served on the offender.

*(This clause is based on rule 70.1 of the Criminal Procedure Rules 2005)*

#### **Court Administrator's notice to offender**

**39.**—(1) The Courts Administrator shall, as soon as practicable after receiving the application, cause to be served on the offender a copy of it together with a notice which —

(a) informs him that the result of any reference could be that the court would quash the sentence passed on him in the proceeding and in place of it pass such sentence as they thought appropriate for the case and as the court below had power to pass when dealing with him (including a greater punishment);

(b) informs him of the effect of sections 46(1) (entitlement of offender to be present at hearing of reference, although he may be in custody), 46(2) (power of court to pass sentence on offender who is not present) and 48 (entitlement of offender to reasonable costs out of central funds) of Schedule 3 to the Criminal Justice Act 1988;

(c) invites him, within such period as the Courts Administrator may specify (being not less than 14 days from the date of service on him of the notice), to serve notice on the Courts Administrator if he wishes to present any argument to the court on the hearing of the application or, if leave is given, of the reference, and whether to present it in person or by counsel on his behalf;

(d) draws to his attention the effect of section 42 (supply of documentary and other exhibits); and

(e) advises him to consult a legal practitioner as to his position as soon as possible.

(2) The court shall not hear argument by or on behalf of the Attorney General until the period specified by the Courts Administrator has expired unless the offender agrees or has indicated that he does not wish to present any argument to the Court.

*(This clause is based on rule 70.3 of the Criminal Procedure Rules 2005 of England)*

#### **Withdrawal or amendment of application or reference**

**40.** The Attorney General may withdraw or amend an application or reference at any time before the court have begun the hearing of the application or reference as the case may be, or, after that, and until the court have given their decision, may withdraw or amend the application or reference by leave of the court, and notice of such withdrawal or amendment shall be served on the Courts Administrator and on the offender on behalf of the Attorney General.

*(This clause is modelled on rule 70.5 of the Criminal Procedure Rules 2005 of England)*

### **Court Administrator's power to obtain information from court of trial**

41. The Courts Administrator may require the court of trial to furnish the Supreme Court with any assistance or information which it may require for the purpose of exercising their jurisdiction.

*(This clause is based on rule 70.6 of the Criminal Procedure Rules 2005 of England)*

### **Supply of documentary and other exhibits**

42.—(1) The Courts Administrator shall, on request, supply to the offender copies or reproductions of documents or other things required for the application or reference and in such case may make charges in accordance with scales and rates fixed from time to time by regulations.

(2) The Courts Administrator shall, on request, make arrangements for the offender to inspect any document or other thing required for the application or reference.

(3) This rule shall not apply to the supply of transcripts of any proceedings or part of proceedings.

*(This clause is based on rule 70.7 of the Criminal Procedure Rules 2005 of England)*

### **Service of documents**

43.—(1) For the purposes of this Part service of a document on the offender may be effected —

(a) in the case of a document to be served on a body corporate by delivering it to the secretary or clerk of the body at its registered or principal office or sending it by post addressed to the secretary or clerk of the body at that office; and

(b) in the case of a document to be served on any other person —

(i) by delivering it to the person to whom it is directed,

(ii) by leaving it for him with some person at this last known or usual place of abode, or

(iii) by sending it by post addressed to him at his last known or usual place of abode.

(2) For the purpose of this Part service of a document on the Courts Administrator may be effected —

(a) in the case of an offender who is in custody, by delivering it to the person having custody of him;

(b) by delivering it to the Registrar;

(c) by addressing it to him and leaving it at his office at the Town Hall, Stanley;

(d) by sending it by post addressed to him at the said office.

(3) A person having custody of an offender and to whom a document is delivered in pursuance of paragraph (2)(a) shall endorse on it the date of delivery and cause it to be forwarded to the Courts Administrator.

*(This clause is modelled on rule 70.8 of the Criminal Procedure Rules 2005 of England)*

**Time limits in respect of applications under section 37(4)**

44. An application to the Supreme Court for leave to refer a case to the Court of Appeal under section 37(4) shall be made within a period of 28 days beginning with the date on which the Supreme Court concludes its review under section 37(1); and an application to the Court of Appeal for leave shall be made within the period of 21 days from the date on which the Supreme Court concludes its review or refuses leave to refer the case to the Court of Appeal.

*(This clause and clauses 45 to 48 are based on provisions of Schedule 3 of the Criminal Justice Act 1988 of England)*

**Time spent in custody pending review etc**

45. The time during which an offender whose case has been referred for review under section 37 is in custody pending its review and pending any reference to the Court of Appeal under subsection (4) of that section shall be reckoned as part of the term of any sentence to which he is for the time being subject.

**Presence of offender in court**

46.—(1) A person in custody shall not be entitled to be present —

(a) on any proceedings preliminary or incidental to a reference;

(b) on the hearing of any reference under section 37(4) by the Court of Appeal,

but shall be entitled to be present on the hearing of a reference by the Supreme Court.

(2) The power of the Supreme Court to pass sentence on a person may be exercised even though he is not present.

**Time from which sentence passed by Supreme Court or Court of Appeal is to run**

47. The term of any sentence passed by the Supreme Court or Court of Appeal under section 37 shall, unless otherwise directed by the court in question, begin to run from the time when it would have begun to run if passed in the proceeding in relation to which the reference was made.

**Offender's costs**

48. Where, on a sentence being referred to the Supreme Court under section 37(1) or a point of law being referred to the Court of Appeal under section 37(4), the offender appears by legal practitioner for the purpose of presenting any argument to the court, he shall be entitled to payment by the Crown of his costs in such amount as shall be fixed by the Senior Magistrate and

for that purpose section 20(1) of the Prosecution of Offences Act 1985 and the regulations and scales made for the purposes of that provision shall apply in relation to this section as it and they apply in relation to Part II of that Act.

## **PART VI REPEALS**

### **Repeals etc**

49.—(1) Sections 19, 56 and 57 (which have been replaced by provisions this Ordinance) of the Administration of Justice Ordinance (Title 22.1) are hereby repealed.

(2) Sections 20 to 23 of that Ordinance shall no longer have effect in relation to criminal proceedings.

(3) Part V (sections 108 to 114) of the Magistrate's Court Act 1980 (c 43) so far as they relate to criminal proceedings shall cease to have effect as part of the law of the Falkland Islands

*(Sections 111, 112 and 114 of the Magistrate's Court Act 1980 also apply in respect of civil proceedings)*



**THE  
FALKLAND ISLANDS GAZETTE  
Supplement**

**PUBLISHED BY AUTHORITY**

---

---

*Vol. 17*

*27<sup>th</sup> October 2006*

*No. 15*

---

---

The following are published in this Supplement –

**Supplementary Appropriation (2006-2007) Ordinance 2006 (No. 19 of 2006);**

**Marine Farming Ordinance 2006 (No. 20 of 2006);**

**Fishery Products Ordinance 2006 (No. 21 of 2006); and**

**Proceeds of Crime Ordinance 2006.**



**ELIZABETH II**



**FALKLAND ISLANDS**

---

ALAN EDDEN HUCKLE,  
*Governor.*

**Supplementary Appropriation (2006-2007) Ordinance 2006**

(No: 19 of 2006)

**ARRANGEMENT OF PROVISIONS**

Section

1. Short title
2. Appropriation of further sum

Schedule

ELIZABETH II



FALKLAND ISLANDS

ALAN EDDEN HUCKLE,  
*Governor.*

**SUPPLEMENTARY APPROPRIATION (2006-2007) ORDINANCE 2006**

(No: 19 of 2006)

*(assented to: 2 October 2006)*  
*(commencement: upon publication)*  
*(published: 27 October 2006)*

**AN ORDINANCE**

To appropriate and authorise the withdrawal from the Consolidated Fund of the additional sum of £822,740 for the service of the financial year ending 30 June 2007.

ENACTED by the Legislature of the Falkland Islands as follows —

**Short title**

1. This Ordinance may be cited as the Supplementary Appropriation (2006-2007) 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 2006 and ending on 30 June 2007 ("the financial year") the further sum of £822,740 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 Number 1 of 2006-2007 (the authority of which lapses on the commencement of this Ordinance).

## SCHEDULE

<u>Number</u>	<u>Head of Service</u>	<u>Amount</u> £
<b>OPERATING BUDGET</b>		
0200	Health and Social Services	100,000
0250	Education and Training	12,000
0600	Central Administration	7,500
0800	Legislature	5,000
<b>TOTAL OPERATING BUDGET</b>		<hr/> 124,500
<b>FUND TRANSFERS/TRANSFER PAYMENTS</b>		
0999	Transfer Payments	698,240
<b>TOTAL SUPPLEMENTARY EXPENDITURE</b>		<hr/> 822,740 <hr/>

Passed by the Legislature of the Falkland Islands this 22nd day of September 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

---

ALAN EDDEN HUCKLE,  
*Governor.*

**Marine Farming Ordinance 2006**

(No: 20 of 2006)

ARRANGEMENT OF PROVISIONS

Section

*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

ELIZABETH II



FALKLAND ISLANDS

ALAN EDDEN HUCKLE,  
*Governor.*

**MARINE FARMING ORDINANCE 2006**

(No: 20 of 2006)

*(assented to: 2 October 2006)*  
*(commencement: in accordance with section 1)*  
*(published: 27 October 2006)*

**AN ORDINANCE**

To provide for the licensing of fish farming in marine waters; and for connected purposes.

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) The Director may require the applicant to provide such information additional to that required by subsection (1) as he may specify.
- (3) Any information provided in the application or under subsection (2) shall, if the Director so requires, be in such form or verified in such manner as he may specify.
- (4) 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 (2), 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

(c) 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 to 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.

Passed by the Legislature of the Falkland Islands this 22nd day of September 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**

---

ALAN EDDEN HUCKLE,  
*Governor.*

**Fishery Products Ordinance 2006**

(No: 21 of 2006)

**ARRANGEMENT OF PROVISIONS**

Section

**PART 1  
PRELIMINARY**

1. Short title and commencement
2. Interpretation
3. Meaning of “relevant Community legislation”

**PART 2  
WATER QUALITY**  
*Quality of controlled waters*

4. Designation of waters
  5. Water quality objectives
  6. Monitoring of pollution
  7. Offences of polluting controlled waters
  8. Authority for discharges
  9. Prohibition of certain discharges
  10. Consent for discharges
  11. Review, revocation etc of consents
  12. Appeals against refusal etc of consent
- Quality of water used for processing fishery products*
13. Standards of purity

- 14. Compliance with standards
- 15. Use of processes and substances
- 16. Regulations: supplementary

PART 3  
HEALTH OF SHELLFISH ETC  
*Introductory*

- 17. Interpretation of Part 3

*Designation of production areas etc*

- 18. Designation of production areas
- 19. Designation of prohibited areas for shellfish or crustaceans production
- 20. Amendment etc. of designation order
- 21. Temporary prohibition orders concerning production areas
- 22. Restriction on collection etc of shellfish or crustaceans
- 23. Collecting or marketing shellfish or crustaceans from prohibited areas

*Aquaculture animals and products*

- 24. Placing on the market of aquaculture animals and products
- 25. Transport of aquaculture animals
- 26. Identification of aquaculture animals and aquaculture products
- 27. Export to Community of aquaculture animals and aquaculture products

*Controls on movement of fish etc.*

- 28. Introduction of live fish etc
- 29. Quarantine requirements

*Control of disease*

- 30. Notification of disease
- 31. Powers to control diseases of fish, shellfish etc
- 32. Control of disease: further measures
- 33. Default powers
- 34. Offences

PART 4  
HYGIENE

- 35. Designation of vessels, establishments etc
- 36. Regulation of designated vessels etc

PART 5  
SUPPLEMENTARY

*Regulations, orders, directions and codes of practice*

- 37. Power to make regulations
- 38. Application of UK legislation
- 39. Power to give directions
- 40. Codes of practice
- 41. Transfer of functions

*Enforcement*

- 42. Offences by bodies corporate
- 43. Powers of entry
- 44. Obstruction
- 45. Procurement of samples
- 46. Analysis etc of samples
- 47. Regulation of sampling and analysis etc

*Registers*

- 48. Registers of orders etc

*Amendment and repeal*

- 49. Amendment and repeal

**ELIZABETH II**



**FALKLAND ISLANDS**

ALAN EDDEN HUCKLE,  
*Governor.*

**FISHERY PRODUCTS ORDINANCE 2006**

(No: 21 of 2006)

*(assented to: 2 October 2006)*  
*(commencement: in accordance with section 1)*  
*(published: 27 October 2006)*

**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

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 is 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.

Passed by the Legislature of the Falkland Islands this 22nd day of September 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**

---

ALAN EDDEN HUCKLE,  
*Governor.*

**Proceeds of Crime Ordinance 2006**

(No: 22 of 2006)

**ARRANGEMENT OF PROVISIONS**

Section

1. Short title and commencement
2. Adoption of Parts 2, 4, 5 and 7 to 12 of Proceeds of Crime Act 2002 (c.29)

Schedule 1

Schedule 2

Schedule 3

ELIZABETH II



FALKLAND ISLANDS

ALAN EDDEN HUCKLE,  
*Governor.*

**PROCEEDS OF CRIME ORDINANCE 2006**

(No: 22 of 2006)

*(assented to: 2 October 2006)*  
*(commencement: in accordance with section 1)*  
*(published: 27 October 2006)*

**AN ORDINANCE**

To provide for confiscation orders in relation to persons who benefit from criminal conduct to prohibit dealing with property, to allow the recovery of property which is or represents property obtained through unlawful conduct or which is intended to be used in unlawful conduct, to make provision about money laundering.

ENACTED by the Legislature of the Falkland Islands as follows —

**Short title and commencement**

1. This Ordinance may be cited as the Proceeds of Crime Ordinance 2006 and shall come into force on such date as is appointed by the Governor by notice published in the Gazette.

**Adoption of Parts 2, 4, 5 and 7 to 12 of Proceeds of Crime Act 2002 (c.29)**

2. Parts 2, 4, 5 and 7 to 12 of the Proceeds of Crime Act 2002 (c.29) are adopted as law of the Falkland Islands subject to the modifications and exceptions specified in the Schedule to this Ordinance.

**Amendments and repeals of existing laws**

3.—(1) Schedule 2 shall have effect to amend existing laws in the manner specified therein.  
(2) Schedule 3 shall have effect to repeal existing laws to the extent specified therein.

## SCHEDULE 1

MODIFICATIONS, ADAPTATIONS AND EXCEPTIONS SUBJECT TO WHICH PARTS 2,  
4, 5 AND 7 TO 12 OF THE PROCEEDS OF CRIME ACT 2002  
SHALL HAVE EFFECT IN THE FALKLAND ISLANDS

1.—(1) In this Schedule —

- (a) “the Act” means the Proceeds of Crime Act 2002 (c.29);
- (b) every reference to a section, without more, is to a section of the Act.

(2) In the Act —

- (a) unless otherwise specified, every reference to the Director is replaced by a reference to the Attorney General;
- (b) the words “section 130 of the Sentencing Act”, wherever they appear, are replaced by the words “section 53 of the Criminal Justice Ordinance (Title 24.1)”;
- (c) unless otherwise specified, the words “the Secretary of State”, wherever they appear, are replaced by the words “the Governor”;
- (d) the words “England and Wales”, and “United Kingdom”, wherever they appear, are replaced by the words “the Falkland Islands”; and
- (e) except where provided to the contrary the words “the Crown Court”, wherever they appear, are replaced by the words “the Magistrate’s Court”.

3. In section 6(2)(b) all words appearing after the word “offences” are omitted.

4. In section 8, subsection (7) is replaced by —

“(7) These are the provisions —

- (a) the Drug Trafficking Offences Ordinance (Title 49.1);
- (b) Part IV of the Criminal Justice Ordinance (Title 24.1);
- (c) Part 4 of this Act.”

5. In section 9, subsection (3) is modified by the addition of the words “as if it formed part of the law of the Falkland Islands”.

6. In section 13 —

(a) the words “section 27 of the Misuse of Drugs Act 1971 (c.38)” in paragraph (b) of subsection (3) are replaced by the words “section 24 of the Misuse of Drugs Ordinance (Title 49.3)”;

(b) the words “section 143 of the Sentencing Act” in paragraph (c) of subsection (3) are replaced by the words “section 59 of the Criminal Justice Ordinance (Title 24.2)”;

(c) paragraph (d) of subsection (3) is omitted; and

(d) in paragraph (a) of subsection (5) the words “the Crown Court” are replaced by the words “the court” and the words “section 130 of the Sentencing Act” are replaced by the words “section 53 of the Criminal Justice Ordinance (Title 24.1)”.

7. In section 15(5) —

(a) paragraph (a) is replaced by —

“(a) any time limit for notice of appeal or of application for leave to appeal;” and

(b) paragraph (b) is omitted.

8. Section 23 is modified —

(a) in subsection (6) by replacing all words appearing after the words “be wound up under” by the words “Companies Act 1948 in its application to the Falkland Islands”

(b) by the addition of the following subsection —

“(7) An application to vary a confiscation order may only be made to the court which made that order.”.

9. Section 25 is modified —

(a) by omitting subsection (1)(b);

(b) by inserting after the words “the court” in subsection (2), the words “acting of its own motion”.

10. Section 28 is modified by the addition of the following subsection —

“(8) In this section “the court” means the Magistrate’s Court unless the proceedings referred to in subsection (1) are proceedings on indictment in the Supreme Court, when “the court” means the Supreme Court.”

11. Section 29 is modified by the addition of the following subsection —

“(5) In this section “the court” means the court which made the order under section 6 as applied by section 28.”

12. Section 31 is modified by replacing subsection (1) with —

“(1) If a court makes a confiscation order the Attorney General may appeal in respect of the order —

(a) to the Supreme Court in the case of an order made by the Magistrate’s Court; or

(b) to the Court of Appeal in the case of an order made by the Supreme Court.”

13. Section 32 is modified —

(a) by replacing the words “Court of Appeal”, wherever they appear, with the words “appellate court”;

(b) by replacing the words “the Crown Court”, wherever they appear, with the words “the court against whose decision the appeal was brought”.

14. Section 33 is modified by —

(a) replacing the words “House of Lords”, wherever they appear, with the words “Court of Appeal”; and

(b) replacing the “Court of Appeal”, wherever they appear in section 33 as enacted in England, with the words “Supreme Court”.

15. Section 35 is modified by replacing subsection (2) with the following —

“(2) Section 73 of the Criminal Justice Ordinance (Title 24.1) (application of procedure for enforcing fines) shall apply as if the amount ordered to be paid had been ordered to be paid under section 63 (confiscation orders) of that Ordinance.”

16. Section 36 is modified by replacing the words “section 139(2) to (4) and (9) of the Sentencing Act” with the words “section 14(1) to (7) and (9) (with the omission from that subsection of the words “subject to subsection (10)”) of the Criminal Justice Ordinance (Title 24.1).”

17. Section 38 is modified —

(a) in subsection (2) by the replacement of the words “section 108 of the Sentencing Act” with the words “section 40 of the Criminal Justice Ordinance (Title 24.1)”; and

(b) in paragraph (a) of subsection (4) by inserting before the words “section 189(1) of the Criminal Justice Act 2003” the words “any law of the Falkland Islands corresponding to”;

(c) by omitting paragraph (b) of section 38(4); and

(d) in paragraph (c) of section 38(4), by replacing the words “section 139(2) of the Sentencing Act” with the words “section 14(2) of the Criminal Justice Ordinance (Title 24.1)”.

**18. Section 39 is modified —**

(a) in paragraph (b) of subsection (1) and in subsection (5) by replacing the words “section 139(4) of the Sentencing Act” by the words “section 14(4) of the Criminal Justice Ordinance (Title 24.1)”;

(b) in paragraph (c) of subsection (1) and in subsections (2) and (4) by replacing the words “section 139(2) of the Sentencing Act” with the words “section 14(2) of the Criminal Justice Ordinance (Title 24.1)”;

(c) in subsection (5) by replacing the words “appropriate person” by the words “Attorney General”; and

(d) by omitting subsection (6).

**19. Section 41 is modified —**

(a) in subsection (1) by replacing the words “Crown Court” with the words “Magistrate’s Court”; and

(b) in subsection (8) by replacing paragraphs (a) to (e) with —

“(a) section 11 of the Drug Trafficking Offences Ordinance (Title 49.1);

(b) section 77 of the Criminal Justice Ordinance (Title 24.1); and

(c) section 29 of the Drug Trafficking Ordinance (No 25 of 1997).”

**20. Section 42 is modified —**

(a) in paragraph (b) of subsection (1) by replacing the words “a judge” with the words “the Senior Magistrate”; and

(b) in subsection (2) by replacing the words “Crown Court” by the words “Magistrate’s Court”.

**21. Section 43 is modified —**

(a) by replacing the words “Court of Appeal”, wherever they appear in the section) with the words “Supreme Court”; and

(b) in subsection (2) by replacing the words “Crown Court’s” with the words “Magistrate’s Court’s”.

**22. Section 44 is modified —**

(a) by replacing the words “House of Lords”, wherever they appear, with the words “Court of Appeal”; and

(b) by replacing the words “Court of Appeal”, wherever they appear in the section as enacted in England with the words “Supreme Court”.

**23. Section 45(1) is modified by replacing the words “officer of Revenue and Customs” with the words “Customs officer”.**

**24. Section 47 is modified —**

(a) in subsection (1) by replacing the words “The registration Acts” with the words “the Land Charges Ordinance 1996 (No 24 of 1996)” and by replacing the word “apply” with the word “applies”; and

(b) by omitting subsections (2), (3) and (4).

**25. Section 48 is modified by replacing the words “the Crown Court”, wherever they appear, with the words “the Magistrate’s Court”.**

**26. Section 49(8) is modified by replacing paragraphs (a) to (e) with —**

“(a) section 11 of the Drug Trafficking Offences Ordinance (Title 49.1);

(b) section 77 of the Criminal Justice Ordinance (Title 24.1); and

(c) section 29 of the Drug Trafficking Ordinance (No 25 of 1997).”

**27. Section 50(2) is modified by replacing the words “Crown Court” with the words “Magistrate’s Court”.**

**28. Section 51(7) is modified by replacing paragraphs (a) to (e) by —**

“(a) section 11 of the Drug Trafficking Offences Ordinance (Title 49.1);

(b) section 77 of the Criminal Justice Ordinance (Title 24.1); and

(c) section 29 of the Drug Trafficking Ordinance (No 25 of 1997).”

**29. Section 52 is modified —**

(a) by replacing the words “Court of Appeal”, wherever they appear, with the words “Supreme Court”;

(b) by replacing the words “Crown Court”, wherever they appear, with the words “Magistrate’s Court”; and

(c) by omitting paragraph (a) of subsection (6).

30. Section 53(7) is modified by replacing paragraphs (a) to (e) in the same way as paragraphs (a) to (e) of section 51(7) are replaced by paragraph 28 of this Schedule.

31. Section 54(7) is modified by replacing the words “appropriate designated officer” with the words “Courts Administrator”.

32. Section 55 is modified —

(a) by replacing the words “designated officer”, wherever they appear, and the words “designated officer’s” by the words “Courts Administrator” and “Courts Administrator’s”, respectively; and

(b) by omitting subsection (7).

33. Section 57 is modified by omitting subsection (6).

34. Section 65 is modified by replacing the words “Court of Appeal”, wherever they appear, by the words “Supreme Court”.

35. Section 66 is modified in the like manner as section 44 is modified by virtue of paragraph 22 of this Schedule.

36. Section 67 is modified —

(a) in paragraph (a) of subsection (2) —

(i) by replacing the word “constable” with the words “police officer”;

(ii) by replacing the words “section 19 of the Police and Criminal Evidence Act 1984 (c.60)” with the words “section 190 of the Criminal Justice Ordinance (Title 24.1)”;

(b) by omitting paragraph (b) of subsection (2);

(c) in subsection (3) —

(i) by replacing paragraph (a) of subsection (3) with —



“(a) has been seized by a customs officer under any provision of law conferring a general power of seizure etc on customs officers;” and

(ii) by omitting paragraph (b) of that subsection;

(d) by replacing subsection (5) with —

“(5) In such a case a court of summary jurisdiction may order the Financial Secretary (if the money is held by him in any fund under his control) or any bank or other financial institution holding the money in an account maintained by the Royal Falkland Islands Police or by the Customs Department to pay the money to the Courts Administrator for the court on account of the money due under the confiscation order.”;

(e) in subsection (6) —

(i) by replacing the words “building society” by the words “financial institution”;

(ii) by replacing the words “magistrate’s court” with the words “court of summary jurisdiction”;

(f) by replacing subsection (8) with —

“(8) For the purposes of this section “bank” and “financial institution” have the same meanings as they have under the Banking Ordinance (Title 10.1).”

**37.** Section 68 is omitted.

**38.** Section 70 is modified by replacing the words “magistrate’s court”, wherever they appear, with the words “Summary Court”.

**39.** Section 72 is modified by replacing subsection (9) with —

“(9) Compensation under this section is payable by the Crown to the applicant and is a charge on the Consolidated Fund.”

**40.** Section 73 is modified by replacing subsection (3) with —

“(3) Compensation under this section is payable by the Crown to the applicant and is a charge on the Consolidated Fund.”

**41.** Section 79(4) is modified by replacing paragraphs (a) to (e) with —

“(a) section 11 of the Drug Trafficking Offences Ordinance (Title 49.1);

(b) section 77 of the Criminal Justice Ordinance (Title 24.1); and

(c) section 29 of the Drug Trafficking Ordinance (No 25 of 1997).”

**42. Section 82 is modified —**

(a) by replacing paragraph (a) with —

“(a) section 24 of the Misuse of Drugs Ordinance (Title 49.3);”;

(b) by omitting paragraphs (b) and (c);

(c) by replacing paragraph (d) with —

“(d) section 59 of the Criminal Justice Ordinance (Title 24.1)”;

(d) by omitting paragraph (e).

**43. Section 85 is modified —**

(a) in subsection (1)(c) by replacing the words “High Court” with the words “Supreme Court”;

(b) by replacing the words “Court of Appeal”, wherever they appear in subsections (5) and (6) with the words “Supreme Court”; and

(c) by replacing the words “House of Lords” wherever they appear in subsection (6) with the words “Court of Appeal”.

**44. Section 88 is modified by omitting subsection (5).**

**45. Section 89 is modified —**

(a) in subsection (1) by inserting the words “the Supreme Court or” before the words “the Court of Appeal”;

(b) by omitting subsection (2);

(c) in subsection (3) by replacing the words “in the Criminal Appeal Act 1968 (c.19)(subject to any specified modifications)” with the words “relating to criminal appeals in the Court of Appeal Ordinance (Title 22.2)”;

(d) in subsection (4) by replacing —

(i) the words “criminal division of the Court of Appeal” with the words “the Supreme Court or the Court of Appeal”;

(ii) in paragraph (a) by replacing all words appearing after the words "section 43(1) or (2)" with —

"(appeals to the Supreme Court against orders made in restraint proceedings and to the Court of Appeal under section 44 (appeals to Court of Appeal against decision of Supreme Court under section 43))",

(iii) by inserting in paragraph (b) after the word "appeals" the words "to the Supreme Court"; and

(iv) by adding a further paragraph —

"(c) section 65 (appeals to the Court of Appeal against decision of the Supreme Court under section 64),".

46. Section 90 is omitted.

47. Section 91 is replaced by —

**"Criminal Procedure Rules**

**91.** Any Criminal Procedure Rules made under section 91 of the Act in the form it has effect in England and Wales in relation to —

(a) proceedings under this Part, or

(b) receivers appointed under this Part,

shall have effect in the Falkland Islands with all necessary modifications."

48. Section 240 is modified —

(a) in paragraph (a) by replacing the words "High Court or Court of Session" with the words "Supreme Court"; and

(b) in paragraph (b) by omitting all words appearing after the words "civil proceedings" with the words "before a court of summary jurisdiction".

49. Section 241 is modified —

(a) by replacing subsection (1) with —

"(1) Conduct occurring in the Falkland Islands is unlawful conduct if it is unlawful under the criminal law of the Falkland Islands."

(b) in paragraph (a) of subsection (2), by replacing the words "of that country" with the words "of that country or territory";

(c) by replacing paragraph (b) of subsection (2) with —

“(b) if it occurred in the Falkland Islands, would be unlawful under the criminal law of the Falkland Islands; and

(d) in subsection (3), by omitting the words “or sheriff”.

**50.** In sections 243(1), 245A(1), 245D(2) and 246(1) the words “High Court” are replaced by the words “Supreme Court”.

**51.** Section 244 is omitted.

**52.** Section 245(1) is modified by omitting paragraph (d).

**53.** Section 245C(6) is modified by omitting paragraph (b).

**54.** Section 246(7) is modified by omission of all words appearing after the words “interim receiver”.

**55.** Section 248 is modified —

(a) in subsection (1) —

(i) by replacing the words “The registration Acts” by the words “the Land Charges Ordinance (No 24 of 1996)”, and

(ii) by replacing the words “interim receiving orders”, wherever they appear, with the words “property freezing orders and in relation to interim receiving orders”;

(b) by omitting subsections (2), (3) and (4).

**56.** Section 249 is omitted.

**57.** Section 252 is modified by replacing with immediate effect subsection (4) with the new subsection (4) substituted by section 109 and Schedule 6 paragraphs 4, 14(1) and (2) of the Serious Organised Crime and Police Act 2005 from the date appointed under section 178(8) of that Act.

**58.** Section 253(2) is modified by replacing the words “High Court” with the words “Supreme Court”.

**59.** Sections 255A to 265 (which relate to Scotland) are omitted.

**60.** Section 266 is modified —

(a) by replacing subsection 2(b) with —

“(b) any provision which is incompatible with the Constitution”;

(b) by omitting subsection (5) (which relates to Scotland);

(c) by inserting after subsection (8) with immediate effect the subsections (8A) and (8B) which were inserted by section 109 and Schedule 6 paragraphs 4 and 15 of the Serious Organised Crime and Police Act 2005 as from a day to be appointed under section 178(8) of that Act.

61. Section 268 (which relates to Scotland) is omitted.

62. Section 269(2) is modified by omitting the words “right of irritancy”.

63. Section 271 is modified by replacing subsection (4) with —

“(4) But if —

(a) a property freezing order or an interim receiving order applied at any time to the associated property or joint tenancy; and

(b) the enforcement authority agrees that the person has suffered loss as a result of the order mentioned in paragraph (a),

the amount of the payment may be reduced by any amount the enforcement authority and that person agree is reasonable, having regard to that loss and relevant circumstances.”

64. Section 272 is modified by replacing subsection (5) with —

“(5) If —

(a) a property freezing order or an interim receiving order applied at any time to the associated property or joint tenancy; and

(b) the court is satisfied that the person who holds the associated property has suffered loss from the order mentioned in paragraph (a),

a recovery order making provision by virtue of subsection (2) or (3) may require the enforcement authority to pay compensation to that person.”

65. Section 273 is modified by replacing subsection (5) with —

“(5) None of the following provisions applies to a court making a recovery order by virtue of subsection (2) —

(a) any provision of any enactment (whenever passed or made and whether passed or made in the Falkland Islands or passed or made elsewhere and having effect in the

Falkland Islands) which prevents assignment and the making of orders that restrain a person from receiving anything he is prevented from assigning; and

(b) any provision of the pension scheme in question corresponding to any of those provisions.”

**66.** Section 275 is modified by omitting the references to the legislation of Northern Ireland which appear in subsections (4) and (6).

**67.** Section 280 is modified by —

(a) replacing subsection (2) with —

“(2) The trustee is to make out of the sums —

(a) first any payment required to be made by him by section 272;

(b) next, any payment of legal expenses which, after giving effect to section 266(8B) are payable under this subsection in pursuance of provision under section 266(8A) contained in the recovery order;

(c) then, any payment of expenses incurred by a person acting as an insolvency practitioner which are payable under this subsection by virtue of section 432(10),

and any sum which remains is to be paid to the enforcement authority.”; and

(b) by omitting subsection (4).

**68.** Section 282 is modified —

(a) in subsection (1), by omitting the words “after consultation with the Scottish Ministers”; and

(b) by omitting subsections (3) and (4).

**69.** Section 283 is modified —

(a) in subsection (3) —

(i) by replacing the words “High Court in England and Wales” in paragraph (a) by the words “Supreme Court”; and

(ii) by omitting paragraph (b); and

(b) by replacing subsection (5) with —

“(5) If the court is satisfied that the applicant has suffered loss as a result of a property freezing order, or an interim receiving order, it may require the enforcement authority to pay compensation to him.”

70. Sections 284, 285 and 286 (which relate to Scotland) are omitted.

71. Section 287 is modified —

(a) in subsection (2) by omitting the words “after consultation with the Scottish Ministers”;

(b) by replacing subsection (3) with —

“(3) If the authority applies for a property freezing order or an interim receiving order before starting the proceedings, subsection (1) applies to the application instead of to the start of the proceedings.”; and

(c) by replacing subsection (4) with —

“(4) This section does not affect the continuation of proceedings for a recovery order which have been properly started or the making or continuing effect of a property freezing order or interim receiving order.”

72. Section 289 is modified —

(a) in subsection (1) and (2) by replacing the words “officer of Revenue and Customs or constable” with the words “Customs officer or police officer”;

(b) in subsections (3) and (4), by omitting the words “or constable”;

(c) in subsection (5), by omitting paragraph (b); and

(d) in subsection (6), by omitting all words after the words “Secretary of State”;

(e) in subsection (7) by replacing the words “section 164 of the Customs and Excise Management Act 1979” with the words “section 164 of the Customs Ordinance 2003 (No 9 of 2003)”.

73. Section 290 is modified —

(a) in subsections (2), (6) and (7) by replacing the words “judicial officer” with the words “justice of the peace”;

(b) by omitting subsection (3); and

(c) by replacing subsection (4) with —

“(4) A senior officer means —

(a) in relation to the exercise of the power by a customs officer, the Collector of Customs; and

(b) in relation to the exercise of the power by a police officer, a police officer of at least the rank of inspector.”

(d) by omitting subsection (5);

(e) in subsection (6), by replacing —

(i) the word “constable” by the words “police officer”;

(ii) the words “appointed person” by the words “Chief Executive”; and

(f) by omitting subsections (8) and (9).

**74.** Section 291 is modified —

(a) in subsection (1), by replacing the words “appointed person” by the words “Chief Executive”;

(b) in subsection (2), by replacing the words “officer of the Revenue and Customs or constable” with the words “customs officer or police officer”;

(c) in subsection (4), by omitting the words “or, as the case may be, the Scottish Ministers,”; and

(d) by omitting subsection (5).

**75.** Section 292 is modified —

(a) by replacing subsection (1) with —

“(1) The code of practice made and in operation under section 292(1) and (4) of the Act in the form it has effect in England shall with all necessary modifications apply in relation to the exercise of powers under section 289 by customs officers and police officers.”

(b) by omitting subsections (2), (3), (4) and (5); and

(c) in subsection (6), by replacing the words “an officer of the Revenue and Customs or constable” with the words “a customs officer or police officer”.

**76.** Section 293 (which relates to Scotland) is omitted.



77. Section 294 is modified, in subsections (1) and (2) by replacing the words “An officer of the Revenue and Customs or constable” with the words “A customs officer or a police officer”.

78. Section 295 is modified —

(a) in subsection (1) by replacing the words “the officer of the Customs and Revenue or constable” with the words “the customs officer or police officer”;

(b) in subsection (1B) —

(i) by replacing paragraph (d) with —

“(d) any public holiday”;

(ii) by omitting paragraph (e);

(c) by replacing subsection (4) with —

“(4) An application for an order under subsection (2) may be made by a customs officer or a police officer, and the justice may make the order if satisfied, in relation to any cash to be further detained, that either of the following conditions is met.”

79. Section 297 is modified —

(a) by omitting all words only relevant to an application in Scotland;

(b) in subsection (4) by replacing the words “An officer of Revenue and Customs or constable” with the words “A customs officer or police officer”.

80. Section 298 is modified —

(a) by replacing subsection (1) with —

“(1) While cash is detained under section 295 an application for the forfeiture of the whole or any part of it may be made by the Attorney General or a person authorised by the Attorney General to make the application.”

(b) by omitting the words “or Sheriff” in subsection (2).

81. Section 299 (in the form it was substituted by section 101 of the Serious Organised Crime Act 2005) is modified in subsection (1) by —

(a) in paragraph (a) by replacing the words “Crown Court” with the words “Supreme Court”;  
and

(b) by omitting paragraphs (b) and (c).

**82. Section 300 is replaced by —**

“(1) Cash forfeited under this Chapter and any accrued interest on it is to be paid into the Consolidated Fund.

(2) If, as a result of an appeal under section 299 the Supreme Court orders the repayment by the Crown of any sum forfeited pursuant to section 298 the court shall also order the payment by the Crown of such sum by way of interest as it considers just.”

**83. Section 301 is modified —**

(a) in subsection (1) —

(i) by replacing the words “magistrates’ court” with the words “Magistrate’s Court”; and

(ii) by omitting all words appearing in subsection (1) thereafter;

(b) by omitting the words “or sheriff” wherever they appear in subsections (2) and (3).

**84. Section 302 is modified —**

(a) in subsection (1) by omitting the words “or (in Scotland) the sheriff”;

(b) in subsections (2), (3), (4) and (5) by omitting the words “or sheriff” wherever they appear;

(c) by replacing subsection (6) with —

“(6) The compensation is to be paid by the Crown and is a charge on the Consolidated Fund.”; and

(d) by omitting subsection (7).

**85. Section 303(1) is replaced by —**

“**303.**—(1) In this Chapter, the minimum amount is the amount in sterling for the time being specified in an order made under section 303(1) in the form it has effect in England.”

**86. Section 308 is modified —**

(a) in subsection (3), by the omission of the last subsection;

(b) in subsection (4) by the replacement of paragraph (a) with —

“(a) a payment is made to a person in pursuance of a compensation order under section 53 of the Criminal Justice Ordinance (Title 24.1).”;

(c) by the omission of subsections (5), (6) and (7);

(d) in subsection (8) by the replacement in paragraph (b) of the words “section 8(7)(a) to (g)” with the words “section 8(7)(a) and (b)”; and

(e) in subsection (9) by the replacement of the same words in paragraph (b) of that subsection in the like manner as in subparagraph (d) of this paragraph.

**87.** Section 309 is modified in subsection (4) by omission of the words “after consultation with the Scottish Ministers”.

**88.** Section 311 is modified —

(a) in subsection (3) —

(i) by replacing paragraph (b) with —

“(b) is an asset of a company and a compromise or arrangement made pursuant to section 206 of the Companies Act 1948 has effect in relation to the company and that asset;”

(ii) by omitting paragraph (c);

(iii) by omitting all words appearing after “adjudged bankrupt” in paragraph (d);

(iv) by replacing paragraph (e) with —

“(e) it is an asset of an individual and a composition or scheme or arrangement accepted and approved pursuant to section 16 of the Bankruptcy Act 1914 has effect in relation to him;” and

(b) by replacing subsection (4) with —

“(4) An application under this section or under any provision of the Bankruptcy Act 1914 for leave to take proceedings for a recovery order may be made without notice to any person.”

(c) by replacing subsection (6) with the following —

“(6) For the purposes of the application of the Bankruptcy Act 1914 to insolvent partnerships and estates of deceased persons under any provision of that Act, subsections (1) to (3) of this section shall be deemed to be part of that Act.”;

(d) subsection (7) is omitted;

(e) subsection (8) is modified —

(i) by replacing paragraph (a) with —

“(a) an asset means any property within the meaning of section 167 of Bankruptcy Act 1914”;

(ii) in paragraph (b) —

(aa) by omitting the words “or trust deed”; and

(bb) by replacing all words appearing after the words “is the court” with the words “for the purposes of the application in the Falkland Islands of the Bankruptcy Act 1914”; and

(iii) by omitting paragraph (d).

**89.** Sections 312 to 315 are omitted.

**90.** In section 316 —

(a) the definitions of “constable”, “the court”, “interim administration order”, “interim receiving order” and “part” are omitted;

(b) the definition of “enforcement authority” is replaced by —

“ “enforcement authority” means the Attorney General”;

(c) the definition of “interest” is replaced by —

“ “interest” in the case of land means any legal estate and any equitable interest or power”;

(d) paragraph (b) of the definition of “respondent” is omitted;

(e) subsection (4) is replaced by —

“(4) Property is all property wherever situated whether real or personal and includes things in action and incorporeal property.”;

(f) in subsection (9), paragraph (b) is modified by omitting all words appearing after the word “discontinued”.

**91.** Section 327 is modified —

(a) by omitting all words after the words “England and Wales” (the latter being replaced by the words “the Falkland Islands” by paragraph 1(b)(iv) of this Schedule);

(b) by inserting the following subsections after subsection (2) —

“(2A) Nor does a person commit an offence under subsection (1) if —

(a) he knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a particular country or territory outside the Falkland Islands, and

(b) the relevant criminal conduct —

(i) was not at the time it occurred, unlawful under the law of that country or territory, and

(ii) is not of a description specified by an order made by the Secretary of State for the purposes of section 327(2A)(b) of the Act in the form it has effect in England.

(2B) In subsection (2A) “the relevant criminal conduct” is the criminal conduct by reference to which the property concerned is criminal property.”

**92.** Section 329 is modified by inserting the following subsections after subsection (2) —

“(2A) Nor does a person commit an offence under subsection (1) if —

(a) he knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a country or territory outside the Falkland Islands; and

(b) the relevant criminal conduct —

(i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory, and

(ii) is not of a description prescribed by an order made by the Secretary of State for the purposes of section 329(2A) in the form it has effect in England.

(2B) In subsection (2A) “the relevant criminal conduct” is the criminal conduct by reference to which the property concerned is criminal property.

(2C) A deposit-taking body that does an act mentioned in subsection (1) does not commit an offence under that subsection if —

(a) it does the act in operating an account maintained with it, and

(b) the arrangement facilitates the acquisition, retention, use or control of criminal property that is less than the threshold amount determined under section 339A for the act.”

**93.** Section 330 is modified —

(a) by replacing subsection (1) with —

“(1) A person commits an offence if the conditions in subsections (2) to (4) are satisfied.”

(b) by inserting the following subsection after subsection (3) —

“(3A) The third condition is —

(a) that he can identify the other person mentioned in subsection (2) or the whereabouts of any of the laundered property; or

(b) that he believes, or it is reasonable to expect him to believe, that the information or other matter mentioned in subsection (3) will or may assist in identifying that other person or the whereabouts of any of the laundered property.”;

(c) by inserting the following subsections after subsection (5) —

“(5A) The laundered property is the property forming the subject matter of the money laundering that he knows or suspects, or has reasonable grounds for knowing or suspecting, that other person to be engaged in.

(6) But he does not commit an offence under this section if —

(a) he has a reasonable excuse for not making the required disclosure,

(b) he is a professional legal adviser, and

(i) if he knows either of the things mentioned in subsection (5)(a) and (b), he knows the thing because of information or other matter that came to him in privileged circumstances; or

(ii) the information or other matter mentioned in subsection (3) came to him in privileged circumstances, or”; and

(d) by inserting the following subsection after subsection (7) —

“(7A) Nor does a person commit an offence under this section if —

(a) he knows, or believes on reasonable grounds, that the money laundering is occurring in a particular country or territory outside the Falkland Islands, and

(b) the money laundering —

(i) is not unlawful under the criminal law applying in that country or territory; and

(ii) is not of a description prescribed in an order made by the Secretary of State for the purposes of section 330(7A) in the form it has effect in England.”

(e) by inserting the following subsection after subsection 9 —

“(9A) But a disclosure which satisfies paragraphs (a) and (b) of subsection (9) is not to be taken as a disclosure to a nominated officer if the person making the disclosure —

(a) is a professional legal adviser;

(b) makes it for the purpose of obtaining advice about making a disclosure under this section; and

(c) does not intend it to be a disclosure under this section.”

94. Section 331 is modified —

(a) by inserting the following subsection after subsection (3) —

“(3A) The third condition is —

(a) that he knows the identity of the other person mentioned in subsection (2), or the whereabouts of any of the laundered property, in consequence of a disclosure made under section 330,

(b) that that other person, or the whereabouts of any of the laundered property, can be identified from the information or other matter mentioned in subsection (3), or

(c) that he believes, or it is reasonable to expect him to believe, that the information or other matter will or may assist in identifying that other person or the whereabouts of any of the laundered property.”

(b) in subsection (4), by replacing the words “Director General of the Serious Organised Crime Agency” with the words “Attorney General”;

(c) by inserting the following subsection after subsection (5) —

“(5A) The laundered property is the property forming the subject matter of the money laundering that he knows or suspects, or has reasonable grounds for knowing or suspecting, that other person to be engaged in.”

(d) by inserting the following subsection after subsection (6) —

“(6A) Nor does a person commit an offence under this section if —

(a) he knows, or believes on reasonable grounds, that the money laundering is occurring in a particular country or territory outside the Falkland Islands, and

(b) the money laundering —

(i) is not unlawful under the criminal law applying in that country or territory; and

(ii) is not of a description prescribed in an order made by the Secretary of State for the purposes of section 331(6A) of the Act in the form it has effect in England.”

95. Section 332 is modified —

(a) in subsection (1), by replacing the words “section 338” by the words “section 337 or 338”;

(b) by inserting the following subsection after subsection (3) —

“(3A) The third condition is —

(a) that he knows the identity of the other person mentioned in subsection (2), or the whereabouts of any of the laundered property, in consequence of a disclosure made under the application section,

(b) that the other person, or the whereabouts of any of the laundered property, can be identified from the information or other matter mentioned in subsection (3), or

(c) that he believes, or it is reasonable to expect him to believe, that the information or other matter will or may assist in identifying that other person or the whereabouts of any of the laundered property.”;

(c) in subsection (4) by replacing the words “Director General of the Serious Organised Crime Agency” by the words “Attorney General (who may authorise himself for the purposes of this Part)”;

(d) by inserting the following two subsections after subsection (5) —

“(5A) The laundered property is the property forming the subject matter of the money laundering that he knows or suspects that other person to be engaged in.

(5B) The application section is section 337 or, as the case may be, section 338.”;

(e) by inserting the following subsection after subsection (6) —

“(7) Nor does a person commit an offence under this section if —



(a) he knows, or believes on reasonable grounds, that the money laundering is occurring in a particular country or territory outside the Falkland Islands, and

(b) the money laundering —

(i) is not unlawful under the criminal law applying in that country or territory; and

(ii) is not of a description prescribed in an order made by the Secretary of State for the purposes of section 332 for the purposes of section 332 in the form it has effect in England.”

96. Section 334 is replaced by —

**“Penalties**

334.—(1) A person guilty of an offence under section 337, 328 or 329 is liable on conviction to imprisonment for a term not exceeding 14 years or to a fine of such amount as the court sees fit, or both.

(2) A person guilty of an offence under section 330, 331, 332 or 333 is liable on conviction to imprisonment for a term not exceeding 5 years or to a fine not exceeding the maximum of level 12 on the standard scale, or both.

(3) A person guilty of an offence under section 339A is liable to a fine not exceeding level 5 on the standard scale.”

97. Section 335 is modified —

(a) by replacing references to “nominated officer” wherever they occur, with references to “police officer of the rank of inspector or above or to the Collector of Customs”; and

(b) in subsection (7) by replacing all the words appearing after “Good Friday or a day which is a” with the words “public holiday.”.

98. Section 336 is replaced with the following —

“336.—(1) A nominated officer must not give the appropriate consent unless he makes a disclosure that property is criminal property to the Attorney General or Principal Crown Counsel and one of the following conditions is satisfied —

(a) the Attorney General gives consent to the doing of the act; or

(b) before the end of seven working days starting with the first working day after the nominated officer makes the disclosure, he does not receive notice from the Attorney General that consent to the doing of the act is refused;

(c) before the end of the period referred to in paragraph (b) he receives such a notice but the moratorium period has expired.

(2) A person who is a nominated officer commits an offence if —

(a) in breach of subsection (1) he gives consent to a prohibited act, and

(b) he knows or suspects that the act is a prohibited act.

(3) A person guilty of such an offence is liable on conviction to imprisonment for a term not exceeding five years or to a fine not exceeding level 10 on the standard scale.

(4) The moratorium period is the period of 31 days starting with the day on which the nominated officer is given notice that consent to the doing of the act is refused.

(5) A working day is a day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a public holiday.

(6) References to a prohibited act are to an act mentioned in section 327(1), 328(1) or 329(1) (as the case may be).

(7) A nominated officer is a person nominated to receive disclosures under section 338."

99. Section 337 is modified —

(a) by replacing subsection (4) with —

"(4) The third condition is that the disclosure is made to a police officer of the rank of inspector or above or to a nominated officer as soon as is practicable after the information or other matter comes to the discloser.";

(b) by the insertion after subsection (4) of —

"(4A) Where a disclosure consists of a disclosure protected under subsection (1) and a disclosure of either or both of —

(a) the identity of the other person mentioned in subsection (3), and

(b) the whereabouts of property forming the subject matter of the money laundering that the discloser knows or suspects, or has reasonable grounds for knowing or suspecting the other person to be engaged in,

the disclosure of the thing mentioned in paragraph (a) or (b) is not to be taken to breach any restriction on the disclosure of information (however imposed)."

100. Section 338 is modified —

(a) by replacing subsection (1) with —

“(1) For the purposes of this Part, a disclosure is authorised if —

(a) it is a disclosure to a police officer of the rank of inspector or above or to a nominated officer that property is criminal property, and

(b) the first, second or third condition set out below is satisfied.”

(b) by inserting the following subsection after subsection (2) —

“(2A) The second condition is that —

(a) the disclosure is made while the alleged offender is doing the prohibited act,

(b) he began to do the act at a time when, because he did not then know or suspect that the property constituted or represented a person’s benefit from criminal conduct, the act was not a prohibited act, and

(c) the disclosure is made on his own initiative and as soon as is practicable after he first knows or suspects that the property constitutes or represents a person’s benefit from criminal conduct.”

(c) in paragraph (a) of subsection (3) by inserting the word “third” between the word “The” at the commencement of the subsection, and the word “condition”.

**101.** Section 339 is modified —

(a) by inserting the following subsections after subsection (1);

“(1A) A person commits an offence if he makes a disclosure under section 330, 331, 332, or 338 otherwise than in the form prescribed under subsection (1) or otherwise than in the manner so prescribed.

(1B) But a person does not commit an offence under subsection (1A) if he has a reasonable excuse for making the disclosure otherwise than in the form prescribed under subsection (1) or (as the case may be) otherwise than in the manner so prescribed.”

(b) by replacing subsections (2) and (3) with —

“(2) The power under subsection (1) to prescribe the form in which a disclosure must be made includes power to provide for the form to include a request to a person making a disclosure that the person provide information specified or described in the form if he has not provided it in making the disclosure.

(3) Where under subsection (2) a request is included in a form prescribed under subsection (1), the form must —

(a) state that there is no obligation to comply with the request, and

(b) explain the protection conferred by subsection (4) on a person who complies with the request.”; and

(c) by omitting subsections (5) and (6).

102. The following section is inserted after section 339 —

**“Threshold amounts**

339A.—(1) This section applies for the purposes of sections 327(2C), 328(5) and 329(2C).

(2) The threshold amount for acts done by a deposit-taking body in operating an account is £250 unless a higher amount is specified under the following provisions of this section (in which event it is that higher amount).

(3) The Collector of Customs or a police officer of the rank of inspector or above (or a nominated officer), may specify the threshold amount for acts done by a deposit-taking body in operating an account —

(a) when he gives consent, or gives notice refusing consent, to the deposit-taking body’s doing of an act mentioned in section 327(1), 328(1) or 329(1) in opening, or operating, the account or a related account, or

(b) on a request from the deposit-taking body.

(4) Where the threshold amount for acts done in operating an account is specified under subsection (3) or this subsection, the Collector of Customs or a police officer of the rank of inspector or above or a nominated officer may vary the amount (whether on a request from the deposit-taking body or otherwise) by specifying a different amount.

(5) Different threshold amounts may be specified under subsections (3) and (4) for different acts done in operating the same account.

(6) The amount specified under subsection (3) or (4) as the threshold amount for acts done in operating an account must, when specified, not be less than the amount specified in subsection (2).

(7) The Governor may by order vary the amount for the time being specified in subsection (2).

(8) For the purposes of this section, an account is related to another if each is maintained with the same deposit-taking body and there is a person who, in relation to each account, is

the person or one of the persons entitled to instruct the body as respects the operation of the account.

(9) The Governor may exercise his powers under subsection (7) by adopting, with such modifications as he sees fit, an order made by the Secretary of State under subsection (7) in the form it has effect in England.”

**103. Section 340 is modified —**

- (a) by omitting subsection (13); and
- (b) by omitting paragraph (b) of subsection (14).

**104. Section 343 is modified —**

- (a) by replacing subsection (2) with —

“(2) In relation to an application for the purposes of a confiscation investigation, a judge is the Senior Magistrate;” and
- (b) by replacing the words “High Court” in subsection (3) with the words “Supreme Court”.

**105. Section 344 is modified —**

- (a) by replacing the words “Crown Court” with the words “Magistrate’s Court”; and
- (b) by replacing the words “High Court” with the words “Supreme Court”.

**106. Section 350 is modified —**

- (a) by omitting the word “authorised” in subsection (1);
- (b) by replacing the words “officer of the department” in subsection (2) with the words “public officer”;
- (c) by replacing paragraphs (a) and (b) of subsection (5) with —

“(a) the Senior Magistrate, in the case of an order made for the purposes of a confiscation investigation or a money laundering investigation;

(b) a Supreme Court judge, in the case of an order made for the purposes of a civil recovery investigation.”

**107. Section 351 is modified by replacing subsection (5) with —**

“(5) Every application under this section must, except with the leave of the judge, be made by the Attorney General or by a person authorised by him to make the application.”

**108.** Section 352 is modified —

(a) by replacing the words “a constable or an officer of Revenue and Customs” in paragraph (a) of subsection (5) with the words “a police officer of the rank of inspector or above or the Collector of Customs”; and

(b) by replacing the words “a named member of the staff of the Agency” in paragraph (b) of subsection (5) with the words “a public officer named by the Attorney General”.

**109.** Section 353 is modified by replacing subsection (10) with —

“(10) An appropriate person is —

(a) a police officer or a customs officer, if the warrant is sought for the purposes of a confiscation investigation or a money laundering investigation;

(b) a public officer named by the Attorney General, if the warrant is sought for the purposes of a civil recovery investigation.”

**110.** Section 354 is modified by replacing the words “High Court” in subsection (2) with the words “Supreme Court”.

**111.** Section 355 is modified —

(a) by replacing subsection (3) with —

“(3) This subsection applies to the following provisions of the Criminal Justice Ordinance (Title 24.1) —

(a) section 186 (search warrants - safeguards);

(b) section 187 (execution of warrants);

(c) section 192 (access and copying);

(d) section 193 (retention).”;

(b) by omitting subsection (4).

**112.** Section 359 is modified by replacing subsection (4) with —

“(4) A person guilty of an offence under subsection (3) is liable on conviction to imprisonment for a term not exceeding two years or a fine not exceeding level 10 on the standard scale.”

**113.** Section 360 is modified by omitting all words appearing after the words “section 5 of the Perjury Act 1911 (c.6)” in paragraph (c) of subsection (2).

**114.** Section 364 is modified —

(a) in subsection (3) —

(i) by replacing all words appearing in paragraph (d) after the words “allocated to it” with the words “Companies Act 1948 or any corresponding legislation of any country or territory outside the Falkland Islands”.

(ii) by omitting paragraph (e);

(iii) by replacing paragraph (f) with —

“(f) its registered office, and any previous registered offices under the Companies Act 1948 or anything similar under corresponding legislation of any country or territory outside the Falkland Islands;” and

(iv) by replacing all words appearing after “Limited Liability Partnerships Act 2002 (c.12)” with the words “of Great Britain or anything similar under corresponding legislation of any country or territory outside the Falkland Islands.”

(b) in subsection (5) —

(i) by inserting after paragraph (a) —

“(aa) constitutes an offence specified in section 415(1A) of this Act;” and

(ii) by inserting in paragraph (b), after the words “paragraph (a)”, the words “or (aa)”.

**115.** Section 369 is modified —

(a) by replacing paragraph (a) of subsection (3) with —

“(a) the Attorney General or any public officer named by him;”,

(b) by omitting subsections (5) and (6);

(c) by replacing subsection (7) with —

“(7) Except as provided by paragraph (b) of subsection (3), an application under this section may only be made by the Attorney General or a public officer named by him.”

**116. Section 375 is modified —**

- (a) in subsection (2) in the like manner as section 369(3)(a) is modified above; and
- (b) by omitting subsections (4) and (5).

**117. Section 377 is modified —**

- (a) by replacing paragraphs (a) to (e) of subsection (1) with —

- “(a) the Attorney General and persons exercising functions on his behalf;
- (b) police officers; and
- (c) customs officers.”

- (b) by omitting subsections (2) to (5);

- (c) by inserting the following subsection after subsection (7) —

“(7A) The code of practice mentioned in subsection (1) shall have effect in the Falkland Islands with such modifications as would apply to it if it were imperial legislation to which section 76 of the Interpretation and General Clauses Ordinance (Title 67.1) applied.”; and

- (d) by omitting subsection (9).

**118. Section 378 is modified —**

- (a) by replacing subsection (1) with —

“(1) In relation to a confiscation investigation or money laundering investigation these are appropriate officers —

- (a) the Attorney General and Principal Crown Counsel;

- (b) a police officer of the rank of sergeant or above;

- (c) the Collector of Customs; and

- (d) any person appointed by the Governor to be an appropriate officer for the purpose of confiscation investigations.”



(b) by replacing subsection (2) with —

“(2) In relation to a confiscation investigation and a money laundering investigation these are senior appropriate officers —

(a) the Attorney General and Principal Crown Counsel;

(b) any police officer of the rank of inspector or above; and

(c) a person appointed by the Governor to be a senior appropriate officer.”; and

(c) by omitting subsections (4) to (7).

**119.** Section 379 is modified —

(a) by replacing the words “Police and Criminal Evidence Act 1984 (c.60)” with the words “for the purposes of Part XII of the Criminal Justice Ordinance (Title 24.1)”; and

(b) by omitting all words having relation to Northern Ireland.

**120.** Sections 380 to 412 (which apply only to Scotland) are omitted.

**121.** Section 417 is replaced by the following —

“**417.**—(1) This section applies if a person is adjudged bankrupt in the Falkland Islands.

(2) The following property is excluded from the property of the bankrupt for the purposes of the Bankruptcy Act 1914 —

(a) property for the time being subject to a restraint order which was made under section 41, 120 or 190 before the order adjudging him bankrupt;

(b) any property in respect of which an order under section 50 or 52 is in force;

(c) any property in respect of which an order under section 128(3) is in force;

(d) any property in respect of which an order under section 198 or 200 is in force.

(3) If in the case of a debtor an interim receiver stands at any time appointed under section 8 of the Bankruptcy Act 1914 and any property of the debtor is then subject to a restraint order under section 41, 120 or 190 the powers conferred on the receiver by virtue of that Act do not apply to property then subject to the restraint order.”

**122.** Section 418 is modified —

(a) in subsection (3) —

(i) by replacing paragraph (a) with —

“(a) property of the bankrupt for the purposes of the Bankruptcy Act 1914;”,

(ii) by omitting paragraph (b);

(iii) by replacing paragraph (c) with —

“(c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 26(2) of the Bankruptcy Act 1914;”,

(b) in subsection (4) by replacing the words “1986 Act” with the words “Bankruptcy Act 1914”; and

(c) by omitting subsection (5).

**123.** Section 419 is modified —

(a) by replacing the words “sections 339, 340 or 423 of the 1986 Act” in subsections (2) and (3) in each case with the words “section 27, 42 or 44 of the Bankruptcy Act 1914.”; and

(b) by omitting subsection (5).

**124.** Sections 420 to 422 (which relate to Scotland) are omitted.

**125.** Sections 423 to 425 (which relate to Northern Ireland) are omitted.

**126.** Section 426 is modified —

(a) in subsections (1) and (7) by replacing in each case the words “1986 Act” with the words “Companies Act 1948”; and

(b) by omitting subsections (3), (8) and (10).

**127.** Section 427 is modified —

(a) in subsection (1) by replacing the words “1986 Act” with the words “Companies Act 1948”;

(b) subsections (3) and (4) are replaced by —

“(3) No order may be made corresponding with an order which, in England, may be made under section 238, 239 or 423 of the Insolvency Act 1986 (avoidance of certain transactions), or otherwise in relation to that gift at any time when —

(a) any property of the recipient of the tainted gift is subject to a restraint order under section 41, 120 or 190, or

(b) there is in force of such property an order under section 50, 52, 128(3), 198 or 200.

(4) An order corresponding with an order which, in England, may be made under section 238, 239 or 423 of the Insolvency Act 1986, or otherwise, after an order mentioned in subsection (3)(a) or (b) is discharged must take into account any realisation under Part 2 of this Act held by the recipient of the tainted gift."

**128.** Sections 428 to 429 (which relate to Northern Ireland) are omitted.

**129.** Section 430 is modified —

(a) by replacing subsection (1) with —

"(1) In this section "company" means a company which may be wound up under the Companies Act 1948.";

(b) by omitting subsection (3);

(c) in subsection (7) by replacing the words "1986 Act or 1989 Order" with the words "Companies Act 1948"; and

(d) by omitting subsection (8).

**130.** Section 431 is modified by replacing the words "1986 Act" in subsection (1) with the words "Bankruptcy Act 1914".

**131.** Section 432 is modified —

(a) by replacing the words "interim receiving order under section 246" in paragraph (b) of subsection (1), in paragraph (a) of subsection (8) and in paragraph (a) of subsection (9) in each case with the words "a property freezing order made under section 245A or an interim receiving order made under section 246"; and

(b) in subsection (4) by replacing the words "1985 Act, the 1986 Act, the 1989 Order" with the words "the Bankruptcy Act 1914, the Companies Act 1948, any other written law of the Falkland Islands."

**132.** Section 433 is modified by —

(a) replacing subsection (2) with the following subsections —

"(2) A person acts as an insolvency practitioner in relation to a company by acting —

(a) as its liquidator, or provisional liquidator, or

(b) as the supervisor of any compromise or arrangement with its creditors approved by it;

(2A) A person acts as an insolvency practitioner in relation to an individual by acting —

(a) as his trustee in bankruptcy or interim receiver of his property;

(b) as trustees under a deed which is a deed of arrangement made for the benefit of his creditors; or

(c) as administrator of the insolvent estate of a deceased person.”

(b) by omitting subsections (4) and (5).

**133.** Section 434 is omitted.

**134.** Section 436 is modified —

(a) in subsection (1) by replacing the words “a permitted person” by the words “a customs officer, police officer, other public officer or the Commissioner of Taxes”,

(b) by omitting subsections (3), (5), (8) and (9).

**135.** Section 437 is modified —

(a) by replacing all references in that section to the Commissioners of Inland Revenue with references to the Commissioner of Taxes;

(b) by replacing all references in that section to “the Commissioners of Customs and Excise” with references to “Collector of Customs”;

(c) in paragraph (a) of subsection (4) by replacing the words “Board of Inland Revenue” with the words “the Taxation Officer”.

**136.** Section 438 is modified —

(a) in subsection (1) —

(i) by the omission of paragraph (e); and

(ii) by replacing paragraph (f) with —

“(f) the exercise by any person of his functions under Chapter 3 of Part 5”;

(b) by replacing subsection (3) with —

“(3) But such information may be disclosed by the Attorney General to —

(a) the Governor;

(b) the Commissioner of Taxation; and

(c) the Collector of Customs.”

(c) by omitting subsection (8).

**137.** Sections 439 to 441 (which relate to Scotland) are omitted.

**138.** Section 443 is omitted.

**139.** Section 444 is modified —

(a) in subsection (1) by replacing the words “Her Majesty” with the words “the Governor”;

(b) in subsection (3) —

(i) by replacing the words “listed persons” in paragraph (a) with the words “Attorney General”; and

(ii) by replacing the words “a court in the part of the United Kingdom” with the words “the court in which”; and

(c) by omitting subsection (4) (inserted by section 108 of the Serious Organised Crime and Police Act 2005);

(d) by adding the following subsection —

“(5) The Governor’s powers under subsection (1) include power to apply, with such modifications as he may think fit, any Order in Council made under section 444(1) in the form that subsection has effect in the United Kingdom.”

**140.** Section 445 is modified —

(a) in subsection (1) by replacing the words “Her Majesty” with the words “the Governor”; and

(b) in subsection (2) by replacing paragraph (b) with —

“(b) provisions about the functions of the Governor, the Attorney General, police officers, customs officers and tax officers.”

141. Section 447(8) is modified by replacing the words “in any part of the United Kingdom” in both places they occur, with the words “in the Falkland Islands”.

142. Section 448 is replaced by —

“448. The Governor may by Order make such provision about tax as he considers necessary or expedient to give better effect in the Falkland Islands to the purposes of the Act and, without prejudice to the generality of the foregoing, may for such purposes make any provision corresponding to provision made in Schedule 10 of the Act in the form it has effect in the United Kingdom.”

143. Sections 449 to 451 are omitted.

144. Sections 453 to 458 are omitted.

145. Schedule 1 is omitted.

146. Schedule 2 is modified by replacing references to the provisions of legislation specified in the left hand column of the following table with the provision of the legislation specified opposite it in the right hand column of that table —

**TABLE**

<b>Provision of English law</b>	<b>Corresponding provision of Falkland Islands law</b>
(a) <u>Misuse of Drugs Act 1971 (c.38)</u>	(a) <u>Misuse of Drugs Ordinance (Title 49.3)</u>
(1) section 3	(1) section 3
(2) section 4(2) or (3)	(2) section 4
(3) section 5(3)	(3) section 5(2)
(4) section 8	(4) section 8
(5) section 20	(5) section 18(1)
(b) <u>Customs and Excise Management Act 1979 (c.2)</u>	(b) <u>Customs Ordinance 2003 (No 9 of 2003)</u>
(1) section 50(2) or (3)	(1) section 43(2) or (3)
(2) section 68(2)	(2) section 60
(3) section 170	(3) section 159
(c) <u>Criminal Justice (International Co-operation) Act 1990 (c.5)</u>	(c) <u>Criminal Justice (International Co-operation) Ordinance (Title 24.2)</u>
(1) section 12	(1) section 13
(2) section 19	(2) section 19
(d) <u>Firearms Act 1968 (c.27)</u>	(d) <u>Firearms and Ammunition Ordinance (Title 23.2)</u>
(1) section 3(1)	(1) section 9(1)

147. Schedules 3 to 5 are omitted.

148. Schedule 6 is modified in paragraph 2(4) by omitting the references to Scottish and Northern Irish legislation.

149. Schedules 7 and 8 are omitted.

150. Schedule 9 is modified —

(a) in paragraph 1(1) —

(i) by replacing paragraph (a) with —

“(a) accepting deposits by a person under a licence under the Banking Ordinance (Title 10.1);”

(ii) by omitting sub-paragraphs (b), (c) and (e),

(iii) by replacing the words “15,000 euro” in sub-paragraph (n) with “10,000 pounds”;

(b) in paragraph 1(2) by omitting sub-paragraph (b);

(c) by omitting paragraphs (a) to (d) and (f) of paragraph 2;

(d) by omitting paragraph 3(2) to (6) and (7).

(e) by replacing sub-paragraphs (a) to (g) of paragraph 4(1) with —

“(a) in relation to banks and financial institutions, the Financial Secretary,

(b) in relation to any person carrying on business in the Falkland Islands either on his own account, in partnership or as an employee who is a member of, or subject to the exercise of disciplinary powers by, any body which is a designated professional body for the purposes of Part 20 of the Financial Services and Markets Act 2000 (c.8)”;

(f) by omitting paragraph 2(2) and (3);

(g) by replacing the words “The Treasury” in paragraph 5 with the words “the Governor”.

151. Schedules 10, 11 and 12 are omitted.

## SCHEDULE 2

### AMENDMENTS

#### *Introduction*

1. The amendments specified in this Schedule shall have effect.

#### *Misuse of Drugs Ordinance (Title 49.3)*

2. Section 24 of the Misuse of Drugs Ordinance (forfeiture) is amended —

(a) in subsection (1) by replacing the words “a drug trafficking offence” as defined in the Drug Trafficking Offences Ordinance section 2(1)” with the words “an offence falling within subsection (3) of this section”; and

(b) by adding the following subsection after subsection (2) —

“(3) An offence falls within this section if it is an offence which is specified in paragraph 1 of Schedule 2 to the Proceeds of Crime Act 2002 (drug trafficking offences”, or so far as it relates to that paragraph, paragraph 10 of that Schedule.”

#### *Part VII of Criminal Justice Ordinance (Title 24.1)*

3. Section 132 of the Criminal Justice Ordinance (rehabilitated persons and spent convictions) is amended by the insertion of the following subsection after subsection (2) —

“(2A) In subsection (2)(a) of this section the reference to a fine or other sum adjudged to be paid by or imposed on a conviction does not include a reference to an amount payable under a confiscation order made under Part 2 of the Proceeds of Crime Act 2002.”.

## SCHEDULE 3

### REPEALS

Short title and Title No	Extent of Repeal
Drug Trafficking Offences Ordinance (Title 49.1)	the whole Ordinance
Criminal Justice (International Co-operation) Ordinance (Title 24.2)	section 16.

Passed by the Legislature of the Falkland Islands this 22nd day of September 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.*



---

Published by the Attorney General's Chambers, Cable Cottage, Stanley, Falkland Islands  
Price: Thirteen Pounds and Sixty Pence

© **CrownCopyright** 2006



**THE  
FALKLAND ISLANDS GAZETTE  
Supplement**

**PUBLISHED BY AUTHORITY**

---

---

*Vol. 17*

*3<sup>rd</sup> November 2006*

*No. 16*

---

---

The following are published in this Supplement –

**Criminal Appeals Bill 2006; and**

**Protection of Wrecks (Designation) Order 2006 (S. R. & O. No. 24 of 2006).**

## **Criminal Appeals Bill 2006**

(No: of 2006)

### **ARRANGEMENT OF PROVISIONS**

Clause

#### **Part I Introductory**

1. Short title
2. Interpretation
3. Conditional and absolute discharges
4. Certain orders not to be treated as a sentence
5. Attorney General to be deemed to be prosecutor in Crown prosecutions

#### **Part II Appeals from and Cases stated by the Summary Court**

##### *Appeal*

6. Right of appeal from the Summary Court to the Magistrate's Court
7. Documents to be sent to the Magistrate's Court

##### *Abandonment of appeal*

8. Abandonment of appeal: notice
9. Abandonment of appeal: bail
10. Powers of Summary Court on abandonment of appeal

##### *Composition of Magistrate's Court for the purposes of an appeal*

11. Composition of Magistrate's Court for the purposes of appeal and procedure

##### *Grounds for allowing an appeal against conviction*

12. Grounds for allowing an appeal against conviction
13. Power to substitute conviction of alternative offence
14. Power to substitute conviction of alternative sentence after guilty plea
15. Sentence when appeal against conviction allowed in respect of one or more offences
16. Power to order retrial
17. Supplementary provisions as to retrial
18. Powers on appeal against sentence

##### *Case stated*

19. Statement of case by Summary Court
20. Effect of decision of Supreme Court on case stated by Summary Court

##### *Supplementary provisions as to appeal and case stated*

21. Bail on appeal or case stated
22. Recognizance and fees on case stated
23. Mode of application to state a case under section 19(1)

- 24. Consideration of draft case by Summary Court
- 25. Preparation and submission of final case to the Summary Court
- 26. Extension of time limits by the Courts Administrator
- 27. Service of documents where application made to the Summary Court
- 28. Content of case stated by the Summary Court

### **Part III**

#### **Appeals from and cases stated by Magistrate's Court**

- 29. Right of appeal from the Magistrate's Court to the Supreme Court
- 30. Application for purposes of this Part of certain provisions of Part II relating to appeals and cases stated under that Part

### **Part IV**

#### **References by the Attorney General on points of law following acquittal of indictable offence**

- 31. References to superior court following acquittal of an indictable offence
- 32. Mode of references under section 31
- 33. Registrar's notice to respondent
- 34. Withdrawal or amendment of reference
- 35. Anonymity of the respondent
- 36. Service of documents

### **Part V**

#### **Reference to Supreme Court of unduly lenient sentence passed by Summary Court or Magistrate's Court**

- 37. Reviews of sentencing
- 38. Applications for review of sentence
- 39. Court Administrator's notice to offender
- 40. Withdrawal or amendment of application or reference
- 41. Court Administrator's power to obtain information from court of trial
- 42. Supply of documentary and other exhibits
- 43. Service of documents
- 44. Time limits in respect of applications under section 37(4)
- 45. Time spent in custody pending review etc
- 46. Presence of offender in court
- 47. Time from which sentence passed by Supreme Court or Court of Appeal if to run
- 48. Offender's costs

### **Part VI**

#### **Repeals**

- 49. Repeals etc

## CRIMINAL APPEALS BILL 2006

(No:            of 2006)

A BILL

for

AN ORDINANCE

To make new provision in relation to appeals against conviction or sentence in criminal proceedings; to make provision for references by the Attorney General to the Court of Appeal of points of law arising in cases where a person has been acquitted of an indictable offence and the powers of the Court of Appeal in relation to such references; to make provision for references by the Attorney General to the Supreme Court of unduly lenient sentences in the Summary Court and the Magistrate's Court; and by the Attorney General or the offender to the Court of Appeal of points of law arising out of the determination by the Supreme Court of such references, and to make provision for purposes connected with the foregoing purposes.

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

### **PART I INTRODUCTORY**

#### **Short title**

1. This Ordinance may be cited as the Criminal Appeals Ordinance 2006

#### **Interpretation**

2. Except where the context otherwise requires, "appeal" where used in Part II or Part III of this Ordinance means appeal under that Part and "appellant" has a corresponding meaning.

#### **Conditional and absolute discharges**

3. For the purposes of this Ordinance, and notwithstanding any other provision of written law —

(a) a person in respect of whom on conviction by a court of an offence an order for conditional or absolute discharge has been made is not to be deemed not to have been convicted of that offence; and

(b) a conditional discharge shall be treated as a sentence passed in respect of that offence.

*(The purpose of this clause is to permit an appeal against a conviction resulting in an absolute discharge and an appeal against conviction and sentence where the accused has been conditionally discharged. The clause repeats the effect of the existing law)*

**Certain orders not to be treated as a sentence**

4. In this Ordinance “sentence” includes any order made on conviction, not being —

(a) an order for the payment of costs;

*(The effect of this provision is that neither the accused nor the prosecutor has a right of appeal against an order or costs made against him. This can result in an injustice, but reflects the English law: section 108(3)(b) Magistrates Courts Act 1980 and the present law of the Falkland Islands)*

(b) an order under section 2 of the Protection of Animals Act 1911 (which enables a court to order the destruction of an animal); or

*(This provision does not change the existing law and follows the English law (section 108(3)(b) Magistrates' Courts Act 1980. If there were to be a right of appeal, provision would have to be made as to keeping of the animal concerned-- e.g. a dangerous dog-- pending the appeal. If the appeal were to be against an order of the Magistrate's Court to the Supreme Court it could be some months before the appeal could be heard)*

(c) an order made in pursuance of any enactment under which the court has no discretion as to the making of the order or its terms.

**Attorney General to be deemed to be prosecutor in Crown prosecutions**

5. For the purposes of the subsequent provisions of this Ordinance, the Attorney General shall be deemed to have been the prosecutor in all prosecutions where the information was laid by a police officer or other public officer acting in the course of his duty as such.

*(The reason for this provision is so that notice of appeal by the accused, and accompanying papers, are sent to the Attorney General's Chambers and do not linger in another department)*

**PART II**

**APPEALS FROM AND CASES STATED BY THE SUMMARY COURT**

*Appeal*

**Right of appeal from the Summary Court to the Magistrate's Court**

6.—(1) A person convicted by the Summary Court may appeal to the Magistrate's Court —

(a) if he pleaded guilty, against sentence;

(b) if he did not, against conviction or sentence;

(c) with the leave of the Magistrate's Court, against conviction of an offence in respect of which he pleaded guilty.

*(Subclause (1) is modelled on section 108(1) Magistrates Courts Act 1980. Paragraph (c) is new, and does not appear in that provision. It is aimed in particular at the situation where an unrepresented defendant pleads guilty to an offence to which he should have pleaded not guilty to the offence with which he was charged.)*

(2) An appeal under this section shall be commenced by the appellant's giving notice of appeal in accordance with the following provisions of this section and where the appellant seeks to appeal against an offence to which he pleaded guilty, shall include an application for the leave of the Senior Magistrate to pursue that appeal.

(3) The notice required by the preceding paragraph shall be in writing and shall be given to the Courts Administrator on behalf of the Summary Court and to the prosecutor.

(4) Notice of appeal shall be given not later than 21 days after the day on which the decision appealed against is given and, for this purpose, where the court has adjourned the trial of an information after conviction, that day shall be the day on which the court sentences or otherwise deals with the offender:

Provided that, where the Summary Court exercises any power to defer sentence conferred by written law, that day shall, for the purposes of an appeal against conviction, be the day on which the court exercises that power.

(5) A notice of appeal shall state the grounds of appeal.

(6) The time for giving notice of appeal may be extended, either before or after it expires, by the Magistrate's Court, on an application made in accordance with subsection (7).

(7) An application for an extension of time shall be made in writing, specifying the grounds of the application and sent to Courts Administrator.

(8) Where the Magistrate's Court extends the time for giving notice of appeal, the Courts Administrator shall give notice of the extension to —

(a) the appellant; and

(b) the prosecutor;

and furnish a copy of it to the Summary Court.

*(Subclauses (2) to (7) are modelled upon rule 63.2 of the Criminal Procedure Rules 2005 of England. Rule 63.2 replaces rule 7 of the Crown Court Rules 1982 which previously applied in the Falkland Islands in relation to appeals against conviction or sentence from the Summary Court to the Supreme Court)*

### **Documents to be sent to the Magistrate's Court**

7.—(1) The Courts Administrator shall as soon as possible furnish to the Magistrate's Court any notice of appeal to the Magistrate's Court given to the Courts Administrator on behalf of the Summary Court.

(2) The Courts Administrator shall furnish to the Magistrate's Court, with the notice of appeal, a copy of the notes of evidence taken at the hearing in the Summary Court together with a copy of the extract of the Summary Court's register relating to the relevant decision of the Summary Court and of the last known or usual address of the parties to the appeal.

(3) Where any person, having given notice of appeal to the Magistrate's Court, has been granted bail for the purposes of the appeal, the Courts Administrator shall before the date fixed for hearing furnish to the Summary Court a copy of the record made in pursuance of section 144(1) of the Criminal Justice Ordinance (Title 24.1).

(4) Where a notice of appeal is given in respect of an appeal against conviction by the Summary Court, the Courts Administrator shall furnish to the Magistrate's Court any admission of facts made for the purpose of the summary trial under section 10 of the Criminal Justice Act 1967 (proof by formal admission).

(5) Where a notice of appeal is given in respect of an appeal against sentence by the Summary Court, and where that sentence was a custodial sentence, the Courts Administrator shall furnish to the Magistrate's Court with the notice of appeal a pre-sentence report before passing such sentence.

*(Clause 7 is based on rule 63.3 of the Criminal Procedure Rules 2005 which replaces rule 74 of the Magistrates' Court Rules 1981 of England, formerly in force in the Falkland Islands)*

### *Abandonment of appeal*

#### **Abandonment of appeal: notice**

8.—(1) Without prejudice to the power of the Magistrate's Court to give leave for the appeal to be abandoned, an appellant may abandon an appeal by giving notice in writing, in accordance with the following provisions of this rule, not later than seven days before the day fixed for the hearing of the appeal.

(2) The notice required by the preceding subsection shall be given —

(a) to the Courts Administrator;

(b) to the prosecutor; and

the Courts Administrator shall furnish a copy of the notice to the Summary Court.

(3) In subsection (1) of this section and in the following two sections, "appeal" includes an application for leave to appeal.



*(Clause 8 is modelled on rule 63.5 of the Criminal Procedure Rules 2005 of England and replaces rule 11 of the English Crown Court Rules which previously applied in the Falkland Islands)*

**Abandonment of appeal: bail**

9. Where notice of abandonment of appeal has been given by the appellant, any recognizance conditioned for the appearance of the appellant at the hearing shall have effect as if conditioned for the appearance of the appellant before the Summary Court on a day and at a time to be notified to the appellant by the Courts Administrator.

*(Clause 9 is modelled on rule 63.6 of the Criminal Procedure Rules 2005 of England and replaces rule 75 of the Magistrates' Court Rules of England which previously applied in the Falkland Islands)*

**Powers of Summary Court on abandonment of appeal**

10.—(1) Where notice to abandon an appeal to the Magistrate's Court has been duly given by the appellant —

(a) the Summary Court may issue process for enforcing the decision of the Summary Court, subject to anything already suffered or done under it by the appellant;

(b) the Summary Court may, on the application of the prosecutor, order the appellant to pay to that party such costs as appear to the court to be just and reasonable in respect of the expenses properly incurred by the prosecutor in connection with that appeal before notice of abandonment was given to the prosecutor.

(2) In the case of an appeal in which the Attorney General is or is deemed by virtue of section 5 to be the prosecutor the power of the Summary Court under paragraph (b) of subsection (1) to order the appellant to pay costs to the prosecutor in respect of expenses incurred by the prosecutor shall include power to order the appellant to pay a sum or sums to the Attorney General for the benefit of the Crown in respect of legal work done by him or any public officer on his behalf in connection with the abandoned appeal.

*(This clause is modelled on section 109 of the Magistrates' Court Act 1980)*

*Composition of Magistrate's Court for the purposes of an appeal*

**Composition of Magistrate's Court for the purposes of appeal and procedure**

11.—(1) For the purposes of the hearing of an appeal from the Summary Court under this Part the Magistrate's Court shall be constituted by the Senior Magistrate sitting alone.

(2) The Magistrate's Court shall not conduct the hearing of the appeal by rehearing the proceeding against the appellant from which the appeal derives.

*(Under the Administration of Justice Ordinance as it as present stands it is not clear whether appeals from the Magistrate's Court (presently to the Supreme Court) should proceed by way of rehearing, as is the case in England, or not but the Chief Justice on an appeal early in 2006 ruled that they should not. In subsequent discussions with the Attorney General, the Chief Justice*

*suggested that the law should make it clear that such appeals should not proceed by way of rehearing. The above clause provides that the same shall apply in relation to appeals from the Summary Court to the Magistrate's Court. There are a number of reasons for taking this course—*

*(a) there appears to be no good reason for providing different procedures in appeals in summary criminal matters, dependent on which was the court of trial (Summary Court or Magistrate's Court) when the procedure at trial is identical;*

*(b) appeals by way of rehearing are likely to be more expensive in terms of legal fees;*

*(c) appeals by way of rehearing are more likely to be delayed by reason of problems with availability of witnesses;*

*(d) where any of the witnesses are vulnerable witnesses (e.g. young children) it is not desirable that they should be required to give evidence twice)*

#### *Grounds for allowing appeal and powers in relation to an appeal*

#### **Grounds for allowing an appeal against conviction**

**12.—(1)** Subject to the provisions of this Part, the Magistrate's Court —

(a) shall allow an appeal against conviction if it thinks that the conviction is unsafe; and

(b) shall dismiss such an appeal in any other case.

(2) In the case of an appeal against conviction the Magistrate's Court shall, if it allows the appeal, quash the conviction.

(3) An order of the Magistrate's Court quashing a conviction shall, except when under section 16 the appellant is ordered to be retried, operate as a direction to the Summary Court to enter, instead of the record of conviction, a record of acquittal.

*(This clause follows the corresponding provision in relation to appeals from the Supreme Court to the Court of Appeal)*

#### **Power to substitute conviction of alternative offence**

**13.—(1)** This section applies on an appeal against conviction, where the appellant has been convicted of an offence to which he did not plead guilty and the Summary Court could on the information have convicted him of some other offence, and on considering the record of the proceedings it appears to the Magistrate's Court that the Summary Court must have been satisfied of facts which proved him guilty of the other offence.

(2) The Magistrate's Court may, instead of allowing or dismissing the appeal, substitute for the finding of the Summary Court a finding of guilty of the other offence, and pass such sentence in

substitution for the sentence passed by the Summary Court as the Summary Court could by law have passed in respect of it, not being a sentence of greater severity.

**Power to substitute conviction of alternative sentence after guilty plea**

14.—(1) This section applies on an appeal against conviction where —

- (a) an appellant has been convicted of an offence to which he pleaded guilty;
- (b) if he had not so pleaded, he could have pleaded, or been found, guilty of some other offence, and
- (c) it appears to the Magistrate's Court that the plea of guilty indicates an admission by the appellant of facts which prove him guilty of the other offence.

(2) The Magistrate's Court may, instead of allowing or dismissing the appeal, substitute for the appellant's plea of guilty a plea of guilty of the other offence and pass such sentence in substitution for the sentence passed by the Summary Court as may be authorised by law for the other offence, not being a sentence of greater severity.

**Sentence when appeal against conviction allowed in respect of one or more offences**

15.—(1) This section applies where the appellant has appealed against conviction by the Summary Court in the same proceeding of two or more offences and the Magistrate's Court allows the appeal in respect of one or more of those offences, but not the other or all of them.

(2) For the purposes of this section, any two or more convictions are to be treated as having occurred in the same proceeding if —

- (a) they occur on the same day, or
- (b) the Summary Court in imposing sentence in respect of one or more of those convictions states, or it is clear by necessary implication (for example where a sentence of imprisonment is passed in respect of an offence and further sentences of imprisonment are imposed in respect of another offence or offences which are expressed to be concurrent with that sentence of imprisonment), that it is treating the sentence passed together with the other or others as substantially one sentence.

(3) Except as provided by subsection (4), the Magistrate's Court where this section applies may in respect of any offence in respect of which the appellant remains convicted pass such sentence, in substitution for any sentence passed by the Summary Court, as it thinks proper and is authorised by law for the offence of which he remains convicted.

(4) The Magistrate's Court shall not under this section pass any sentence such that the appellant's sentence as a whole will, in consequence of the appeal, be of greater severity than the sentence (taken as a whole) which was passed by the Summary Court in respect of convictions which occurred in the same proceeding.

**Power to order retrial**

16.—(1) Where the Magistrate's Court allows an appeal against conviction and it appears to the court that the interests of justice so require, it may order the information against the appellant to be retried.

(2) The Magistrate's Court shall not under this section order a person to be retried for any offence other than —

(a) the offence of which he was convicted and in respect of which the appeal is allowed; or

(b) an offence of which he could have been convicted at the original trial.

**Supplementary provisions as to retrial**

17.—(1) A person who is to be retried for an offence in pursuance of an order under section 16 shall be tried on a fresh information preferred by direction of the Magistrate's Court.

(2) Unless the Magistrate's Court on an application by the prosecutor by notice in writing, sent to the Court Administrator and to the appellant, grants leave for the information to be preferred within a greater time, an information preferred in pursuance of such a direction may not be preferred after the end of two months from the date of the order for retrial.

(3) The Magistrate's Court shall not grant leave on an application under subsection (2) unless it is satisfied —

(a) that the prosecution has acted with all due expedition; and

(b) there is good and sufficient reason for a retrial in spite of the lapse of time since the order under section 16 was made.

(4) Where a person has been ordered to be retried but an information cannot be preferred without leave, he may apply to the Magistrate's Court to set aside the order for retrial and make in its place an order quashing his conviction of the offence.

(5) On an application under subsection (2) the Magistrate's Court may set aside the order for retrial and make in its place an order quashing the applicant's conviction of the offence.

(6) The prosecutor may at any time by notice to the appellant and to the Courts Administrator notify that it is not intended to proceed to retrial of the appellant. The Courts Administrator shall furnish a copy of the notice to the Magistrate's Court, which shall thereupon set aside the order for retrial and make in its place an order quashing the applicant's conviction of the offence.

**Powers on appeal against sentence**

18. On an appeal against sentence the Magistrate's Court may, if it thinks that the appellant should be sentenced differently for the offence for which he was dealt with by the Summary Court, may —

(a) quash any sentence or order which is the subject of the appeal;

(b) in place of it pass such sentence or make such order as it thinks appropriate for the case and as the Summary Court had power to pass or make when dealing with him for the offence,

but the court shall so exercise its powers under this subsection that, taking the case as a whole, the appellant is not more severely dealt with on appeal than he was dealt with in the Summary Court.

#### *Case stated*

#### **Statement of case by Summary Court**

19.—(1) Any person who was a party to criminal proceedings before the Summary Court or is aggrieved by the conviction, order, determination or other proceeding of the court may question the proceeding on the ground that is wrong in law or is in excess of jurisdiction by applying to the justices composing the court to state a case for the opinion of the Supreme Court on the question of law or jurisdiction involved.

(2) An application under subsection (1) shall be made within 21 days after the day on which the decision of the Summary Court was given.

(3) For the purpose of subsection (2), the day on which the decision of the Summary Court is given shall, where the court has adjourned the trial of an information after conviction, be the day on which the court sentences or otherwise deals with the offender.

(4) On the making of an application under this section in respect of a decision any right of the applicant to appeal against the decision to the Magistrate's Court shall cease.

(5) If the justices are of opinion that an application under this section is frivolous, they may refuse to state a case, and if the applicant so requires, shall give him a certificate stating that the application has been refused; but the justices shall not refuse to state a case if the application is made by or under the direction of the Attorney General.

(6) Where justices refuse to state a case, the Supreme Court may, on the application of the person who applied for the case to be stated, make an order of mandamus requiring the justices to state a case.

*(This clause reflects section 111 of the Magistrates' Courts Act 1980)*

#### **Effect of decision of Supreme Court on case stated by Summary Court**

20. Any conviction, order determination or other proceedings of the Summary Court varied by the Supreme Court on an appeal by case stated, and any judgment or order of the Supreme Court on such an appeal, may be enforced as if it were a decision of the Summary Court.

*(This clause reflects section 112 of the Magistrates' Courts Act 1980)*

*Supplementary provisions as to appeal and case stated*

**Bail on appeal or case stated**

21.—(1) Where a person has given notice of appeal to the Magistrate's Court against the decision of the Summary Court or has applied to the Summary Court to state a case for the opinion of the Supreme Court, then, if he is in custody, the Summary Court may, subject to subsections (2) and (4), grant him bail.

(2) For the purposes of subsection (1), section 25 of the Criminal Justice and Public Order Act 1994 shall be deemed to apply as part of the law of the Falkland Islands.

*(Section 25 of the Criminal Justice and Public Order Act 1994 provides that bail may only exceptionally be granted to a person charged with or convicted certain offences if he has previously been convicted of any such offence. The offences concerned include murder, attempted murder, manslaughter and a number of serious sexual offences)*

(3) If a person is granted bail under subsection (1), the time and place at which he is to appear shall be —

(a) if he has given notice of appeal, the Magistrate's Court at the time appointed for the hearing of the appeal;

(b) if he has applied for the statement of a case, the Summary Court at such time within 10 days after the judgment of the High Court has been given as may be specified by the Summary Court.

(4) Subsection (1) shall not apply where the accused has been committed to the Magistrate's Court for sentence under section 14 or 15 of the Administration of Justice Ordinance (Title 22.1).

(5) Section 37(6) of the Criminal Justice Act 1948 and section 22 of the Criminal Justice Act 1967 are applied as law of the Falkland Islands with the replacement —

(a) of the words "High Court" wherever they appear in those provisions with the words "Supreme Court"; and

(b) of the words "magistrates' court" wherever they appear in those provisions with the words "court of summary jurisdiction".

(6) Section 37(6) of the Criminal Justice Act 1948 (which as applied by subsection (5) of this section relates to the currency of a sentence while a person is released on bail by the Supreme Court) shall apply to a person released on bail by the Summary Court under this section pending the hearing of a case stated as it applies to a person released on bail under section 22 of the Criminal Justice Act 1967 (which as applied by subsection (5) of this section enables the Supreme Court to grant or vary conditions bail in certain circumstances to grant bail or vary the conditions of bail which has been granted).

*(This clause is modelled, in part, on section 113 of the Magistrates' Courts Act 1980 of England)*

**Recognizance and fees on case stated**

**22.**—(1) Subject to subsection (2), justices to whom an application has been made to state a case for the opinion of the Supreme Court on any proceeding of the Summary Court shall not be required to state the case until the applicant has entered into a recognizance, with or without sureties, before the Summary Court, conditioned to prosecute the appeal without delay and to submit to the judgment of the Supreme Court and pay such costs as that court may award.

(2) Subsection (1) shall have not apply where the application to state a case has been made by, or by the direction of, the Attorney General.

*(This clause is modelled on section 114 of the Magistrates' Courts Act 1980)*

**Mode of application to state a case under section 19(1)**

**23.**—(1) An application under section 19(1) shall be made in writing and signed by or on behalf of the applicant and shall identify the question or questions of law or jurisdiction on which the opinion of the Supreme Court is sought.

(2) When one of the questions on which the opinion of the Supreme Court is sought is whether there was evidence on which the Summary Court could come to its decision, the particular finding of fact made by the Summary Court which it is claimed cannot be supported by the evidence before the Summary Court shall be specified in such application.

*(This clause is modelled on rule 64.1 of the Criminal Procedure Rules 2005 of England which replaces rule 76 of the Magistrates' Courts Rules 1981 of England which previously applied in the Falkland Islands)*

**Consideration of draft case by the Summary Court**

**24.**—(1) Within 21 days after receipt of an application made in accordance with section 23, the Courts Administrator shall, unless the justices refuse under section 19(5) to state a case, send a draft case in which are stated the matters required under section 28 (content of case stated) to the applicant or his legal practitioner and shall send a copy thereof to the respondent or his legal practitioner.

(2) Within 21 days after receipt of as case stated under subsection (1), each party may make representations thereon. Any such representations shall be in writing and signed by or on behalf of the party making them and shall be sent to the Courts Administrator.

(3) Where the justices under section 19(5) refuse to state a case and they are required by a mandatory order of the Supreme Court under section 19(6) to state a case subsection (1) of this section shall apply as if —

(a) the words “receipt of an application made in accordance with section 23” were replaced by the words “the date on which a mandatory order under section 19(6) is made”; and

(b) the words “unless the justices refuse under section 19(5) to state a case” were omitted.

*(This clause is modelled on rule 64.2 of the Criminal Procedure Rules 2005 of England which replaces rule 77 of the Magistrates’ Courts Rules 1981 of England which previously applied in the Falkland Islands)*

#### **Preparation and submission of final case to the Summary Court**

**25.—**(1) Within 21 days after the latest day on which representations may be made under section 24(2), the justices whose decision is questioned shall, after considering such representations, make such adjustments, if any, to the draft case prepared for the purposes of that rule as they think fit, and shall date and sign the case.

(2) A case may be stated on behalf of the justices whose decision is requested by any 2 or more of them and may, if the justices so direct, be signed on their behalf by the Courts Administrator.

(3) Forthwith after the case has been stated and signed the Courts Administrator shall send it to the applicant or his legal practitioner, together with any statement required by section 26(3).

*(This clause is modelled on rule 64.3 of the Criminal Procedure Rules 2005 of England which replaces rule 78 of the Magistrates’ Courts Rules 1981, which previously applied in the Falkland Islands)*

#### **Extension of time limits by the Courts Administrator**

**26.—**(1) If the Courts Administrator is unable to send to the applicant a draft case under section 24(1) within the time required by that subsection, he shall do so as soon as practicable thereafter and the provisions of that rule shall apply accordingly; but in that event the Courts Administrator shall attach to the draft case, and to the final case when it is sent under section 25(3) to the applicant or his legal practitioner, a statement of the delay and of the reasons for it.

(2) If the Courts Administrator receives an application in writing from or on behalf of the applicant or respondent for an extension of time within which representations on the draft case may be made under section 24(2), together with reasons in writing for it, the Courts Administrator may, by notice in writing sent to the applicant, or respondent as the case may be, extend the time and the provisions of section 24(2) and of section 25 shall apply accordingly; but in that event the Courts Administrator shall attach to the final case, when it is sent to the applicant or his legal practitioner under section 25(3), a statement of the delay and the reasons for it.

(3) If the justices are unable to state a case within the time required by section 25(1), they shall do so as soon as practicable thereafter and the provisions of section 25 shall apply accordingly, but in that event the Courts Administrator shall attach to the final case, when it is sent to the applicant or his legal practitioner under section 25(3), a statement of the delay and the reasons for it.



*(This clause is modelled on rule 64.5 of the Criminal Procedure Rules 2005 of England. This replaces rule 79 of the Magistrates' Courts Rules 1981, which previously applied in the Falkland Islands)*

#### **Service of documents where application made to the Summary Court**

27. Any document required by sections 23 to 26 to be sent to any person shall be either delivered to him or sent by post in a registered letter and, if sent by post to an applicant or respondent, shall be addressed to him at his last known or usual place of abode.

*(This clause is modelled on rule 64.5 of the Criminal Procedure Rules 2005, this replaces rule 80 of the Magistrate's Court Rules 1981, which previously applied in the Falkland Islands)*

#### **Content of case stated by the Summary Court**

28.—(1) A case stated by the Summary Court shall state the facts found by the court and the question or questions of law or jurisdiction on which the opinion of the Supreme Court is sought.

(2) Where one of the questions on which the opinion of the Supreme Court is sought is whether there was evidence on which the Summary Court could come to its decision, the particular finding of fact which it is claimed cannot be supported by the evidence before the Summary Court shall be specified in the case.

(3) Unless one of the questions on which the opinion of the Supreme Court is sought is whether there was evidence on which the Supreme Court could come to its decision, the case shall not contain a statement of evidence.

*(This clause is modelled on rule 64.6 of the Criminal Procedure Rules 2005 of England. This replaces rule 81 of the Magistrates' Courts Rules of England, which previously applied in the Falkland Islands)*

### **PART III APPEALS FROM AND CASES STATED BY MAGISTRATE'S COURT**

#### **Right of appeal from the Magistrate's Court to the Supreme Court**

29.—(1) A person convicted by the Magistrate's Court may appeal to the Supreme Court—

(a) if he pleaded guilty, against sentence;

(b) if he did not, against conviction or sentence; and

(c) with the leave of the Magistrate's Court or of the Supreme Court, against his conviction of an offence to which he pleaded guilty.

(2) An appeal under this section shall be commenced by the appellant's giving notice of appeal in accordance with the following provisions of this section and where the appellant seeks to appeal against an offence to which he pleaded guilty, shall include an application for leave to pursue that appeal.

(3) The notice required by the preceding paragraph shall be in writing and shall be given to the Courts Administrator on behalf of the Magistrate's Court and to the prosecutor.

(4) Notice of appeal shall be given not later than 21 days after the day on which the decision appealed against is given and, for this purpose, where the court has adjourned the trial of an information after conviction, that day shall be the day on which the court sentences or otherwise deals with the offender:

Provided that, where the Magistrate's Court exercises any power to defer sentence conferred by written law, that day shall, for the purposes of an appeal against conviction, be the day on which the court exercises that power.

(5) A notice of appeal shall state the grounds of appeal.

(6) The time for giving notice of appeal may be extended, either before or after it expires, by the Magistrate's Court or of the Supreme Court, on an application made in accordance with subsection (7).

(7) An application for an extension of time shall be made in writing, specifying the grounds of the application and sent to Courts Administrator.

(8) Where the Magistrate's Court extends the time for giving notice of appeal, the Courts Administrator shall give notice of the extension to —

(a) the appellant; and

(b) the prosecutor;

and furnish a copy of it to the Supreme Court.

(9) The Courts Administrator shall furnish to the Supreme Court any admission of facts made for the purpose of the summary trial under section 10 of the Criminal Justice Act 1967 (proof by formal admission).

**Application for purposes of this Part of certain provisions of Part II relating to appeals and cases stated under that Part**

30.—(1) With the modifications stated in subsection (2) of this section, sections 7 to 28, except section 11(1), shall apply in relation to appeals and cases stated to which this Part applies.

(2) Those modifications are —

(a) every reference in those sections to the justices shall be replaced by a reference to the Senior Magistrate;

(b) every reference in those sections to the Magistrate's Court shall be replaced by a reference to the Supreme Court; and

(c) every reference in those sections to the Summary Court shall be replaced by a reference to the Magistrate's Court.

#### **PART IV**

#### **REFERENCES BY THE ATTORNEY GENERAL ON POINTS OF LAW FOLLOWING ACQUITTAL OF INDICTABLE OFFENCE**

##### **References to superior court following acquittal of an indictable offence**

31.—(1) Where a person has been acquitted of an indictable offence has been acquitted (whether in respect of the whole or part of the indictment), the Attorney General may, if he desires the opinion of the Court of Appeal on a point of law which has arisen in the case, refer that point to that court, and the court shall, in accordance with this section, consider the point and give its opinion on it.

(2) For the purpose of consideration of a point referred to a relevant superior court under this section that court shall hear argument —

(a) by, or by a legal practitioner on behalf of, the Attorney General; and

(b) if the acquitted person desires to present any argument to the court, by the acquitted person or by a legal practitioner on his behalf.

(3) Whenever a point is referred to the Court of Appeal under this section, the Court of Appeal shall consider the point and give its opinion on it accordingly.

(4) Where, on point being referred to the Court of Appeal under this section, the acquitted person appears by legal practitioner for the purpose of presenting any argument to the court, he shall be entitled to payment by the Crown of his costs in such amount as shall be fixed by the Senior Magistrate and for that purpose section 20(1) of the Prosecution of Offences Act 1985 and the regulations and scales made for the purposes of that provision shall apply in relation to this section as it and they apply in relation to Part II of that Act.

*(The provision made by this clause is new and is based on section 36 of the Criminal Justice Act 1972. There is no present provision of Falkland Islands law permitting the prosecution to challenge an acquittal on indictment in the Supreme Court. The clause would make limited inroads into that position and would enable the Attorney General to challenge a decision on a point of law which arose in the case. Where there is a jury, the challenge is of the judge, not the jury, and the acquittal could not be overturned, even in a case where the trial was before a judge sitting without a jury. The clause would not apply where the trial was in the Summary Court or Magistrate's Court. In relation to acquittals in such trials a decision on a point of law arising in the case in the Summary Court or Magistrate's Court could be challenged on case stated under the previous provisions of this Bill)*

### **Mode of references under section 31**

**32.**—(1) Every reference under section 31 shall be in writing and shall —

- (a) specify the point of law referred and, where appropriate, such facts of the case as are necessary for proper consideration of the point of law;
- (b) summarise the arguments intended to be put to the court; and
- (c) specify the authorities intended to be cited:

Provided that no mention shall be made in the reference of the proper name of any person or place which is likely to lead to the identification of the respondent.

(2) A reference shall be entitled “Reference under section 31 of the Criminal Appeals Ordinance 2006”.

*(This clause is modelled on rule 69.1 of the Criminal Procedure Rules 2005 of England)*

### **Registrar’s notice to respondent**

**33.**—(1) The Registrar of the Court of Appeal shall cause to be served on the respondent notice of the reference which shall also —

- (a) inform the respondent that the reference will not affect the trial in relation to which it is made or any acquittal in that trial; and
- (b) invite the respondent, within such period as may be specified in the notice (being not less than 28 days from the date of service of the notice), to inform the Registrar if he wishes to present any argument to the court and, if so, whether he wishes to present such argument in person or by legal practitioner on his behalf.

(2) The court shall not hear argument by or on behalf of the Attorney General until the period specified in the notice has expired unless the respondent agrees or has indicated that he does not wish to present any argument to the court.

*(This clause is modelled on rule 69.2 of the Criminal Procedure Rules 2005 of England)*

### **Withdrawal or amendment of reference**

**34.** The Attorney General may withdraw or amend the reference at any time before the court have begun the hearing, or, after that, until the court have given their opinion, may withdraw or amend the reference by leave of the court, and notice of such withdrawal shall be served on the respondent on behalf of the Attorney General.

*(This clause replicates rule 69.3 of the Criminal Procedure Rules 2005 of England)*

**Anonymity of the respondent**

35. The court shall ensure that the identity of the respondent is not disclosed during the proceedings on a reference except where the respondent has given his consent to the use of his name in the proceedings.

*(This clause replicates rule 69.4 of the Criminal Procedure Rules 2005 of England)*

**Service of documents**

36. For the purpose of this Part service of a document on the respondent may be effected —

(a) in the case of a document to be served on a body corporate by delivering it to the secretary or clerk to the body at its principal or registered address or sending it by post addressed to the secretary or clerk of that body at that office; and

(b) in the case of a document to be served on any other person by—

(i) delivering it to the person to whom it is directed;

(ii) leaving it for him with some person at his last known or usual place of abode, or

(iii) sending it to him by post addressed to him at his last known or usual place of abode.

*(This clause replicates rule 69.6(1) of the Criminal Procedure Rules 2005 of England)*

**PART V****REFERENCE TO SUPREME COURT OF UNDULY LENIENT SENTENCE  
PASSED BY SUMMARY COURT OR MAGISTRATE'S COURT****Reviews of sentencing**

37.—(1) If it appears to the Attorney General —

(a) that the sentencing of a person in a proceeding in the Summary Court or in the Magistrate's Court has been unduly lenient; and

(b) that the case is one to which this Part applies,

he may refer the case to the Supreme Court to review the sentencing of that person; and on such a reference the Supreme Court may —

(i) quash any sentence passed on him in the proceeding, and

(ii) in place of it pass such sentence as it thinks appropriate for the case and as the original sentencing court had power to pass when dealing with him.

(2) Without prejudice to the generality of subsection (1), the condition specified in paragraph (a) of that section may be satisfied if it appears to the Attorney General that the sentencing court —

(a) erred in law as his powers of sentencing; or

(b) failed to impose a sentence required by law.

(3) For the purposes of this Part any two or more sentences are to be treated as being imposed in the same proceeding if —

(a) they were passed on the same day;

(b) they were passed on different days but the court in passing any one of them stated that it was treating that one together with the other or others as substantially the one sentence.

(4) Where the Supreme Court has concluded its review of a case referred to it under this section the Attorney General or the offender may refer a point of law involved in any sentence passed on that person in that proceeding to the Court of Appeal for its opinion and the Court of Appeal shall consider the point and either remit the case to the Supreme Court or deal with it itself.

(5) A reference under subsection (4) shall only be made with the leave of the Supreme Court on an application made within 28 days of it delivering its decision on the review or of the Court of Appeal and such leave shall only be granted if the court is satisfied that the point is of general public importance.

(6) For the purpose of dealing with a case under this section the Court of Appeal may exercise any powers of the Supreme Court.

(7) For the purposes of subsection (5), the Supreme Court concludes its review when it delivers in writing the reasons for its decision.

*(This clause is based on section 36 of the Criminal Justice Act 1988, with modifications. Under the present law of the Falkland Islands, there is no method available to the prosecution of challenging a sentence which is unduly lenient. Section 36 of the 1988 Act enables the Attorney General of England to apply to the English Court of Appeal for review of a decision of the Crown Court. In England, trials on indictment take place before a judge and jury. In the Falkland Islands most offences which, in England, would only be triable on indictment take place before the Magistrate's Court utilising the same summary procedure as applies in the Summary Court. In general, the sentencing power of the Summary Court is much lower than that of the Magistrate's Court (and for that reason the Summary Court can commit a person it has convicted to the Magistrate's Court for sentence if a higher sentence than the Summary Court can impose could be imposed by the Magistrate's Court and the Summary Court believes that a greater sentence than it itself can impose may be appropriate). In fishery cases, however, the Summary Court has the same sentencing powers as the Magistrate's Court.*

*The clause would enable the Attorney General to ask the Supreme Court to review any sentence imposed by the Summary Court or Magistrate's Court which he considers to be unduly lenient. The English Court of Appeal has said that the purpose of section 36 of the Criminal Justice Act 1988, on which this clause is based, is the avoidance of gross error, the allaying of widespread public concern at what appears to be an "unduly" lenient sentence, and the preservation of public confidence in cases where a judge has departed to a substantial extent from the norms of sentencing generally applied, the distinction between a lenient sentence needs to be kept in mind, and careful consideration needs to be given to the individual circumstances before a decision is taken by the Attorney General to make the case the subject of a reference. In England, where a sentence is increased the Court of Appeal will allow some discount from what it considers to be the correct sentence on account of what is commonly referred to as "the double jeopardy principle" (i.e. that a person having dealt with by a court in respect of an offence should not again face conviction or sentence in respect of that offence). The English Court of Appeal gives greater weight to this factor where the offender did not face a custodial sentence in the first instance, or where he has been released from the sentence passed. Allowance will also be made for the fact that the offender has completed part or all of a community sentence)*

#### **Applications for review of sentence**

**38.—**(1) Every application for review of sentence under section 37 shall be in writing and shall be sent to the Courts Administrator within 28 days from the day on which the sentence, or the last of the sentences, in the case was passed.

(2) Each such application shall —

(a) specify —

(i) the name of the offender,

(ii) the date on which, and the offence with which, he was convicted,

(iii) the sentence passed on him in respect of that offence,

(iv) the date on which the sentence was passed (if later than the date under sub-paragraph (ii));

(v) the court by which the sentence was passed; and

(b) state the reason why it appears to the Attorney General that the sentencing of the offender was unduly lenient;

(c) if it contains the information required by paragraphs (a) and (b) constitute the reference to the Supreme Court.

(3) An application shall be entitled "Reference under section 37 of the Criminal Appeal Ordinance 2006" and shall be sent on behalf of the Attorney General to the Courts Administrator

who shall, as soon as practicable after receiving it, cause a copy of it to be served on the offender.

*(This clause is based on rule 70.1 of the Criminal Procedure Rules 2005)*

**Court Administrator's notice to offender**

**39.**—(1) The Courts Administrator shall, as soon as practicable after receiving the application, cause to be served on the offender a copy of it together with a notice which —

(a) informs him that the result of any reference could be that the court would quash the sentence passed on him in the proceeding and in place of it pass such sentence as they thought appropriate for the case and as the court below had power to pass when dealing with him (including a greater punishment);

(b) informs him of the effect of sections 46(1) (entitlement of offender to be present at hearing of reference, although he may be in custody), 46(2) (power of court to pass sentence on offender who is not present) and 48 (entitlement of offender to reasonable costs out of central funds) of Schedule 3 to the Criminal Justice Act 1988;

(c) invites him, within such period as the Courts Administrator may specify (being not less than 14 days from the date of service on him of the notice), to serve notice on the Courts Administrator if he wishes to present any argument to the court on the hearing of the application or, if leave is given, of the reference, and whether to present it in person or by counsel on his behalf;

(d) draws to his attention the effect of section 42 (supply of documentary and other exhibits); and

(e) advises him to consult a legal practitioner as to his position as soon as possible.

(2) The court shall not hear argument by or on behalf of the Attorney General until the period specified by the Courts Administrator has expired unless the offender agrees or has indicated that he does not wish to present any argument to the Court.

*(This clause is based on rule 70.3 of the Criminal Procedure Rules 2005 of England)*

**Withdrawal or amendment of application or reference**

**40.** The Attorney General may withdraw or amend an application or reference at any time before the court have begun the hearing of the application or reference as the case may be, or, after that, and until the court have given their decision, may withdraw or amend the application or reference by leave of the court, and notice of such withdrawal or amendment shall be served on the Courts Administrator and on the offender on behalf of the Attorney General.

*(This clause is modelled on rule 70.5 of the Criminal Procedure Rules 2005 of England)*



#### **Court Administrator's power to obtain information from court of trial**

41. The Courts Administrator may require the court of trial to furnish the Supreme Court with any assistance or information which it may require for the purpose of exercising their jurisdiction.

*(This clause is based on rule 70.6 of the Criminal Procedure Rules 2005 of England)*

#### **Supply of documentary and other exhibits**

42.—(1) The Courts Administrator shall, on request, supply to the offender copies or reproductions of documents or other things required for the application or reference and in such case may make charges in accordance with scales and rates fixed from time to time by regulations.

(2) The Courts Administrator shall, on request, make arrangements for the offender to inspect any document or other thing required for the application or reference.

(3) This rule shall not apply to the supply of transcripts of any proceedings or part of proceedings.

*(This clause is based on rule 70.7 of the Criminal Procedure Rules 2005 of England)*

#### **Service of documents**

43.—(1) For the purposes of this Part service of a document on the offender may be effected —

(a) in the case of a document to be served on a body corporate by delivering it to the secretary or clerk of the body at its registered or principal office or sending it by post addressed to the secretary or clerk of the body at that office; and

(b) in the case of a document to be served on any other person —

(i) by delivering it to the person to whom it is directed,

(ii) by leaving it for him with some person at this last known or usual place of abode, or

(iii) by sending it by post addressed to him at his last known or usual place of abode.

(2) For the purpose of this Part service of a document on the Courts Administrator may be effected —

(a) in the case of an offender who is in custody, by delivering it to the person having custody of him;

(b) by delivering it to the Registrar;

(c) by addressing it to him and leaving it at his office at the Town Hall, Stanley;

(d) by sending it by post addressed to him at the said office.

(3) A person having custody of an offender and to whom a document is delivered in pursuance of paragraph (2)(a) shall endorse on it the date of delivery and cause it to be forwarded to the Courts Administrator.

*(This clause is modelled on rule 70.8 of the Criminal Procedure Rules 2005 of England)*

**Time limits in respect of applications under section 37(4)**

44. An application to the Supreme Court for leave to refer a case to the Court of Appeal under section 37(4) shall be made within a period of 28 days beginning with the date on which the Supreme Court concludes its review under section 37(1); and an application to the Court of Appeal for leave shall be made within the period of 21 days from the date on which the Supreme Court concludes its review or refuses leave to refer the case to the Court of Appeal.

*(This clause and clauses 45 to 48 are based on provisions of Schedule 3 of the Criminal Justice Act 1988 of England)*

**Time spent in custody pending review etc**

45. The time during which an offender whose case has been referred for review under section 37 is in custody pending its review and pending any reference to the Court of Appeal under subsection (4) of that section shall be reckoned as part of the term of any sentence to which he is for the time being subject.

**Presence of offender in court**

46.—(1) A person in custody shall not be entitled to be present —

(a) on any proceedings preliminary or incidental to a reference;

(b) on the hearing of any reference under section 37(4) by the Court of Appeal,

but shall be entitled to be present on the hearing of a reference by the Supreme Court.

(2) The power of the Supreme Court to pass sentence on a person may be exercised even though he is not present.

**Time from which sentence passed by Supreme Court or Court of Appeal is to run**

47. The term of any sentence passed by the Supreme Court or Court of Appeal under section 37 shall, unless otherwise directed by the court in question, begin to run from the time when it would have begun to run if passed in the proceeding in relation to which the reference was made.

**Offender's costs**

48. Where, on a sentence being referred to the Supreme Court under section 37(1) or a point of law being referred to the Court of Appeal under section 37(4), the offender appears by legal practitioner for the purpose of presenting any argument to the court, he shall be entitled to payment by the Crown of his costs in such amount as shall be fixed by the Senior Magistrate and

for that purpose section 20(1) of the Prosecution of Offences Act 1985 and the regulations and scales made for the purposes of that provision shall apply in relation to this section as it and they apply in relation to Part II of that Act.

## **PART VI REPEALS**

### **Repeals etc**

49.—(1) Sections 19, 56 and 57 (which have been replaced by provisions this Ordinance) of the Administration of Justice Ordinance (Title 22.1) are hereby repealed.

(2) Sections 20 to 23 of that Ordinance shall no longer have effect in relation to criminal proceedings.

(3) Part V (sections 108 to 114) of the Magistrate's Court Act 1980 (c 43) so far as they relate to criminal proceedings shall cease to have effect as part of the law of the Falkland Islands

*(Sections 111, 112 and 114 of the Magistrate's Court Act 1980 also apply in respect of civil proceedings)*

---

## SUBSIDIARY LEGISLATION

---

### PROTECTION OF WRECKS

#### Protection of Wrecks (Designation) Order 2006

S. R. & O. No: 24 of 2006

*Made: ..... 23 October 2006*

*Published: ..... 3 November 2006*

*Coming into force: on publication*

IN EXERCISE of my powers under section 3 of the Protection of Wrecks Ordinance (Title 34.5) 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 Protection of Wrecks (Designation) Order 2006 and shall come into force upon publication in the *Gazette*.

#### **Designation of restricted area**

2. The area within one hundred metres of any part of the outside of the hull of *HMS Coventry* the centre of the wreck of which lies at 51°04.077'S, 59°42.626'W is designated as a restricted area.

Made this 23<sup>rd</sup> day of October 2006

A. E. Huckle,  
*Governor*

---

#### EXPLANATORY NOTE

*(not forming part of the above Order)*

This Order designates the wreck of HMS Coventry a restricted site under the provisions of the Protection of Wrecks Ordinance with the effect that it is unlawful to dive in that area without a licence under the Protection of Wrecks Ordinance.

Published by the Attorney General's Chambers, Cable Cottage, Stanley, Falkland Islands  
Price: Five Pounds and Eighty Pence

© CrownCopyright 2006



**THE  
FALKLAND ISLANDS GAZETTE  
Supplement**

**PUBLISHED BY AUTHORITY**

---

*Vol. 17*

*29<sup>th</sup> November 2006*

*No. 17*

---

The following are published in this Supplement –

**Coins (No 2)(Amendment) Order 2006; and**

**Falkland Islands Status (Amendment) Bill 2006.**

---

## SUBSIDIARY LEGISLATION

---

### CURRENCY

#### Coins (No 2) (Amendment) Order 2006

S. R. & O. No. 25 of 2006

*Made: ..... 24 November 2006*

*Published: ..... 29 November 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 (No 2)(Amendment) Order 2006 and shall come into force upon publication in the *Gazette*.

#### **Amendment of the Coins (No 2) Order 2006**

2. Schedule 1 of the Coins (No 2) Order 2006(a) is replaced with the following —

#### **“Schedule**

#### **Specifications of coins of the Falkland Islands to commemorate the lives of six Great Britons**

Type	Cupro-nickel	Silver Proof	Gold Proof	Gold Proof
Denomination	1 Crown	1 Crown	1/5 <sup>th</sup> Crown	1/25 <sup>th</sup> 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	25,000	2,000	20,000

---

(a) SR&O No 23 of 2006

Mint	Pobjoy Mint Ltd
Remedy	Variations to be allowed of the tolerance permitted by the Pobjoy Mint Ltd.
Obverse design for reverse designs 1 and 2	The uncouped portrait of Her Majesty the Queen by Raphael Maklouf in the centre surrounded by the inscription "QUEEN ELIZABETH II FALKLAND ISLANDS 2006".
Obverse design for reverse designs 3 to 6	The uncouped portrait of Her Majesty the Queen by Ian Rank-Broadley surrounded by the inscription "QUEEN ELIZABETH II FALKLAND ISLANDS 2007".
Reverse design (1 of 6)	Design depicts an image of Vice-Admiral Nelson framed by a border inscribed with the famous signal "ENGLAND EXPECTS THAT EVERY MAN WILL DO HIS DUTY" together with a ship's cannon. The 'Victory' is shown to his left and the Order of Bath to his right. Wording "1758 – HORATIO NELSON – 1805" appears in the surround and the denomination at the base.
Reverse design (2 of 6)	Design depicts an image of Isambard Kingdom Brunel with the 'ss Great Britain' in the background. The design framed by a border showing different images associated with him together with the propeller from the Great Britain. Wording "1806 – ISAMBARD KINGDOM BRUNEL – 1859" appears in the surround and the denomination at the base.
Reverse design (3 of 6)	Design depicts an image of Sir Winston Churchill framed within the sash of the Order of the Garter. Wording "1874 – WINSTON CHURCHILL – 1965" appears in the surround and the denomination at the base.
Reverse design (4 of 6)	Design depicts an image of Charles Darwin framed by a border depicting various steps in the Evolution Chain together with a Warrah. The 'Beagle' appears to his right. Wording "1809 – CHARLES DARWIN – 1882" appears in the surround and the denomination at the base.
Reverse design (5 of 6)	Design depicts an image of Lord Baden-Powell framed by a border showing images from Scouting together with the scout badge. A scout is shown to his left and a camp site to his right. Wording "1857 – ROBERT BADEN-POWELL – 1941" appears in the surround and the denomination at the base.
Reverse design (6 of 6)	Design depicts an image of Queen Elizabeth I framed by a border showing heraldic images together with the Tudor Rose. Wording "1533 – QUEEN ELIZABETH I – 1603" appears in the surround and the denomination at the base."

Made this 24<sup>th</sup> day of November 2006

H. Hall,  
*Acting Governor*



**Falkland Islands Status (Amendment) Bill 2006**

(No:     of 2006)

**ARRANGEMENT OF PROVISIONS**

**Clause**

1.     Short title and commencement
2.     Amendment of the Falkland Islands Status Ordinance

**Schedule**

**FALKLAND ISLANDS STATUS (AMENDMENT) BILL 2006**

(No:             of 2006)

**A BILL**

**for**

**AN ORDINANCE**

To amend the Falkland Islands Status Bill Ordinance.

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

**Short title and commencement**

1. This Ordinance may be cited as the Falkland Islands Status (Amendment) Ordinance 2006 and shall come into force on 1<sup>st</sup> January 2007.

**Amendment of the Falkland Islands Status Ordinance**

2. The Falkland Islands Status (Amendment) Ordinance (Title 52.3) is amended in the manner specified in the Schedule to this Ordinance.

**SCHEDULE**

**Amendment of the Falkland Islands Status Ordinance**

1. In this Schedule “the principal Ordinance” means the Falkland Islands Status Ordinance (Title 52.3).
2. Section 4(1) of the principal Ordinance is replaced by the following —

“(1) The Governor shall during the months of January, April, July and October in each year cause the Executive Council to consider and advise him upon any applications for Falkland Islands status forwarded to him by the Principal Immigration Officer for decision and remaining undetermined and after such consideration the Governor shall determine any such application by granting or refusing it but the Governor shall not refuse an application unless he has —

(a) notified the applicant in writing of his intention to refuse the application and of the ground or grounds on which he intends to refuse it;

(b) given the applicant a reasonable opportunity to make representations in relation to the intended refusal of the application on that ground or those grounds;

(c) caused any such representations to be considered by the Executive Council.”

3. Section 4 of the principal Ordinance is further amended by inserting the following subsection at the end of section 4 —

“(3) A grant of Falkland Islands status shall not take effect unless the Governor otherwise determines having regard to the circumstances of the particular applicant (for example because of the infirmity of mind or body of the applicant) until the applicant has at a Falkland Islands status ceremony held in accordance with section 4A made the Falkland Islands status pledge and a certificate of Falkland Islands status has been delivered to him thereat.”

4. The following sections are inserted in the principal Ordinance after section 4 —

**“Falkland Islands status ceremony and Falkland Islands status pledge**

**4A.—**(1) A Falkland Islands status ceremony shall be held within approximately one month after any grant of Falkland Islands status and shall be presided over by the Governor or such person as he may delegate for the purpose.

(2) Subject to subsection (3), every person who after the commencement of this section has been granted Falkland Islands status but has not yet made the Falkland Islands status pledge before the person presiding at a Falkland Islands status ceremony shall be invited to attend every such ceremony until he has made such a pledge.

(3) Subsection (2) does not apply to a person in respect of whom a grant of Falkland Islands status has taken effect by virtue of a determination made by the Governor under section 4(3).

(4) The Falkland Islands status pledge shall be made by the person concerned reading aloud and thereafter signing in the presence and hearing of the person presiding at a Falkland Islands status ceremony a pledge in the following form —

“I, ..... pledge my loyalty to the Falkland Islands and will respect its rights and freedoms. I will uphold its democratic values. I will obey its laws and fulfil my duties and obligations under its Constitution.” ”

(5) If a person to whom subsection (2) applies fails within twelve months after the grant to him of Falkland Islands status to make the Falkland Islands status pledge in accordance with subsection (4), the Governor may give notice in writing to him that he intends to annul that grant unless the person concerned within six months after the service of that notice makes that pledge at a Falkland Islands status ceremony.

(6) If a person upon whom a notice has been given in accordance with subsection (5) fails within six months thereafter to make the Falkland Islands status pledge in accordance with that notice, the Governor may annul the grant to that person of Falkland Islands status.

**Register of persons who have been granted Falkland Islands status and persons who have made the Falkland Islands status pledge**

**4B.** The Principal Immigration Officer shall maintain a register of persons who have been granted Falkland Islands status under this Ordinance and persons who have made the Falkland Islands status pledge and that register shall be open to inspection during normal office hours on payment of such fee as may be prescribed by regulations under section 7.”

5. Section 7 of the principal Ordinance is amended —

(a) by omitting the words in parentheses in paragraph (b) of that section;

(b) by replacing the full stop at the end of that paragraph with a comma and the word “and”;  
and

(c) by inserting thereafter the following paragraph —

“(c) the fee payable for inspection of the register maintained under section 4B.”



**THE  
FALKLAND ISLANDS GAZETTE  
Supplement**

**PUBLISHED BY AUTHORITY**

---

---

*Vol. 17*

*29<sup>th</sup> November 2006*

*No. 18*

---

---

The following are published in this Supplement –

**Explanatory Memorandum to the Companies (Amendment) Bill 2006;**

**Appendix to Explanatory Memorandum to the Companies (Amendment) Bill 2006; and**

**Companies (Amendment) Bill 2006.**

## EXPLANATORY MEMORANDUM COMPANIES (AMENDMENT) BILL 2006

### **Introduction**

1. The Companies (Amendment) Bill brings the Falkland Islands law on company accounts and audit and other matters into line with standards set in the United Kingdom and the European Union. There are some differences to take account of the local situation but in general the move away from the Companies Act 1948 requirements to the Companies Act 1985 requirements, as in effect in 2006, will bring the Falkland Islands law into line with the European equivalent law. The 1948 Act as it now applies in the Falkland Islands continues to be that Act as it was in force in 1950; significant and important amendments made to that Act as it applied in England have not been applied in the Falkland Islands. Similarly the repeal of the 1948 Act and its replacement by the 1985 consolidation, which has itself been significantly amended over the years, has not been applied in the Falkland Islands. This Bill is not proposing a replacement of the 1948 Act in full but does provide a significant modernisation of important areas of company law in the Falkland Islands.

2. The Bill applies specific provisions of the Companies Act 1985, as they are in effect in England on 1<sup>st</sup> September 2006, in the Falkland Islands. By virtue of section 80 of the Interpretation and General Clauses Ordinance all subordinate legislation made under those provisions on or before 1<sup>st</sup> September 2006 will also be applied in the Falkland Islands. By virtue of section 77 of that Ordinance all references to the Secretary of State will become references to the Governor so that after that date subordinate legislation under the applied provisions will be made by the Governor. The Bill makes specific modifications of the applied provisions where necessary.

3. The following explanation of the effects of the Bill is not exhaustive and for the complete picture it will be necessary to consult the 1985 Act itself, either directly or through a company law text book or through an advisor. This Memorandum highlights the changes to be effected by the application of the 1985 Act. However, in practice many companies in the Falkland Islands already comply to a large extent with the 1985 Act requirements (which do not always conflict with those in the 1948 Act), so that it is anticipated that what appears to be a significant change will not necessarily be very burdensome for the companies concerned. In some instances the change will allow more freedom for the companies to conduct their affairs as they wish. The application of the 1985 Act provisions will result in clearer law which is consistent with international practice and standards.

### **Clause 1**

4. Clause 1 sets out the short title of the Bill and provides for it to come into force on 1<sup>st</sup> January 2007. Subsection (3) ensures that references to the 1948 Act and the 1985 Act are construed as references to the British Companies Acts of 1948 and 1985 as they apply in the Falkland Islands. Where the titles of those Acts are spelled out in full, the reference is to the Acts as they apply in Great Britain. Paragraph (c) of subsection (3) also provides that the provisions of the Companies Act 1985 which are applied in the Falkland Islands by the Bill may, for convenience, be referred to as the applied enactments. The references to the Acts of 1948 and 1985 and to the applied enactments in this Memorandum have the same meaning.

## **Clause 2**

5. Subsection (1) of Clause 2 sets out the main provisions of the Companies Act 1985 which are to apply in the Falkland Islands. The references are to those provisions as they apply in England on 1<sup>st</sup> September 2006. This date is chosen so that the law to be applied can be examined in the Falkland Islands before the Bill comes into force. The new law will apply in the Falkland Islands on or after 1<sup>st</sup> January 2007.

6. Paragraph (a) will simplify the formal requirements relating to contracts made by companies.

a. It will no longer be necessary to determine what the common law requirements are for individuals but instead a contract may be made by writing under the company's common seal, or by any person acting under its authority, express or implied. The use of the company seal will be voluntary.

b. In addition a person entering into a contract with a company will no longer have to consider whether the individual he is dealing with has the requisite authority to make the contract for the company. Provided that the contract purports to be signed by a director and secretary of the company the contract will be valid against another party acting in good faith and for valuable consideration.

7. Paragraph (b) introduces provisions allowing companies to buy their own shares and to provide financial assistance for the purchase of the company's own shares. The legislation tells the company what to do with the shares once purchased: the equivalent UK provisions applying to quoted companies which allows the company to keep them as "Treasury shares" are not applied.

a. The legislation restates the general prohibition on the purchase of own shares but this is now subject to certain important exceptions. Purchases of own shares will be allowed provided it is authorised by the company's articles of association. Other additional rules are prescribed for the market purchase of shares and off market purchase of shares. Broadly, an off-market purchase is a purchase otherwise than on a recognised investment exchange in the UK. A market purchase (on such an exchange) is only permissible if authorised by the company in general meeting. An off-market purchase may be made only in pursuance of a contract approved in advance by special resolution of the company.

b. The giving of financial assistance by a company for the purchase of that company's own shares will now be permitted in limited circumstances. It will be allowed where the purchase of the shares is part of some larger scheme or where any liability of the purchaser to the company is reduced but only as part of some larger scheme. The latter provision covers cases where the shares have already been acquired as for example where they are partly paid. Other exceptions allow, amongst other things, the issue of bonus shares and the redemption of capital.

c. There are new modernising provisions on redemption of shares and the capital redemption reserve.

8. Paragraph (c) applies provisions of the 1985 Act relating to accounts. These provisions will wholly replace the 1948 Act accounting requirements.

a. Detailed accounting records will be required to be kept, sufficient to support the company's accounts and to show the company's financial situation at any time. The records must be kept at the company's registered office or such other place as the directors may determine, be available for inspection by the officers of the company and be kept for 3 years, in the case of a private company, or 6 years, in the case of a public company.

b. The company's financial year will be the 12 months constituting the company's accounting reference period, with flexibility to vary the length by up to 7 days. The accounting reference period is the period by reference to which the accounts are made up, beginning with the company's accounting reference date. Existing companies' accounting reference date will be the end of the period as respects which accounts were made up and delivered to the Registrar of Companies before the Bill is published. New companies' accounting reference dates will be the last day of the month in which the anniversary of their incorporation falls. The date may be changed by notice to the Registrar.

c. Companies will be required to make up their accounts following the balance sheet and profit and loss formats set out in the legislation. The accounts will be required to adhere either to the provisions of the Act including the UK accounting standards ("Companies Acts accounts") or to the International Accounting Standards ("IAS accounts"). Company Act accounts will still have to show a true and fair view of the company's position, and for those accounts, the legislation is also specific about what must be shown in notes to the accounts. The accounts must be prepared for the company's financial year and must be prepared on a consistent basis year on year, unless there is a substantial reason for change. Corresponding provisions apply in relation to group accounts.

d. The notes to the accounts in the case of a company with subsidiary undertakings or holdings in excess of 20 per cent of the share capital in another company will have to disclose details of these related companies even if group accounts are not required. Further details are required relating to directors' pay and staff numbers.

e. The annual accounts must be signed on the balance sheet by a director whose name must also be clearly identified. There are new requirements relating to auditors and auditors' reports so that (in particular) the company's financial position is more clearly addressed. New requirements relating to disclosure of information to auditors are introduced. The annual (statutory) accounts, if published, must be accompanied by the auditors' report and any other accounts, if published, must be clearly identified as not being the annual accounts.

f. The annual accounts with the directors' report, directors' remuneration report and the auditors' report must be delivered to the Registrar. The accounts must be delivered to the Registrar within 9 months of the end of the accounting reference period to which the accounts relate. [This period is specific for the Falkland Islands: in the UK it is 7 months and 10 months for private and public companies.] Civil penalties will be introduced for failure to deliver the accounts within the due time ranging from £100 to £5000.

g. There will be new powers to apply to the court for a declaration that a company's accounts do not comply with the legal requirements. In the UK this is exercised by the Secretary of State or by a person authorised by the Secretary of State: in the Falkland Islands this power will be exercised by the Governor or by a person authorised by the Governor or by a person authorised by the Secretary of State in the UK. Information held by the Commissioner for Taxes may be disclosed to such an authorised person who may also require information to be provided by the company or its staff.

h. The accounting exemptions for small companies are applied by the Bill: these do not apply to IAS accounts. The general effect is to allow small companies to prepare shorter less detailed accounts, known as "abbreviated accounts". Abbreviated accounts must state that they are prepared under these exemptions. The exemptions also remove the need to deliver the directors' report and the profit and loss account to the Registrar General.

i. The definition in section 247 of "small company" will apply for the purposes of the special provisions for small companies under section 246, including the entitlement to file abbreviated accounts and to deliver a balance sheet complying with the requirements of Schedule 8A. Lower turnover amounts and balance sheet totals will however apply for the purposes of exemption from audit of accounts under section 249A (see paragraph 17(3) of Schedule 2 to the Bill).

j. A special auditor's report is required to verify small companies' accounts unless the exemption from audit applies.

k. Special provisions in sections 248 and 248A, also apply where a small company prepares group accounts, and where accounts are prepared for small or medium sized groups allowing preparation of abbreviated accounts in these cases also. Section 249 defines a group as small if its aggregate turnover does not exceed £5,600,000 net or £6,720,000 gross and its aggregate balance sheet total does not exceed £2,800,000 net or £3,360,000 gross. It is medium if its turnover does not exceed £22,800,000 net or £27,360,000 gross and its aggregate balance sheet total does not exceed £11,400,000 net or £13,680,000 gross.

l. Section 249A exempts small companies with a turnover of not more than £1.5 million and a balance sheet total of not more than £1 million from the audit requirements, the principal effect being that they will not need to have their accounts audited. This exemption is also available to dormant companies (those with no significant accounting transactions during the year). In addition the legislation provides for the Secretary of State to make Regulations allowing for summary financial statements to be provided to shareholders and others instead of the full accounts as generally required by the Act. The current Regulations are the Companies (Summary Financial Statement) Regulations 1995 (SI 1995/2092) which will apply in the Falkland Islands.

m. Private companies will be able to elect by elective resolution to dispense with laying accounts before the company in general meeting but this is subject to the right of a member or auditor of the company to require the accounts to be so laid.



n. The legislation defines “accounting standards” as the standards set by such body as may be prescribed in Regulations. The Accounting Standards (Prescribed Body) Regulations 2005 (SI 2005/697) have been made prescribing the Accounting Standards Board for this purpose. These Regulations will apply in the Falkland Islands and accordingly accounting standards for the purposes of the Falkland Islands will be those prescribed by that Board. This provision does not apply in relation to International Accounting Standards.

o. The legislation will authorise the Governor to amend or modify the accounting requirements by Regulations.

p. There are new definitions of parent and subsidiary undertakings for the purposes of the accounting provisions, in particular looking more towards actual control and dominant influences irrespective of shareholdings. Further definitions of expressions used in the accounting provisions are provided in the applied enactments.

9. Paragraph (d) makes new provision relating to annual returns. Each company will have to make up its annual return to the anniversary either of its incorporation or the date to which its last return was made. 28 days from that date in each year will be allowed for making the return and there will be penalties for non-compliance, including daily default penalties. Prescribed particulars relating to the company, its members and its officers must be included in the return. The return will be required to be made on the UK annual return form with any necessary modifications.

10. Paragraph (e) will allow private companies to elect by elective resolution not to hold an annual general meeting: such resolutions continue in effect until revoked. Members of a company can require an annual general meeting to be held notwithstanding the company has passed such a resolution.

11. Paragraph (f) applies the provisions of the 1985 Act relating to elective resolutions. An elective resolution of a company is one passed by all the members present and entitled to vote at a meeting of which at least 21 days notice has been given. Less notice will be acceptable if agreed by all such members. Notice of such a meeting must state that an elective resolution is to be voted on at the meeting. Such resolutions remain in effect until revoked.

12. Paragraph (g) will allow private companies to apply to the Registrar General to be struck off the register of companies. This new simple method will facilitate matters for private companies which have (broadly speaking) ceased to carry on business.

13. Paragraph (h) applies the provisions of the 1985 Act relating to overseas companies with branches in Great Britain to overseas companies with branches in the Falkland Islands. The old regime is left in place in case there are overseas companies in the Falkland Islands which do not have a branch there. It is not thought that there will be many in this latter category. The new provisions reflect the law applying across the European Union.

14. Subsection (2) of Clause 2 ensures that the modifications of the applied enactments in Schedule 2 have effect and also preserves the power of the Governor to amend the legislation.

15. Subsection (3) ensures that the applied enactments will be correctly interpreted as part of Falkland Islands law.

16. Subsection (4) stops the disapplication of the 1985 Act as part of Falkland Islands law from continuing except in a transitional phase.

17. Subsection (5) ensures that sections 80 and 81 of the Interpretation and General Clauses Ordinance do not override any specific provision of the Bill.

### **Clause 3**

18. This clause ensures that the 1948 Act is correctly interpreted once the Bill is in force. In particular it will need to be read in the light of the applied provisions of the 1985 Act and effect given to those so far as possible even where there is an area of apparent conflict between the two.

### **Clause 4**

19. This clause inserts provisions relating to the appointment of auditors into the 1948 Act. These new provisions are added to that Act as the main provisions relating to auditors remain in the 1948 Act.

a. The first new section, 160A, makes provision for the appointment of auditors where the company is exempt from the requirement to lay accounts before the company in general meeting. The new provision requires auditors for a year to be appointed within 28 days of the date on which the accounts for the previous year were sent to members.

b. The second section, 160B, allows private companies to elect not to appoint auditors annually. This election is to be made by elective resolution and where such an election is made the auditors are deemed to be re-elected each year.

c. The third section, 160C, exempts small companies and dormant companies from the obligation to appoint auditors. Here "small company" and "dormant company" mean the same as in the 1985 Act.

d. The fourth section, 160D, applies where auditors are not appointed annually and allows members to have a meeting of the company called for the purpose of debating and voting on the termination of the appointment of auditors.

### **Clause 5**

20. This clause amends provisions of the 1948 Act which allow companies to pass special resolutions at meetings of which less than 21 days notice has been given provided that not less than 95 per cent of the members have agreed to the short notice. The amendments reduce the figure of 95 per cent to 90 per cent.

### **Clause 6**

21. Clause 6 amends section 143 of the 1948 Act to add to the categories of resolution that need to be sent to the Registrar General all elective resolutions, resolutions on companies ceasing to be public companies after purchase of own shares, and resolutions relating to the authority to

purchase own shares.

#### **Clause 7**

22. Clause 7 confers a general power on the Governor to make Regulations amending any of the applied enactments or any subordinate legislation made under those enactments or to apply any subordinate legislation coming into effect after 1<sup>st</sup> September 2006 which itself amends or replaces any of those enactments. The power includes power to make any necessary modifications of the 1948 Act. It also includes power to disapply any enactment. This will enable the Falkland Islands to take account of any future developments in the UK law most expeditiously.

#### **Clause 8**

23. Clause 8 makes provisions with respect to the forms to be used under the applied enactments and fees to be charged in respect of the functions of the Registrar General.

a. Subsection (1) allows the use of UK forms where no forms have been prescribed for the Falkland Islands. Any necessary modifications will be made, subject to the direction of the Registrar General. This will allow, for example, for changes of address and amounts of fees payable.

b. Subsection (2) authorises the Governor to make Regulations prescribing the fees to be charged by the Registrar General in respect of his functions under the applied enactments and in respect of services which there is no legal obligation to provide but which he may choose to provide.

c. Subsection (3) allows for the amendment of the fees provisions in the existing law in the Falkland Islands as some may be overtaken by the new regime.

d. Subsection (4) ensures that all fees will be paid into the Consolidated Fund.

#### **Clause 9 and Schedule 1**

24. Clause 9 introduces Schedule 1 to the Bill which disapplies certain provisions of the 1948 Act which are replaced or made redundant by the applied enactments.

#### **Clause 10 and Schedule 2**

25. Clause 10 introduces Schedule 2 to the Bill which modifies the applied enactments and makes transitional provisions and savings.

#### **Part I of Schedule 2**

26. Part I of Schedule 2 modifies the applied enactments to take account of the circumstances in the Falkland Islands. Some of these modifications are technical, for example, translating references to the 1948 Act where that Act still applies in the Falkland Islands. The effect of others has been mentioned in the notes above on clause 2. These modifications are not all mentioned below.

27. Paragraph 2 modifies references to companies formed and registered under the provisions of

the 1948 Act relating to formation and registration of companies remain in force.

28. Paragraph 3 removes unwanted references to the Companies Act 1985.

29. Paragraph 4 changes the date to the commencement date for the Falkland Islands.

30. Paragraph 7 restricts the purchase of own shares to purchases which are authorised by the company's articles.

31. Paragraph 11 specifies what is to be the accounting reference date of a company that is the date on which its accounting reference period ends in each calendar year, once the new provisions are in effect. First, for companies incorporated before 1<sup>st</sup> January 2007, it will (subject to section 225) be the anniversary of the last day of the company's last financial year ending before 1<sup>st</sup> January 2007. Secondly for a company incorporated on or after 1<sup>st</sup> January 2007 the accounting reference date will be the last day of the month in which the anniversary of its incorporation falls.

32. Paragraph 12 removes references to a company in administration under Part II of the Insolvency Act 1986 which does not apply in the Falkland Islands (and there is no equivalent in the Falkland Islands).

33. Paragraph 18 makes technical amendments to the definition of "dormant company" to take account of the 1948 Act provisions on change of name, re-registration of companies and annual returns.

34. Paragraph 21 disapplies certain provisions of the 1985 Act which have no equivalent in the Falkland Islands.

35. Paragraph 22 modifies the application of the United Kingdom Financial Reporting Standard for Smaller Entities so that companies within the UK definition of "small company" can be taken to be small companies for the purposes of that standard.

36. Paragraph 23 makes a technical amendment to the definition of "turnover" to take account of the non-existence of VAT in the Falkland Islands.

37. Paragraph 24 amends section 363(1)(b) so as to ensure that where an annual return has been made by a company under the 1948 Act to a date earlier than 1<sup>st</sup> January 2007, the date to which the return is to be made up under the new regime will be the anniversary of that earlier date.

38. Paragraph 25 amends section 379A which relates to elective resolutions so as to disapply the reference to section 80A of the 1985 Act, which has no equivalent in the Falkland Islands, and converts the reference to section 386 to its equivalent in the 1948 Act.

39. Paragraph 28 modifies Schedule 24. The bulk of the provisions relating to criminal proceedings and penalties are set out in Schedule 24 which provides for many fines calculated by reference to the statutory maximum which is £5,000. These references are converted into

references to level 6 on the standard scale which currently is £7,500. In addition some offences in the UK are indictable. In the Falkland Islands all proceedings will be summary.

#### **Part II of Schedule 2**

40. Part II of Schedule 2 modifies certain provisions of the Companies Act 1948 consequentially on the preceding provisions of the Bill.

41. Paragraphs 30 and 31 introduce new provision into the 1948 Act relating to the liability of the directors and shareholders of a company which is being wound up after it has redeemed any of its own shares by a payment out of capital within one year of the commencement of the winding up.

42. Paragraph 32 updates section 410 (accounts of overseas companies) so that it refers to the new regime for accounts. It is expected that most overseas companies will be within sections 699 and 699A of the 1985 Act.

#### **Part III of Schedule 2**

43. Paragraph 34 ties the effective commencement of the provisions relating to accounts to the beginning of each company's financial year first starting on or after 1<sup>st</sup> January 2007. This will prevent any application of the new law to times falling before that date. It also ensures that the old law will continue to apply to accounts etc to which the new law does not apply.

44. Paragraph 35 makes technical savings relating to redeemable shares and to company's capital redemption reserve fund which becomes the capital redemption reserve.

45. Paragraph 36 makes the necessary provision to ensure that things done or not done before the commencement date can be the subject of proceedings after that date and that periods of time running before commencement are not artificially terminated on commencement. It means for example that continuing offences may be prosecutable in respect of times running before commencement and also in respect of times running after commencement.

**Appendix to Explanatory Memorandum  
of  
Companies (Amendment) Bill 2006**

---

*Provisions of Companies Act 1985 of England to be applied by Companies (Amendment) Bill 2006 modified (where appropriate) by Schedule 2 to the Bill and section 76 of the Interpretation and General Clauses Ordinance.*

---

**36. Company contracts**

Under the law of the Falkland Islands a contract may be made —

(a) by a company, by writing under its common seal, or

(b) on behalf of a company, by any person acting under its authority, express or implied;

and any formalities required by law in the case of a contract made by an individual also apply, unless a contrary intention appears, to a contract made by or on behalf of a company.

**36A. Execution of documents**

(1) Under the law of the Falkland Islands the following provisions have effect with respect to the execution of documents by a company.

(2) A document is executed by a company by the affixing of its common seal.

(3) A company need not have a common seal, however, and the following subsections apply whether it does or not.

(4) A document signed by a director and the secretary of a company, or by two directors of a company, and expressed (in whatever form of words) to be executed by the company has the same effect as if executed under the common seal of the company.

(4A) Where a document is to be signed by a person as a director or the secretary of more than one company it shall not be taken to be duly signed by that person for the purposes of subsection (4) unless the person signs it separately in each capacity.

(5) (Repealed)

(6) In favour of a purchaser a document shall be deemed to have been duly executed by a company if it purports to be signed by a director and the secretary of the company, or by two directors of the company, and, where it makes it clear on its face that it is intended by the person or persons making it to be a deed, to have been delivered upon its being executed.

A “purchaser” means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property.

(7) This section applies in the case of a document which is (or purports to be) executed by a company in the name of or on behalf of another person whether or not that person is also a company.

(8) For the purposes of this section, a document is (or purports to be) signed, in the case of a director or secretary of a company which is not an individual, if it is (or purports to be) signed by an individual authorised by the director or secretary to sign on its behalf.

#### **143. General rule against company acquiring its own shares**

(1) Subject to the following provisions, a company limited by shares or limited by guarantee and having a share capital shall not acquire its own shares, whether by purchase, subscription or otherwise.

(2) If a company purports to act in contravention of this section, the company is liable to a fine, and every officer of the company who is in default is liable to imprisonment or a fine, or both; and the purported acquisition is void.

(3) A company limited by shares may acquire any of its own fully paid shares otherwise than for valuable consideration; and subsection (1) does not apply in relation to —

(a) the redemption or purchase of shares in accordance with Chapter VII of this Part;

(b) the acquisition of shares in a reduction of capital duly made;

(c) the purchase of shares in pursuance of an order of the court or Part XVII (relief to members unfairly prejudiced), or

(d) the forfeiture of shares, or the acceptance of shares surrendered in lieu, in pursuance of the articles, for failure to pay any sum payable in respect of the shares.

#### **144. Acquisition of shares by company’s nominee**

(1) Subject to section 145, where shares are issued to a nominee of a company mentioned in section 143(1), or are acquired by a nominee of such a company from a third person as partly paid up, then, for all purposes —

(a) the shares are to be treated as held by the nominee on his own account; and

(b) the company is to be regarded as having no beneficial interest in them.

(2) Subject to that section, if a person is called on to pay any amount for the purpose of paying up, or paying any premium on, any shares in such a company which were issued to him, or which

he otherwise acquired, as the company nominee and he fails to pay that amount within 21 days from being called on to do so, then —

(a) if the shares were issued to him as subscriber to the memorandum by virtue of an undertaking of his in the memorandum, the other subscribers to the memorandum, or

(b) if the shares were otherwise issued to or acquired by him, the director of the company at the time of the issue or acquisition,

are jointly and severally liable with him to pay that amount.

(3) If in proceedings for the recovery of any such amount from any such subscriber or director under this section it appears to the court —

(a) that he is or may be liable to pay that amount, but

(b) that he has acted honestly and reasonably and, having regard to all the circumstances of the case, he ought fairly to be excused from liability,

the court may relieve him, either wholly or partly, from his liability on such terms as the court thinks fit.

(4) Where any such subscriber or director has reason to apprehend that a claim will or might be made for the recovery of any such amount from him, he may apply to the court for relief; and the court has the same power to relieve him as it would have had in proceedings for the recovery of that amount.

#### **145. Exceptions from s.144**

(1) (omitted)

(2) Section 144(1) and (2) do not apply —

(a) to shares acquired by a nominee of the company when the company has no beneficial interest in those shares,

(b) to shares issued in consequence of an application made before 1<sup>st</sup> January 2007, or transferred in pursuance of an agreement to acquire them made before that date.

#### **151. Financial assistance generally prohibited**

(1) Subject to the following provisions of this Chapter\*, where a person is acquiring or is proposing to acquire shares in a company, it is not lawful for the company or any of its subsidiaries to give financial assistance directly or indirectly for the purpose of that acquisition before or at the same time as the acquisition takes place.

\*in section 151 “this Chapter” means sections 151 to 158



(2) Subject to those provisions, where a person has acquired shares in a company and any liability has been incurred (by that or any other person), for the purpose of that acquisition, it is not lawful for the company or any of its subsidiaries to give financial assistance directly or indirectly for the purpose of reducing or discharging the liability so incurred.

(3) If a company acts in contravention of this section, it is liable to a fine, and every officer of it who is in default is liable to imprisonment or a fine, or both.

## **152. Definitions for this Chapter\***

(1) In this Chapter\*—

(a) “financial assistance” means —

(i) financial assistance given by way of gift,

(ii) financial assistance given by way of guarantee, security or indemnity, other than an indemnity in respect of the indemnifier’s own neglect or default, or by way of release or waiver,

(iii) financial assistance given by way of a loan or any other agreement under which any of the obligations of the person giving the assistance are to be fulfilled at a time when in accordance with the agreement any obligations of the person giving the assistance are to be fulfilled at a time when in accordance with the agreement any obligation of another party to the agreement remains unfulfilled, or by way of the novation of, or the assignment of rights arising under, a loan or such other agreement, or

(iv) any other financial assistance given by a company the net assets of which are thereby reduced to a material extent or which has no net assets;

(b) “distributable profits”, in relation to the giving of any financial assistance —

(i) means those profits out of which the company could lawfully make a distribution equal in value to that assistance, and

(ii) includes, in a case where the financial assistance is or includes a non-cash asset, any profit which, if the company were to make a distribution of that asset, would under section 276 (distributions in kind) be available for that purpose,

and

(c) “distribution” has the meaning given by section 263(2).

(2) In subsection (1)(a)(iv), “net assets” means the aggregate of the company’s assets, less the aggregate of its liabilities (“liabilities” to include any provision for liabilities or charges within paragraph 89 of Schedule 4).

(3) In this Chapter\*—

(a) a reference to a person incurring a liability includes his changing his financial position by making an agreement or arrangement (whether enforceable or unenforceable, and whether made on his own account or with any other person) or by any other means, and

(b) a reference to a company giving financial assistance for the purpose of reducing or discharging a liability incurred by a person for the purpose of the acquisition of shares includes its giving such assistance for the purpose of wholly or partly restoring his financial position to what it was before the acquisition took place.

**153. Transactions not prohibited by s.151**

(1) Section 151(1) does not prohibit a company from giving financial assistance for the purpose of an acquisition of shares in it or its holding company if —

(a) the company's principal purpose in giving that assistance is not to give it for the purpose of any such acquisition, or the giving of the assistance for that purpose is but an incidental part of some larger purpose of the company, and

(b) the assistance is given in good faith in the interests of the company.

(2) Section 151(2) does not prohibit a company from giving financial assistance if —

(a) the company's principal purpose in giving the assistance is not to reduce or discharge any liability incurred by a person for the purpose of the acquisition of shares in the company or its holding company, or the reduction or discharge of any such liability is but an incidental part of some larger purpose of the company, and

(b) the assistance is given in good faith in the interests of the company.

(3) Section 151 does not prohibit —

(a) a distribution of a company's assets by way of dividend lawfully made or a distribution made in the course of the company's winding up,

(b) the allotment of bonus shares,

(c) a reduction of capital confirmed by order of the court under section 68 of the 1948 Act,

(d) a redemption or purchase of shares made in accordance with Chapter VII of this Part,

(e) anything done in pursuance of an order of the court under section 206 of the 1948 Act (compromises and arrangements with creditors and members),

\*Again, this is a reference to sections 151 to 158

(f) anything done under an arrangement made in pursuance of section 287 of the 1948 Act (acceptance of shares by liquidator in winding up as consideration for sale of property), or

(g) anything done under an arrangement made between a company and its creditors which is binding on the creditors by virtue of section 306 of the 1948 Act.

(4) Section 151 does not prohibit —

(a) where the lending of money is part of the ordinary business of the company, the lending of money by the company in the ordinary course of its business,

(b) the provision by a company, in good faith in the interests of the company, of financial assistance for the purposes of an employees' share scheme,

(bb) without prejudice to paragraph (b), the provision of financial assistance by a company or any of its subsidiaries for the purposes of or in connection with anything done by the company (or a company in the same group) for the purpose of enabling or facilitating transactions in shares in the first-mentioned company between, and involving the acquisition of beneficial ownership of those shares by, any of the following persons —

(i) the bona fide employees or former employees of that company or of another company in the same group; or

(ii) the wives, husbands, widows, widowers, children or step-children under the age of eighteen of any such employees or former employees,

(c) the making by a company of loans to persons (other than directors) employed in good faith by the company with a view to enabling those persons to acquire fully paid shares in the company or its holding company to be held by them by way of beneficial ownership.

(5) For the purposes of subsection (4)(bb) a company is in the same group as another company if it is a holding company or subsidiary of that company, or a subsidiary of a holding company of that company.

#### **154. Special restriction for public companies**

(1) In the case of a public company, section 153(4) authorises the giving of financial assistance only if the company has net assets which are not thereby reduced or, to the extent that those assets are thereby reduced, if the assistance is provided out of distributable profits.

(2) For this purpose the following definitions apply —

(a) "net assets" means the amount by which the aggregate of the company's assets exceeds the aggregate of its liabilities (taking the amount of both assets and liabilities to be as stated in the company's accounting records immediately before the financial assistance is given);

(b) "liabilities" includes any amount retained as reasonably necessary for the purpose of providing for any liability or loss which is either likely to be incurred, or certain to be incurred but uncertain as to amount or as to the date on which it will arise.

#### **155. Relaxation of s.151 for private companies**

(1) Section 151 does not prohibit a private company from giving financial assistance in a case where the acquisition of shares in question is or was an acquisition of shares in the company or, if it is a subsidiary of another private company, in that other company if the following provisions of this section, and sections 156 to 158, are complied with as respects the giving of that assistance.

(2) The financial assistance may only be given if the company has net assets which are not thereby reduced or, to the extent that they are reduced, if the assistance is provided out of distributable profits.

Section 154(2) applies for the interpretation of this subsection.

(3) This section does not permit financial assistance to be given by a subsidiary, in a case where the acquisition of shares in question is or was an acquisition of shares in its holding company, if it is also a subsidiary of a public company which is itself a subsidiary of that holding company.

(4) Unless the company proposing to give the financial assistance is a wholly-owned subsidiary, the giving of assistance under this section must be approved by special resolution of the company in general meeting.

(5) Where the financial assistance is to be given by the company in a case where the acquisition of shares in question is or was an acquisition of shares in its holding company, that holding company and any other company which is both the company's holding company and a subsidiary of that other holding company (except, in any case, a company which is a wholly-owned subsidiary) shall also approve by special resolution in general meeting the giving of the financial assistance.

(6) The directors of the company proposing to give the financial assistance and, where the shares acquired or to be acquired are shares in its holding company, the directors of that company and of any other company which is both the company's holding company and a subsidiary of that other holding company shall before the financial assistance is given make a statutory declaration in the prescribed form complying with the section next following.

#### **156. Statutory declaration under s.155**

(1) A statutory declaration made by a company's directors under section 155(6) shall contain such particulars of the financial assistance to be given, and of the business of the company of which they are directors, as may be prescribed, and shall identify the person to whom the assistance is to be given.

(2) The declaration shall state that the directors have formed the opinion, as regards the company's initial situation immediately following the date on which the assistance is proposed to be given, that there will be no ground on which it could then be found to be unable to pay its debts; and either —

(a) if it is intended to commence the winding up of the company within 12 months of that date, that the company will be able to pay its debts in full within 12 months of the commencement of the winding up, or

(b) in any other case, that the company will be able to pay its debts as they fall due during the year immediately following that date.

(3) In forming their opinion for purposes of subsection (2), the directors shall take into account the same liabilities (including contingent and prospective liabilities) as would be relevant under section 222 of the 1948 Act (winding up by the court) to the question whether the company is unable to pay its debts.

(4) The directors' statutory declaration shall have annexed to it a report addressed to them by their company's auditors stating that —

(a) they have enquired into the state of affairs of the company, and

(b) they are not aware of anything to indicate that the opinion expressed by the directors in the declaration as to any of the matters mentioned in subsection (2) of this section is unreasonable in all the circumstances.

(5) The statutory declaration and auditors' report shall be delivered to the registrar of companies—

(a) together with a copy of any special resolution passed by the company under section 155 and delivered to the registrar in compliance with section 143 of the 1948 Act, or

(b) where no such resolution is required to be passed, within 15 days after the making of the declaration.

(6) If a company fails to comply with subsection (5), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(7) A director of a company who makes a statutory declaration under section 155 without having reasonable grounds for the opinion expressed in it is liable to imprisonment or a fine, or both.

#### **157. Special resolution under s.155**

(1) A special resolution required by section 155 to be passed by a company approving the giving of financial assistance must be passed on the date on which the directors of that company make

the statutory declaration required by that section in connection with the giving of that assistance, or within the week immediately following that date.

(2) Where such a resolution has been passed, an application may be made to the court for the cancellation of the resolution —

(a) by the holders of not less in the aggregate than 10 per cent in nominal value of the company's issued share capital or any class of it, or

(b) if the company is not limited by shares, by not less than 10 per cent of the company's members;

but the application shall not be made by a person who has consented to or voted in favour of the resolution.

(3) Subsections (3) to (10) of section 54 (litigation to cancel resolution under section 53) apply to applications under this section as to applications under section 54.

(4) A special resolution passed by a company is not effective for purposes of section 155 —

(a) unless the declaration made in compliance with subsection (6) of that section by the directors of the company, together with the auditors' report annexed to it, is available for inspection by members of the company at the meeting at which the resolution is passed,

(b) if it is cancelled by the court on an application under this section.

#### **158. Time for giving financial assistance under s.155**

(1) This section applies as to the time before and after which financial assistance may not be given by a company in pursuance of section 155.

(2) Where a special resolution is required by that section to be passed approving the giving of the assistance, the assistance shall not be given before the expiry of the period of 4 weeks beginning with —

(a) the date on which the special resolution is passed, or

(b) where more than one such resolution is passed, the date on which the last of them is passed,

unless, as respects that resolution (or, if more than one, each of them), every member of the company which passed the resolution who is entitled to vote at general meetings of the company voted in favour of the resolution.

(3) If application for the cancellation of any such resolution is made under section 157, the financial assistance shall not be given before the final determination of the application unless the court otherwise orders.

(4) The assistance shall not be given after the expiry of the period of 8 weeks beginning with —

(a) the date on which the directors of the company proposing to give the assistance made their statutory declaration under section 155, or

(b) where that company is a subsidiary and both its directors and the directors of any of its holding companies made such a declaration, the date on which the earliest of the declarations is made,

unless the court, on an application under section 157, otherwise orders.

### **159. Power to issue redeemable shares**

(1) Subject to the provisions of this Chapter\*, a company limited by shares or limited by guarantee and having a share capital may, if authorised to do so by its articles, issue shares which are to be redeemed or are liable to be redeemed at the option of the company or the shareholder.

(2) No redeemable shares may be issued at a time when there are no issued shares of the company which are not redeemable.

(3) Redeemable shares may not be redeemed unless they are fully paid; and the terms of redemption must provide for payment on redemption.

### **159A. Terms and manner of redemption**

(1) Redeemable shares may not be issued unless the following conditions are satisfied as regards the terms and manner of redemption.

(2) The date on or by which, or dates between which, the shares are to be or may be redeemed must be specified in the company's articles or, if the articles so provide, fixed by the directors, and in the latter case the date or dates must be fixed before the shares are issued.

(3) Any other circumstances in which the shares are to be or may be redeemed must be specified in the company's articles.

(4) The amount payable on redemption must be specified in, or determined in accordance with, the company's articles, and in the latter case the articles must not provide for the amount to be determined by reference to any person's discretion or opinion.

(5) Any other terms and conditions of redemption shall be specified in the company's articles.

\*This is a reference to sections 159 to 181

(6) Nothing in this section shall be construed as requiring a company to provide in its articles for any matter for which provision is made by this Act.

#### **160. Financing etc of redemption**

(1) Subject to the next subsection and to sections 171 (private companies redeeming or purchasing own shares out of capital) and 178(4) (terms of redemption or purchase enforceable in a winding up) —

(a) redeemable shares may only be redeemed out of distributable profits of the company or out of the proceeds of a fresh issue of shares made for the purposes of redemption; and

(b) any premium payable on redemption must be paid out of distributable profits of the company.

(2) If the redeemable shares were issued at a premium, any premium payable on their redemption may be paid out of the proceeds of a fresh issue of shares made for the purposes of redemption, up to an amount equal to —

(a) the aggregate of the premiums received by the company on the issue of the shares redeemed, or

(b) the current amount of the company's share premium account (including any sum transferred to that account in respect of premiums on the new shares),

whichever is the less; and in that case the amount of the company's share premium account shall be reduced by a sum corresponding (or by sums in the aggregate corresponding) to the amount of any payment made by virtue of this subsection out of the proceeds of the issue of the new shares.

(3) (Repealed)

(4) Shares redeemed under this Chapter\* shall be treated as cancelled on redemption, and the amount of the company's issued share capital shall be diminished by the nominal value of those shares accordingly; but the redemption of shares by a company is not to be taken as reducing the amount of the company's authorised share capital.

(5) Without prejudice to subsection (4), where a company is about to redeem shares, it has power to issue shares up to the nominal value of the shares to be redeemed as if those shares had never been issued.

**161. (Repealed)**

\*sections 159 to 181



### **162. Power of company to purchase own shares**

(1) Subject to the following provisions of this Chapter\*, a company limited by shares or limited by guarantee and having a share capital may, if authorised to do so by its articles, purchase its own shares (including any redeemable shares).

(2) Sections 159 to 161 apply to the purchase under this section of its own shares as they apply to the redemption of redeemable shares, save that the terms and manner of purchase need not be determined by the articles as required by section 160(3).

(3) A company may not under this section purchase its own shares if as a result of the purchase there would no longer be any member of the company holding shares other than redeemable shares.

### **163. Definitions of “off-market” and “market” purchase**

(1) A purchase by a company of its own shares is “off-market” if the shares either —

(a) are purchased otherwise than on a recognised investment exchange, or

(b) are purchased on a recognised investment exchange but are not subject to a marketing arrangement on that investment exchange.

(2) For this purpose, a company’s shares are subject to a marketing arrangement on a recognised investment exchange if either —

(a) they are listed under Part IV of the Financial Services Act 1986; or

(b) the company has been afforded facilities for dealings in those shares to take place on that investment exchange without prior permission for individual transactions from the authority governing that investment exchange and without limit as to the time during which those facilities are to be available.

(3) A purchase by a company of its own shares is a “market purchase” if it is a purchase made on a recognised investment exchange, other than a purchase which is an off-market purchase by virtue of subsection (1)(b).

(4) In this section “recognised investment exchange” means a recognised investment exchange other than an overseas investment exchange within the meaning of the Financial Services Act 1986.

### **164. Authority for off-market purchase**

(1) A company may only make an off-market purchase of its own shares in pursuance of a contract approved in advance in accordance with this section or under section 165 below.

\*sections 159 to 181

(2) The terms of the proposed contract must be authorised by a special resolution of the company before the contract is entered into; and the following subsections apply with respect to that authority and to resolutions conferring it.

(3) Subject to the next subsection, the authority may be varied, revoked or from time to time renewed by special resolution of the company.

(4) In the case of a public company, the authority conferred by the resolution must specify a date on which the authority is to expire; and in a resolution conferring or renewing authority that date must not be later than 18 months after that on which the resolution is passed.

(5) A special resolution to confer, vary, revoke or renew authority is not effective if any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares in voting on the resolution and the resolution would not have been passed if he had not done so.

For this purpose —

(a) a member who holds shares to which the resolution relates is regarded as exercising the voting rights carried by those shares not only if he votes in respect of them on a poll on the question whether the resolution shall be passed, but also if he votes on the resolution otherwise than on a poll;

(b) notwithstanding anything in the company's articles, any member of the company may demand a poll on that question; and

(c) a vote and a demand for a poll by a person as proxy for a member are the same respectively as a vote and a demand by the member.

(6) Such a resolution is not effective for the purposes of this section unless (if the proposed contract is in writing) a copy of the contract or (if not) a written memorandum of its terms is available for inspection by members of the company both —

(a) at the company's registered office for not less than 15 days ending with the date of the meeting at which the resolution is passed, and

(b) at the meeting itself.

A memorandum of contract terms so made available must include the names of any members holding shares to which the contract relates; and a copy of the contract so made available must have annexed to it a written memorandum specifying any such names which do not appear in the contract itself.

(7) A company may agree to a variation of an existing contract so approved, but only if the variation is authorised by a special resolution of the company before it is agreed to; and

subsections (3) to (6) above apply to the authority for a proposed variation as they apply to the authority for a proposed contract, save that a copy of the original contract or (as the case may require) a memorandum of its terms, together with any variations previously made, must also be available for inspection in accordance with subsection (6).

**165. Authority for contingent purchase contract**

(1) A contingent purchase contract is a contract entered into by a company and relating to any of its shares —

(a) which does not amount to a contract to purchase those shares, but

(b) under which the company may (subject to any conditions) become entitled or obliged to purchase those shares.

(2) a company may only make a purchase of its own shares in pursuance of a contingent purchase contract if the contract is approved in advance by a special resolution of the company before the contract is entered into; and subsections (3) to (7) of section 164 apply to the contract and its terms.

**166. Authority for market purchases**

(1) A company shall not make a market purchase of its own shares unless purchase has first been authorised by the company in general meeting.

(2) That authority —

(a) may be general for that purpose, or limited to the purchase of shares of any particular class or description, and

(b) may be unconditional or subject to conditions.

(3) The authority must —

(a) specify the maximum number of shares authorised to be acquired,

(b) determine both the maximum and the minimum prices which may be paid for the shares, and

(c) specify a date on which it is to expire.

(4) The authority may be varied, revoked or from time to time renewed by the company in general meeting, but this is subject to subsection (3) above; and in a resolution to confer or renew authority, the date on which the authority is to expire must not be later than 18 months after that on which the resolution is passed.

(5) A company may under this section make a purchase of its own shares after the expiry of the time limit imposed to comply with subsection (3)(c), if the contract of purchase was concluded before the authority expired and the terms of the authority permitted the company to make a contract of purchase which would or might be executed wholly or partly after its expiration.

(6) A resolution to confer or vary authority under this section may determine either or both the maximum and minimum prices for purchase by —

(a) specifying a particular sum, or

(b) providing a basis or formula for calculating the amount of the price in question without reference to any person's discretion or opinion.

(7) A resolution of a company conferring, varying, revoking or renewing authority under this section is subject to section 143 of the 1948 Act (resolution to be sent to registrar of companies within 15 days).

**167. Assignment or release of company's right to purchase own shares**

(1) The rights of a company under a contract approved under section 164 or 165, or under a contract for a purchase authorised under section 166, are not capable of being assigned.

(2) An agreement by a company to release its rights under a contract approved under section 164 or 165 is void unless the terms of the release agreement are approved in advance by a special resolution of the company before the agreement is entered into; and subsections (3) to (7) of section 164 apply to approval for a proposed release agreement as to authority for a proposed variation of an existing contract.

**168. Payments apart from purchase price to be made out of distributable profits**

(1) A payment made by a company in consideration of —

(a) acquiring any right with respect to the purchase of its own shares in pursuance of a contract approved under section 165, or

(b) the variation of a contract approved under section 164 or 165, or

(c) the release of any of the company's obligations with respect to the purchase of any of its own shares under a contract approved under section 164 or 165 or under a contract for a purchase authorised under section 166,

must be made out of the company's distributable profits.

(2) If the requirements of subsection (1) are not satisfied in relation to a contract —

(a) in a case within paragraph (a) of the subsection, no purchase by the company of its own shares in pursuance of that contract is lawful under this Chapter,

(b) in a case within paragraph (b), no such purchase following the variation is lawful under this Chapter, and

(c) in a case within paragraph (c), the purported release is void.

**169. Disclosure by company of purchase of own shares**

(1) Within the period of 28 days beginning with the date on which any shares purchased by a company under this Chapter are delivered to it, the company shall deliver to the registrar of companies for registration a return in the prescribed form stating with respect to shares of each class purchased the number and nominal value of those shares and the date on which they were delivered to the company.

(2) In the case of a public company, the return shall also state —

(a) the aggregate amount paid by the company for the shares; and

(b) the maximum and minimum prices paid in respect of shares of each class purchased.

(3) Particulars of shares delivered to the company on different dates and under different contracts may be included in a single return to the registrar; and in such a case the amount required to be stated under subsection (2)(a) is the aggregate amount paid by the company for all shares to which the return relates.

(4) Where a company enters into a contract approved under section 164 or 165, or a contract for a purchase authorised under section 166, the company shall keep at its registered office —

(a) if the contract is in writing, a copy of it; and

(b) if not, a memorandum of its terms,

from the conclusion of the contract until the end of the period of 10 years beginning with the date on which the purchase of all the shares in pursuance of the contract is completed or (as the case may be) the date on which the contract otherwise determines.

(5) Every copy and memorandum so required to be kept shall ... be open to inspection without charge —

(a) by any member of the company, and

(b) if it is a public company, by any other person.

(6) If default is made in delivering to the registrar any return required by this section, every officer of the company who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(7) If default is made in complying with subsection (4), or if an inspection required under subsection (5) is refused, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(8) In the case of a refusal of an inspection required under subsection (5) of a copy or memorandum, the court may by order compel an immediate inspection of it.

(9) The obligation of a company under subsection (4) to keep a copy of any contract or (as the case may be) a memorandum of its terms applies to any variation of the contract so long as it applies to the contract.

#### **170. The capital redemption reserve**

(1) Where under this Chapter\* shares of a company are redeemed or purchased wholly out of the company's profits, the amount by which the company's issued share capital is diminished in accordance with section 160(4) on cancellation of the shares redeemed or purchased shall be transferred to a reserve, called "the capital redemption reserve".

(2) If the shares are redeemed or purchased wholly or partly out of the proceeds of a fresh issue and the aggregate amount of those proceeds is less than the aggregate nominal value of the shares redeemed or purchased, the amount of the difference shall be transferred to the capital redemption reserve.

(3) But subsection (2) does not apply if the proceeds of the fresh issue are applied by the company in making a redemption or purchase of its own shares in addition to a payment out of capital under section 171.

(4) The provisions of the 1948 Act relating to the reduction of a company's share capital apply as if the capital redemption reserve were paid-up share capital of the company, except that the reserve may be applied by the company in paying up its unissued shares to be allotted to members of the company as fully paid bonus shares.

#### **171. Power of private companies to redeem or purchase own shares out of capital**

(1) Subject to the following provisions of this Chapter\*, a private company limited by shares or limited by guarantee and having a share capital may, if so authorised by its articles, make a payment in respect of the redemption or purchase under section 160 or (as the case may be) section 162, of its own shares otherwise than out of its distributable profits or the proceeds of a fresh issue of shares.

(2) References below in this Chapter\* to payment out of capital are (subject to subsection (6)) to any payment so made, whether or not it would be regarded apart from this section as a payment out of capital.

\*sections 159 to 181

(3) The payment which may (if authorised in accordance with the following provisions of this Chapter\*) be made by a company out of capital in respect of the redemption or purchase of its own shares is such an amount as, taken together with —

- (a) any available profits of the company, and
- (b) the proceeds of any fresh issue of shares made for the purposes of the redemption or purchase,

is equal to the price of redemption or purchase; and the payment permissible under this subsection is referred to below in this Chapter as the permissible capital payment for the shares.

(4) Subject to subsection (6), if the permissible capital payment for shares redeemed or purchased is less than their nominal amount, the amount of the difference shall be transferred to the company's capital redemption reserve.

(5) Subject to subsection (6), if the permissible capital payment is greater than the nominal amount of the shares redeemed or purchased —

- (a) the amount of any capital redemption reserve, share premium account or fully paid share capital of the company, and
- (b) any amount representing unrealised profits of the company from the time being standing to the credit of any reserve maintained by the company in accordance with paragraph 34 of Schedule 4 or paragraph 34 of Schedule 8 (revaluation reserve),

may be reduced by a sum not exceeding (or by sums not in the aggregate exceeding) the amount by which the permissible capital payment exceeds the nominal amount of the shares.

(6) Where the proceeds of a fresh issue are applied by a company in making any redemption or purchase of its own shares in addition to a payment out of capital under this section, the references in subsections (4) and (5) to the permissible capital payment are to be read as referring to the aggregate of that payment and those proceeds.

#### **172. Availability of profits for purposes of s.171**

(1) The reference in section 171(3)(a) to available profits of the company is to the company's profits which are available for distribution (within the meaning of Part VIII); but the question whether a company has any profits so available and the amount of any such profits are to be determined for purposes of that section in accordance with the following subsections, instead of sections 270 to 275 in that Part.

(2) Subject to the next subsection, that question is to be determined by reference to —

\*sections 159 to 181

(a) profits, losses, assets and liabilities,

(b) provisions of any of the kinds mentioned in paragraphs 88 and 89 of Schedule 4 (depreciation, diminution in value of assets, retentions to meet liabilities, etc.), and

(c) share capital and reserves (including undistributable reserves),

as stated in the relevant accounts for determining the permissible capital payment for shares.

(3) The relevant accounts for this purpose are such accounts, prepared as at any date within the period for determining the amount of the permissible capital payment, as are necessary to enable a reasonable judgment to be made as to the amounts of any of the items mentioned in subsection (2)(a) to (c) above.

(4) For purposes of determining the amount of the permissible capital payment for shares, the amount of the company's available profits (if any) determined in accordance with subsections (2) and (3) is treated as reduced by the amount of any distributions lawfully made by the company after the date of the relevant accounts and before the end of the period for determining the amount of that payment.

(5) The reference in subsection (4) to distributions lawfully made by the company includes —

(a) financial assistance lawfully given out of distributable profits in a case falling within section 154 or 155,

(b) any payment lawfully made by the company in respect of the purchase by it of any shares in the company (except a payment lawfully made otherwise than out of distributable profits), and

(c) a payment of any description specified in section 168(1) lawfully made by the company.

(6) References in this section to the period for determining the amount of the permissible capital payment for shares are to the period of 3 months ending with the date on which the statutory declaration of the directors purporting to specify the amount of that payment is made in accordance with subsection (3) of the section next following.

### **173. Conditions for payment out of capital**

(1) Subject to any order of the court under section 177, a payment out of capital by a private company for the redemption or purchase of its own shares is not lawful unless the requirements of this and the next two sections are satisfied.

(2) The payment out of capital must be approved by a special resolution of the company.



(3) The company's directors must make a statutory declaration specifying the amount of permissible capital payment for the shares in question and stating that, having made full inquiry into the affairs and prospects of the company, they have formed the opinion —

(a) as regards its initial situation immediately following the date on which the payment out of capital is proposed to be made, that there will be no grounds on which the company could then be found unable to pay its debts, and

(b) as regards its prospects for the year immediately following that date, that, having regard to their intentions with respect to the management of the company's business during that year and to the amount and character of the financial resources which will in their view be available to the company during that year, the company will be able to continue to carry on business as a going concern (and will accordingly be able to pay its debts as they fall due) throughout that year.

(4) In forming their opinion for purposes of subsection (3)(a), the directors shall take into account the same liabilities (including prospective and contingent liabilities) as would be relevant under section 222 of the 1948 Act (winding up by the court) to the question whether a company is unable to pay its debts.

(5) The directors' statutory declaration must be in the prescribed form and contain such information with respect to the nature of the company's business as may be prescribed, and must in addition have annexed to it a report addressed to the directors by the company's auditors stating that —

(a) they have inquired into the company's state of affairs; and

(b) the amount specified in the declaration as the permissible capital payment for the shares in question is in their view properly determined in accordance with sections 171 and 172; and

(c) they are not aware of anything to indicate that the opinion expressed by the directors in the declaration as to any of the matters mentioned in subsection (3) is unreasonable in all the circumstances.

(6) A director who makes a declaration under this section without having reasonable grounds for the opinion expressed in the declaration is liable to imprisonment or a fine, or both.

#### **174. Procedure for special resolution under s.173**

(1) The resolution required by section 173 must be passed on, or within the week immediately following, the date on which the directors make the statutory declaration required by that section; and the payment out of capital must be made no earlier than 5 nor more than 7 weeks after the date of the resolution.

(2) The resolution is ineffective if any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares in voting on the resolution and the resolution would not have been passed if he had not done so.

(3) For purposes of subsection (2), a member who holds such shares is to be regarded as exercising the voting rights carried by them in voting on the resolution not only if he votes in respect of them on a poll on the question whether the resolution shall be passed, but also if he votes on the resolution otherwise than on a poll; and, notwithstanding anything in a company's articles, any member of the company may demand a poll on that question.

(4) The resolution is ineffective unless the statutory declaration and auditors' report required by the section are available for inspection by members of the company at the meeting at which the resolution is passed.

(5) For purposes of this section a vote and a demand for a poll by a person as proxy for a member are the same (respectively) as a vote and demand by the member.

#### **175. Publicity for proposed payment out of capital**

(1) Within a week immediately following the date of the resolution for payment out of capital the company must cause to be published in the Gazette a notice —

(a) stating that the company has approved a payment out of capital for the purpose of acquiring its own shares by redemption or purchase or both (as the case may be);

(b) specifying the amount of the permissible capital payment for the shares in question and the date of the resolution under section 173;

(c) stating that the statutory declaration of the directors and the auditors' report required by that section are available for inspection at the company's registered office; and

(d) stating that any creditor of the company may at any time within the 5 weeks immediately following the date of the resolution for payment out of capital apply to the court under section 176 for an order prohibiting the payment.

(2) Within the week immediately following the date of the resolution the company must also either cause a notice to the same effect as that required by subsection (1) to be published in an appropriate national newspaper or give notice in writing to that effect to each of its creditors.

(3) "An appropriate national newspaper" means a newspaper circulating throughout the Falkland Islands.

(4) References below in this section to the first notice date are to the day on which the company first publishes the notice required by subsection (1) or first publishes or gives the notice required by subsection (2) (whichever is the earlier).

(5) Not later than the first notice date the company must deliver to the registrar of companies a copy of the statutory declaration of the directors and of the auditors' report required by section 173.

(6) The statutory declaration and auditors' report —

(a) shall be kept at the company's registered office throughout the period beginning with the first notice date and ending 5 weeks after the date of the resolution for payment out of capital, and

(b) shall ... be open to the inspection of any member or creditor of the company without charge.

(7) If an inspection required under subsection (6) is refused, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(8) In the case of refusal of an inspection required under subsection (6) of a declaration or report, the court may by order compel an immediate inspection of that declaration or report.

#### **176. Objections by company's members or creditors**

(1) Where a private company passes a special resolution approving for purposes of this Chapter any payment out of capital for the redemption or purchase of any of its shares —

(a) any member of the company other than one who consented to or voted in favour of the resolution; and

(b) any creditor of the company,

may within 5 weeks of the date on which the resolution was passed apply to the court for cancellation of the resolution.

(2) The application may be made on behalf of the persons entitled to make it by such one or more of their number as they may appoint in writing for the purpose.

(3) If an application is made, the company shall —

(a) forthwith give notice in the prescribed form of that fact to the registrar of companies; and

(b) within 15 days from the making of any order of the court on the hearing of the application, or such longer period as the court may by order direct, deliver an office copy of the order to the registrar.

(4) A company which fails to comply with subsection (3), and any officer of it who is in default, is liable to a fine and for continued contravention, to a daily default fine.

**177. Powers of court on application under s.176**

(1) On the hearing of an application under section 176 the court may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the court's satisfaction for the purchase of the interests of dissentient members or for the protection of dissentient creditors (as the case may be); and the court may give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement.

(2) Without prejudice to its powers under subsection (1), the court shall make an order on such terms and conditions as it thinks fit either confirming or cancelling the resolution; and, if the court confirms the resolution, it may in particular by order alter or extend any date or period of time specified in the resolution or in any provision in this Chapter which applies to the redemption or purchase of shares to which the resolution refers.

(3) The court's order may, if the court thinks fit, provide for the purchase by the company of the shares of any of its members and for the reduction accordingly of the company's capital, and may make such alterations in the company's memorandum and articles as may be required in consequence of that provision.

(4) If the court's order requires the company not to make any, or any specified, alteration in its memorandum or articles, the company has not then power without leave of the court to make any such alteration in breach of the requirement.

(5) An alteration in the memorandum or articles made by virtue of an order under this section, if not made by resolution of the company, is of the same effect as if duly made by resolution; and this Act applies accordingly to the memorandum or articles as so altered.

**178. Effect of company's failure to redeem or purchase**

(1) This section has effect where a company has, on or after 15<sup>th</sup> June 1982, —

(a) issued shares on terms that they are or are liable to be redeemed, or

(b) agreed to purchase any of its own shares.

(2) The company is not liable in damages in respect of any failure on its part to redeem or purchase any of the shares.

(3) Subsection (2) is without prejudice to any right of the holder of the shares other than his right to sue the company for damages in respect of its failure; but the court shall not grant an order for specific performance of the terms of redemption or purchase if the company shows that it is unable to meet the costs of redeeming or purchasing the shares in question out of distributable profits.

(4) If the company is wound up and at the commencement of the winding up any of the shares have not been redeemed or purchased, the terms of redemption or purchase may be enforced

against the company; and when shares are redeemed or purchased under this subsection, they are treated as cancelled.

(5) However subsection (4) does not apply if —

(a) the terms provided for the redemption or purchase to take place at a date later than that of the commencement of the winding up, or

(b) during the period beginning with the date on which the redemption or purchase was to have taken place and ending with the commencement of the winding up the company could not at any time have lawfully made a distribution equal in value to the price at which the shares were to have been redeemed or purchased.

(6) There shall be paid in priority to any amount which the company is liable under subsection (4) to pay in respect of any shares —

(a) all other debts and liabilities of the company (other than any due to members in their character as such),

(b) if other shares carry rights (whether as to capital or as to income) which are preferred to the rights as to capital attaching to the first-mentioned shares, any amount due in satisfaction of those preferred rights;

but subject to that, any such amount shall be paid in priority to any amounts due to members in satisfaction of their rights (whether as to capital or income) as members.

(7) (Repealed)

#### **179. Power for Governor to modify this Chapter**

(1) The Governor may by regulations modify the provisions of this Chapter\* with respect to any of the following matters —

(a) the authority required for a purchase by a company of its own shares,

(b) the authority required for the release by a company of its rights under a contract for the purchase of its own shares or a contract under which the company may (subject to any conditions) become entitled or obliged to purchase its own shares,

(c) the information to be included in a return delivered by a company to the registrar of companies in accordance with section 169(1),

\*sections 159 to 181

(d) the matters to be dealt with in the statutory declaration of the directors under section 173 with a view to indicating their opinion of their company's ability to make a proposed payment out of capital with due regard to its financial situation and prospects, and

(e) the contents of the auditors' report required by that section to be annexed to that declaration.

(2) The Governor may also by regulations make such provision (including modification of the provisions of this Chapter) as appears to him to be appropriate —

(a) for wholly or partly relieving companies from the requirement of section 171(3)(a) that any available profits must be taken into account in determining the amount of the permissible capital payment for shares under that section, or

(b) for permitting a company's share premium account to be applied, to any extent appearing to the Governor to be appropriate, in providing for the premiums payable on redemption or purchase by the company of any of its own shares.

(3) Regulations under this section —

(a) may make such further modification of any provisions of this Chapter\* as appears to the Governor to be reasonably necessary in consequence of any provision made under such regulations by virtue of subsection (1) or (2),

(b) may make different provision for different cases or classes of case, and

(c) may contain such further consequential provisions, and such incidental and supplementary provisions, as the Governor thinks fit.

(4) No regulations shall be made under this section until they have been approved by resolution of the Legislative Council.

### **181. Definitions for Chapter VII**

In this Chapter —

(a) "distributable profits", in relation to the making of any payment by a company, means those profits out of which it could lawfully make a distribution (within the meaning given by section 263(2)) equal in value to the payment, and

(b) "permissible capital payment" means the payment permitted by section 171;

and references to payment out of capital are to be construed in accordance with section 171.

\*sections 159 to 181

**221. Duty to keep accounting records**

(1) Every company shall keep accounting records which are sufficient to show and explain the company's transactions and are such as to —

(a) disclose with reasonable accuracy, at any time, the financial position of the company at that time, and

(b) enable the directors to ensure that any balance sheet and profit and loss account prepared under this Part complies with the requirements of this Act.

(2) The accounting records shall in particular contain —

(a) entries from day to day of all sums of money received and expended by the company, and the matters in respect of which the receipt and expenditure takes place, and

(b) a record of the assets and liabilities of the company.

(3) If the company's business involves dealing in goods, the accounting records shall contain —

(a) statements of stock held by the company at the end of each financial year of the company,

(b) all statements of stocktakings from which any such statement of stock as is mentioned in paragraph (a) has been or is to be prepared, and

(c) except in the case of goods sold by way of ordinary retail trade, statements of all goods sold and purchased, showing the goods and the buyers and sellers in sufficient detail to enable all these to be identified.

(4) A parent company which has a subsidiary undertaking in relation to which the above requirements do not apply shall take reasonable steps to secure that the undertaking keeps such accounting records as to enable the directors of the parent company to ensure that any balance sheet and profit and loss account prepared under this Part complies with the requirements of this Act.

(5) If a company fails to comply with any provision of this section, every officer of the company who is in default is guilty of an offence unless he shows that he acted honestly and that in the circumstances in which the company's business was carried on the default was excusable.

(6) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

**222. Where and for how long records to be kept**

(1) A company's accounting records shall be kept at its registered office or such other place as the directors think fit, and shall at all times be open to inspection by the company's officers.

(2) If accounting records are kept at a place outside the Falkland Islands, accounts and returns with respect to the business dealt with in the accounting records so kept shall be sent to, and kept at, a place in the Falkland Islands, and shall at all times be open to such inspection.

(3) The accounts and returns to be sent to the Falkland Islands shall be such as to —

(a) disclose with reasonable accuracy the financial position of the business in question at intervals of not more than six months, and

(b) enable the directors to ensure that the company's balance sheet and profit and loss account comply with the requirements of this Act.

(4) If a company fails to comply with any provision of subsections (1) to (3), every officer of the company who is in default is guilty of an offence, and liable to imprisonment or a fine or both, unless he shows that he acted honestly and that in the circumstances in which the company's business was carried on the default was excusable.

(5) Accounting records which a company is required by section 221 to keep shall be preserved by it —

(a) in the case of a private company, for three years from the date on which they are made, and

(b) in the case of a public company, for six years from the date on which they are made.

(6) An officer of a company is guilty of an offence, and liable to imprisonment or a fine or both, if he fails to take all reasonable steps for securing compliance by the company with subsection (5) or intentionally causes any default by the company under that subsection.

### **223. A company's financial year**

(1) A company's "financial year" is determined as follows.

(2) Its first financial year begins with the first day of its first accounting reference period and ends with the last day of that period or such other date, not more than seven days before or after the end of that period, as the directors may determine.

(3) Subsequent financial years begin with the day immediately following the end of the company's previous financial year and end with the last day of its next accounting reference period or such other date, not more than seven days before or after the end of that period, as the directors may determine.

(4) In relation to an undertaking which is not a company, references in this Act to its financial year are to any period in respect of which a profit and loss account of the undertaking is required to be made up (by its constitution or by the law under which it is established), whether that period is a year or not.



(5) The directors of a parent company shall secure that, except where in their opinion there are good reasons against it, the financial year of each of its subsidiary undertakings coincides with the company's own financial year.

#### **224. Accounting reference periods and accounting reference date**

(1) A company's accounting reference periods are determined according to its accounting reference date.

(2) The accounting reference date of a company incorporated before 1<sup>st</sup> January 2007, that is the date on which its accounting reference period ends in each calendar year shall (subject to section 225) be the anniversary of the last day of the company's last financial year ending before 1<sup>st</sup> January 2007.

(3) The accounting reference date of a company incorporated on or after 1<sup>st</sup> January 2007 is the last day of the month in which the anniversary of its incorporation falls.

(3A) (Omitted)

(4) A company's first accounting reference period is the period of more than six months, but not more than 18 months, beginning with the date of its incorporation and ending with its accounting reference date.

(5) Its subsequent accounting reference periods are successive periods of twelve months beginning immediately after the end of the previous accounting reference period and ending with its accounting reference date.

(6) This section has effect subject to the provisions of section 225 relating to the alteration of accounting reference dates and the consequences of such alteration.

#### **225. Alteration of accounting reference date**

(1) A company may by notice in the prescribed form given to the registrar specify a new accounting reference date having effect in relation to —

(a) the company's current accounting reference period and subsequent periods; or

(b) the company's previous accounting reference period and subsequent periods.

A company's "previous accounting reference period" means that immediately preceding its current accounting reference period.

(2) ...

(3) The notice shall state whether the current or previous accounting reference period —

(a) is to be shortened, so as to come to an end on the first occasion on which the new accounting reference date falls or fell after the beginning of the period, or

(b) is to be extended, so as to come to an end on the second occasion on which that date falls or fell after the beginning of the period.

(4) A notice under subsection (1) stating that the current or previous accounting reference period is to be extended is ineffective, except as mentioned below, if given less than five years after the end of an earlier accounting reference period of the company which was extended by virtue of this section.

This subsection does not apply to a notice given by a company which is a subsidiary undertaking or parent undertaking of another EEA undertaking if the new accounting reference date coincides with that of the other EEA undertaking or, where that undertaking is not a company, with the last day of its financial year, or where the Governor directs that it should not apply, which he may do with respect to a notice which has been given or which may be given.

(5) A notice under subsection (1) may not be given in respect of a previous accounting reference period if the period allowed for laying and delivering accounts and reports in relation to that period has already expired.

(6) An accounting reference period may not in any case be extended so as to exceed 18 months and a notice under this section is ineffective if the current or previous accounting reference period as extended in accordance with the notice would exceed that limit.

(7) In this section “EEA undertaking” means an undertaking established under the law of any part of the United Kingdom or the law of any other EEA state.

## **226. Duty to prepare individual company accounts**

(1) The directors of every company shall prepare for each financial year of the company —

(a) a balance sheet as at the last day of the year, and

(b) a profit and loss account.

Those accounts are referred to in this Part as the company’s “individual accounts”.

(2) The balance sheet shall give a true and fair view of the state of affairs of the company as at the end of the financial year; and the profit and loss account shall give a true and fair view of the profit and loss of the company for the financial year.

(3) A company’s individual accounts shall comply with the provisions of Schedule 4 as to the form and content of the balance sheet and profit and loss account and additional information to be provided by way of notes to the accounts.

(4) Where compliance with the provisions of that Schedule, and the other provisions of this Act as to the matters to be included in a company's individual accounts or in notes to those accounts, would not be sufficient to give a true and fair view, the necessary additional information shall be given in the accounts or in a note to them.

(5) If in special circumstances compliance with any of those provisions is inconsistent with the requirement to give a true and fair view, the directors shall depart from that provision to the extent necessary to give a true and fair view.

Particulars of any such departure, the reasons for it and its effect shall be given in a note to the accounts.

## **227. Duty to prepare group accounts**

(1) If at the end of a financial year a company is a parent company the directors shall, as well as preparing individual accounts for the year, prepare group accounts.

(2) Group accounts shall be consolidated accounts comprising —

(a) a consolidated balance sheet dealing with the state of affairs of the parent company and its subsidiary undertakings, and

(b) a consolidated profit and loss account dealing with the profit or loss of the parent company and its subsidiary undertakings.

(3) The accounts shall give a true and fair view of the state of affairs as at the end of the financial year, and the profit or loss for the financial year, of the undertakings included in the consolidation as a whole, so far as concerns members of the company.

(4) A company's group accounts shall comply with the provisions of Schedule 4A as to the form and content of the consolidated balance sheet and consolidated profit and loss account and additional information to be provided by way of notes to the accounts.

(5) Where compliance with the provisions of that Schedule, and the other provisions of this Act, as to the matters to be included in a company's group accounts or in notes to those accounts, would not be sufficient to give a true and fair view, the necessary additional information shall be given in the accounts or in a note to them.

(6) If in special circumstances compliance with any of those provisions is inconsistent with the requirement to give a true and fair view, the directors shall depart from that provision to the extent necessary to give a true and fair view.

Particulars of any such departure, the reasons for it and its effect shall be given in a note to the accounts.

## **228. Exemption for parent companies included in accounts of larger group**

(1) A company is exempt from the requirement to prepare group accounts if it is itself a subsidiary undertaking and its immediate parent undertaking is established under the law of a member State of the European Economic Community, in the following cases —

- (a) where the company is a wholly-owned subsidiary of that parent undertaking;
- (b) where that parent undertaking holds more than 50 per cent of the shares in the company and notice requesting the preparation of group accounts has not been served on the company by shareholders holding in aggregate —
  - (i) more than half of the remaining shares in the company, or
  - (ii) 5 per cent of the total shares in the company.

Such notice must be served not later than six months after the end of the financial year before that to which it relates.

(2) Exemption is conditional upon compliance with all of the following conditions —

- (a) that the company is included in consolidated accounts for a larger group drawn up to the same date, or to an earlier date in the same financial year, by a parent undertaking established under the law of a member State of the European Economic Community;
- (b) that those accounts are drawn up and audited, and that parent undertaking's annual report is drawn up, according to that law, in accordance with the provisions of the Seventh Directive (83/349/EEC) (where applicable as modified by the provisions of the Bank Accounts Directive (86/635/EEC) or the Insurance Accounts Directive (91/674/EEC),
- (c) that the company discloses in its individual accounts that it is exempt from the obligation to prepare and deliver group accounts;
- (d) that the company states in its individual accounts the name of the parent undertaking which draws up the group accounts referred to above and —
  - (i) if it is incorporated outside the Falkland Islands, the country in which it is incorporated,
  - (ii) ..., and
  - (iii) if it is unincorporated, the address of its principal place of business;
- (e) that the company delivers to the registrar, within the period allowed for delivering its individual accounts, copies of those group accounts and of the parent undertaking's annual report, together with the auditors' report on them; and

(f) that if any document comprised in accounts and reports delivered in accordance with paragraph (e) is in a language other than English, there is annexed to the copy of that document delivered a translation of it into English, certified in the prescribed manner to be a correct translation.

(3) The exemption does not apply to a company any of whose securities are listed on a stock exchange in any member State of the European Economic Community.

(4) Shares held by directors of a company for the purpose of complying with any share qualification requirement shall be disregarded in determining for the purposes of subsection (1)(a) whether the company is a wholly-owned subsidiary.

(5) For the purposes of subsection (1)(b) shares held by a wholly-owned subsidiary of the parent undertaking, or held on behalf of the parent undertaking or a wholly-owned subsidiary, shall be attributed to the parent undertaking.

(6) In subsection (3) “securities” includes —

(a) shares and stock,

(b) debentures, including debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness,

(c) warrants or other instruments entitling the holder to subscribe for securities falling within paragraph (a) or (b), and

(d) certificates or other instruments which confer —

(i) property rights in respect of a security falling within paragraph (a), (b) or (c),

(ii) any right to acquire, dispose of, underwrite or convert a security, being a right to which the holder would be entitled if he held any such security to which the certificate or other instrument relates, or

(iii) a contractual right (other than an option) to acquire any such security otherwise than by subscription.

## **229. Subsidiary undertakings included in the consolidation**

(1) Subject to the exceptions authorised or required by this section, all the subsidiary undertakings of the parent company shall be included in the consolidation.

(2) A subsidiary undertakings may be excluded from consolidation if its inclusion is not material for the purpose of giving a true and fair view; but two or more undertakings may be excluded only if they are not material taken together.

(3) In addition, a subsidiary undertakings may be excluded from consolidation where —

- (a) severe long-term restrictions substantially hinder the exercise of the rights of the parent company over the assets or management of that undertaking, or
- (b) the information necessary for the preparation of group accounts cannot be obtained without disproportionate expense or undue delay, or
- (c) the interest of the parent company is held exclusively with a view to subsequent resale and the undertaking has not been previously been included in consolidated group accounts prepared by the parent company.

The reference in paragraph (a) to the rights of the parent company and the reference in paragraph (c) to the interest of the parent company are, respectively, to rights and interests held by or attributed to the company for the purposes of section 258 (definition of “parent undertaking”) in the absence of which it would not be the parent company.

(4) Where the activities of one or more subsidiary undertakings are so different from those of other undertakings to be included in the consolidation that their inclusion would be incompatible with the obligation to give a true and fair view, those undertakings shall be excluded from consolidation.

This subsection does not apply merely because some of the undertakings are industrial, some commercial and some provide services, or because they carry on industrial or commercial activities involving different products or provide different services.

(5) Where all the subsidiary undertakings of a parent company fall within the above exclusions, no group accounts are required.

### **230. Treatment of individual profit and loss account where group accounts prepared**

(1) The following provisions apply with respect to the individual profit and loss account of a parent company where —

- (a) the company is required to prepare and does prepare group accounts in accordance with this Act, and
- (b) the notes to the company’s individual balance sheet show the company’s profit or loss for the financial year determined in accordance with this Act.

(2) The profit and loss account need not contain the information specified in paragraphs 52 to 57 of Schedule 4 (information supplementing the profit and loss account).

(3) The profit and loss account must be approved in accordance with section 233(1) (approval by board of directors) but may be omitted from the company’s annual accounts for the purposes of the other provisions below in this Chapter.

(4) The exemption conferred by this section is conditional upon its being disclosed in the company's annual accounts that the exemption applies.

**231. Disclosure required in notes to accounts: related undertakings**

(1) The information specified in Schedule 5 shall be given in notes to a company's annual accounts.

(2) Where the company is not required to prepare group accounts, the information specified in Part I of that Schedule shall be given; and where the company is required to prepare group accounts, the information specified in Part II of that Schedule shall be given.

(3) The information required by Schedule 5 need not be disclosed with respect to an undertaking which —

(a) is established under the law of a country outside the Falkland Islands, or

(b) carries on business outside the Falkland Islands,

if in the opinion of the directors of the company the disclosure would be seriously prejudicial to the business of that undertaking, or to the business of the company or any of its subsidiary undertakings, and the Governor agrees that the information need not be disclosed.

This subsection does not apply in relation to the information required under paragraph ... 6, 9A, 20 or 28A of that Schedule.

(4) Where advantage is taken of subsection (3), that fact shall be stated in a note to the company's annual accounts.

(5) If the directors of the company are of the opinion that the number of undertakings in respect of which the company is required to disclose information under any provision of Schedule 5 to this Act is such that compliance with that provision would result in information of excessive length being given, the information need only be given in respect of —

(a) the undertakings whose results or financial position, in the opinion of the directors, principally affected the figures shown in the company's annual accounts, and

(b) undertakings excluded from consolidation under section 229(3) or (4).

(6) If advantage is taken of subsection (5) —

(a) there shall be included in the notes to the company's annual accounts a statement that the information is given only with respect to such undertakings as are mentioned in that subsection, and

(b) the full information (both that which is disclosed in the notes to the accounts and that which is not) shall be annexed to the company's next annual return.

For this purpose the "next annual return" means that next delivered to the registrar after the accounts in question have been approved under section 233.

(7) If a company fails to comply with subsection (6)(b), the company and every officer who is in default is liable to a fine and, for continued contravention a daily default fine.

### **232. Disclosure required in notes to accounts: emoluments and other benefits of directors and others**

(1) The information specified in Schedule 6 shall be given in notes to a company's annual accounts.

(2) In that Schedule —

Part I relates to the emoluments of directors (including emoluments waived), pensions of directors and past directors, compensation for loss of office to directors and past directors and sums paid to third parties in respect of directors' services,

Part II relates to loans, quasi-loans and other dealings in favour of directors and connected persons, and

Part III relates to transactions, arrangements and agreements made by the company or a subsidiary undertakings for officers of the company other than directors.

(3) It is the duty of any director of a company, and any person who is or has at any time in the preceding five years been an officer of the company, to give notice to the company of such matters relating to himself as may be necessary for the purposes of Part I of Schedule 6.

(4) A person who makes default in complying with subsection (3) commits an offence and is liable to a fine.

### **233. Approval and signing of accounts**

(1) A company's annual accounts shall be approved by the board of directors and signed on behalf of the board by a director of the company.

(2) The signature shall be on the company's balance sheet.

(3) Every copy of the balance sheet which is laid before the company in general meeting, or which is otherwise circulated, published or issued, shall state the name of the person who signed the balance sheet on behalf of the board.

(4) The copy of the company's balance sheet which is delivered to the registrar shall be signed on behalf of the board by a director of the company.



(5) If annual accounts are approved which do not comply with the requirements of this Act, every director of the company who is party to their approval and who knows that they do not comply or is reckless as to whether they comply is guilty of an offence and liable to a fine.

For this purpose every director of the company at the time the accounts are approved shall be taken to be a party to their approval unless he shows that he took all reasonable steps to prevent their being approved.

(6) If a copy of the balance sheet —

(a) is laid before the company, or otherwise circulated, published or issued, without the balance sheet having been signed as required by this section or without the required statement of the signatory's name being included, or

(b) is delivered to the registrar without being signed as required by this section,

the company and every officer of it who is in default is guilty of an offence and liable to a fine.

#### **234. Duty to prepare directors' report**

(1) The directors of a company shall for each financial year prepare a report —

(a) containing a fair review of the development of the business of the company and its subsidiary undertakings during the financial year and of their position at the end of it, and

(b) stating the amount (if any) which they recommend should be paid as dividend ...

(2) The report shall state the names of the persons who, at any time during the financial year, were directors of the company, and the principal activities of the company and its subsidiary undertakings in the course of the year and any significant change in those activities in the year.

(3) The report shall also comply with Schedule 7 as regards the disclosure of the matters mentioned there.

(4) In Schedule 7 —

Part I relates to matters of a general nature, including changes in asset values, directors' shareholdings and other interests and contributions for political and charitable purposes,

Part II relates to the acquisition by a company of its own shares or a charge on them,

Part III relates to the employment, training and advancement of disabled persons,

...

Part V relates to the involvement of employees in the affairs, policy and performance of the company.

Part VI relates to the company's policy and practice on the payment of creditors.

(5) In the case of any failure to comply with the provisions of this Part as to the preparation of a directors' report and the contents of the report, every person who was a director of the company immediately before the end of the period for laying and delivering accounts and reports for the financial year in question is guilty of an offence and liable to a fine.

(6) In proceedings against a person for an offence under this section it is a defence for him to prove that he took all reasonable steps for securing compliance with the requirements in question.

#### **234A. Approval and signing of directors' report**

(1) The directors' report shall be approved by the board of directors and signed on behalf of the board by a director or the secretary of the company.

(2) Every copy of directors' report which is laid before the company in general meeting, or which is otherwise circulated, published or issued, shall state the name of the person who signed it on behalf of the board.

(3) The copy of the directors' report which is delivered to the registrar shall be signed on behalf of the board by a director or the secretary of the company.

(4) If a copy of the directors' report —

(a) is laid before the company, or otherwise circulated, published or issued, without the report having been signed as required by this section or without the required statement of the signatory's name being included, or

(b) is delivered to the registrar without being signed as required by this section,

the company and every officer of it who is in default is guilty of an offence and liable to a fine.

#### **235. Auditors' report**

(1) A company's auditors shall make a report to the company's members on all annual accounts of the company of which copies are to be laid before the company in general meeting during their tenure of office.

(2) The auditors' report shall state whether in the auditors' opinion the annual accounts have been properly prepared in accordance with this Act, and in particular whether a true and fair view is given —

(a) in the case of an individual balance sheet, of the state of affairs of the company as at the end of the financial year,

(b) in the case of an individual profit and loss account, of the profit or loss of the company for the financial year,

(c) in the case of group accounts, of the state of affairs as at the end of the financial year, and the profit or loss for the financial year, of the undertakings included in the consolidation as a whole, so far as concerns members of the company.

(3) The auditors shall consider whether the information given in the directors' report for the financial year for which the annual accounts are prepared is consistent with those accounts, and if they are of opinion that it is not they shall state that fact in their report.

### **236. Signature of auditors' report**

(1) The auditors' report shall state the names of the auditors and be signed by them.

(2) Every copy of the auditors' report which is laid before the company in general meeting, or which is otherwise circulated, published or issued, shall state the names of the auditors.

(3) The copy of the auditors' report which is delivered to the registrar shall state the names of the auditors and be signed by them.

(4) If a copy of the auditors' report —

(a) is laid before the company, or otherwise circulated, published or issued, without the required statement of the auditors' names, or

(b) is delivered to the registrar without the required statement of the auditors' names or without being signed as required by this section,

the company and every officer of it who is in default is guilty of an offence and liable to a fine.

(5) References in this section to signature by the auditors are, where the office of auditor is held by a body corporate or partnership, to signature in the name of the body corporate or partnership by a person authorised to sign on its behalf.

### **237. Duties of auditors**

(1) A company's auditors shall, in preparing their report, carry out such investigations as will enable them to form an opinion as to —

(a) whether proper accounting records have been kept by the company and proper returns adequate for their audit have been received from branches not visited by them, and

(b) whether the company's individual accounts are in agreement with the accounting records and returns.

(2) If the auditors are of opinion that proper accounting records have not been kept, or that proper returns adequate for their audit have not been received from branches not visited by them, or if the company's individual accounts are not in agreement with the accounting records and returns, the auditors shall state that fact in their report.

(3) If the auditors fail to obtain all the information and explanations which, to the best of their knowledge and belief, are necessary for the purposes of their audit, they shall state that fact in their report.

(4) If the requirements of Schedule 6 (disclosure of information: emoluments and other benefits of directors and others) are not complied with in the annual accounts, the auditors shall include in their report, so far as they are reasonably able to do so, a statement giving the required particulars.

(4A) If the directors of the company have taken advantage of the exemption conferred by section 248 (exemption for small and medium-sized groups from the need to prepare group accounts) and in the auditors' opinion they were not entitled so to do, the auditors shall state that fact in their report.

### **238. Persons entitled to receive copies of accounts and reports**

(1) A copy of the company's annual accounts, together with a copy of the directors' report for that financial year and of the auditors' report on those accounts, shall be sent to —

(a) every member of the company,

(b) every holder of the company's debentures, and

(c) every person who is entitled to received notice of general meetings,

not less than 21 days before the date of the meeting at which copies of those documents are to be laid in accordance with section 241.

(2) Copies need not be sent —

(a) to a person who is not entitled to receive notices of general meetings and of whose address the company is unaware, or

(b) to more than one of the joint holders of shares or debentures none of whom is entitled to receive such notices, or

(c) in the case of joint holders of shares or debentures some of whom are, and some not, entitled to receive such notices, to those who are not so entitled.

(3) In the case of a company not having a share capital, copies need not be sent to anyone who is not entitled to receive notices of general meetings of the company.

(4) If copies are sent less than 21 days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by all the members entitled to attend and vote at the meeting.

(5) If default is made in complying with this section, the company and every officer of it who is in default is guilty of an offence and liable to a fine.

(6) Where copies are sent out under this section over a period of days, references elsewhere in this Act to the day on which copies are sent out shall be construed as references to the last day of that period.

### **239. Right to demand copies of accounts and reports**

(1) Any member of a company and any holder of a company's debentures is entitled to be furnished, on demand and without charge, with a copy of the company's last annual accounts and directors' report and a copy of the auditors' report on those accounts.

(2) The entitlement under this section is to a single copy of those documents, but that is in addition to any copy to which a person may be entitled under section 238.

(3) If a demand under this section is not complied with within seven days, the company and every officer of it who is in default is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

(4) If in proceedings for such an offence the issue arises whether a person had already been furnished with a copy of the relevant document under this section, it is for the defendant to prove that he had.

### **240. Requirements in connection with publication of accounts**

(1) If a company publishes any of its statutory accounts, they must be accompanied by the relevant auditors' report under section 235 or, as the case may be, the relevant report made for the purposes of section 249A(2).

(2) A company which is required to prepare group accounts for a financial year shall not publish its statutory individual accounts for that year without also publishing with them its statutory group accounts.

(3) If a company publishes non-statutory accounts, it shall publish with them a statement indicating —

(a) that they are not the company's statutory accounts,

(b) whether statutory accounts dealing with any financial year with which the non-statutory accounts purport to deal have been delivered to the registrar,

(c) whether the company's auditors have made a report under section 235 on the statutory accounts for any such financial year and, if no such report has been made, whether the company's reporting accountant has made a report for the purposes of section 249A(2) on the statutory accounts for any such financial year, and

(d) whether any auditors' report so made was qualified or contained a statement under section 237(2) or (3) (accounting records or returns inadequate, accounts not agreeing with records and returns or failure to obtain necessary information and explanations) or whether any report made for the purposes of section 249A(2) was qualified;

and it shall not publish with the non-statutory accounts any auditors' report under section 235 or any report made for the purposes of section 249A(2).

(4) For the purposes of this section a company shall be regarded as publishing a document if it publishes, issues or circulates it or otherwise makes it available for public inspection in a manner calculated to invite members of the public generally, or any class of members of the public, to read it.

(5) References in this section to a company's statutory accounts are to its individual or group accounts for a financial year as required to be delivered to the registrar under section 242; and references to the publication by a company of "non-statutory accounts" are to the publication of—

(a) any balance sheet or profit and loss account relating to, or purporting to deal with, a financial year of the company, or

(b) an account in any form purporting to be a balance sheet or profit and loss account for the group consisting of the company and its subsidiary undertakings relating to, or purporting to deal with, a financial year of the company,

otherwise than as part of the company's statutory accounts.

(6) A company which contravenes any provision of this section, and any officer of it who is in default, is guilty of an offence and liable to a fine.

#### **241. Accounts and reports to be laid before company in general meeting**

(1) The directors of a company shall in respect of each financial year lay before the company in general meeting copies of the company's annual accounts, the directors' report and the auditors' report on those accounts.

(2) If the requirements of subsection (1) are not complied with before the end of the period allowed for laying and delivering accounts and reports, every person who immediately before the

end of that period was a director of the company is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

(3) It is a defence for a person charged with such an offence to prove that he took all reasonable steps for securing that those requirements would be complied with before the end of that period.

(4) It is not a defence to prove that the documents in question were not in fact prepared as required by this Part.

#### **242. Accounts and reports to be delivered to the registrar**

(1) The directors of a company shall in respect of each financial year deliver to the registrar a copy of the company's annual accounts together with a copy of the directors' report for that year and a copy of the auditors' report on those accounts.

If any document comprised in those accounts or reports is in a language other than English then, subject to section 710B(6) (delivery of certain Welsh documents without a translation), the directors shall annex to the copy of that document delivered a translation of it into English, certified in the prescribed manner to be a correct translation.

(2) If the requirements of subsection (1) are not complied with before the end of the period allowed for laying and delivering accounts and reports, every person who immediately before the end of that period was a director of the company is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

(3) Further, if the directors of the company fail to make good the default within 14 days after the service of a notice on them requiring compliance, the court may on the application of any member or creditor of the company or of the registrar, make an order directing the directors (or any of them) to make good the default within such time as may be specified in the order.

The court's order may provide that all costs of and incidental to the application shall be borne by the directors.

(4) It is a defence for a person charged with an offence under this section to prove that he took all reasonable steps for securing that the requirements of subsection (1) would be complied with before the end of the period allowed for laying and delivering accounts and reports.

(5) It is not a defence in any proceedings under this section to prove that the documents in question were not in fact prepared as required by this Part.

#### **242A. Civil penalty for failure to deliver accounts**

(1) Where the requirements of section 242(1) are not complied with before the end of the period allowed for laying and delivering accounts and reports, the company is liable to a civil penalty.

This is in addition to any liability of the directors under section 242.

(2) The amount of the penalty is determined by reference to the length of the period between the end of the period allowed for laying and delivering accounts and reports and the day on which the requirements are complied with, and whether the company is a public or private company, as follows —

<i>Length of period</i>	<i>Public company</i>	<i>Private company</i>
Not more than 3 months	£500	£100
More than 3 months but less than 6 months	£1,000	£250
More than 6 months but less than 12 months	£2,000	£500
More than 12 months	£5,000	£1,000

(3) The penalty may be recovered by the registrar and shall be paid by him into the Consolidated Fund.

(4) It is not a defence in proceedings under this section to prove that the documents in question were not in fact prepared as required by this Part.

#### **244. Period allowed for laying and delivering accounts and reports**

(1) The period allowed for laying and delivering accounts and reports is —

(a) for a private company, 9 months after the end of the relevant accounting reference period, and

(b) for a public company, 9 months after the end of that period.

This is subject to the following provisions of this section.

(2) If the relevant accounting reference period is the company's first and is a period of more than 12 months, the period allowed is —

(a) 10 months or 7 months, as the case may be, from the first anniversary of the incorporation of the company, or

(b) 3 months from the end of the accounting reference period,

whichever last expires.

(3) Where a company carries on business, or has interests, outside the Falkland Islands, the directors may, in respect of any financial year, give to the registrar before the end of the period allowed by subsection (1) or (2) a notice in the prescribed form —

(a) stating that the company so carries on business or has such interests, and

(b) claiming a 3 month extension of the period allowed for laying and delivering accounts and reports;



and upon such a notice being given the period is extended accordingly.

(4) If the relevant accounting period is treated as shortened by virtue of a notice given by the company under section 225 (alteration of accounting reference date), the period allowed for laying and delivering accounts is that applicable in accordance with the above provisions or 3 months from the date of the notice under that section, whichever last expires.

(5) If for any special reason the Governor thinks fit he may, on an application made before the expiry of the period otherwise allowed, by notice in writing to a company extend that period by such further period as may be specified in the notice.

(6) In this section “the relevant accounting reference period” means the accounting reference period by reference to which the financial year for the accounts in question was determined.

#### **245. Voluntary revision of annual accounts or directors’ report**

(1) If it appears to the directors of a company that any annual accounts of the company, or any directors’ report, did not comply with the requirements of this Act, they may prepare revised accounts or a revised report.

(2) Where copies of the previous accounts or report have been laid before the company in general meeting or delivered to the registrar, the revisions shall be confined to —

(a) the correction of those respects in which the previous accounts or report did not comply with the requirements of this Act, and

(b) the making of any necessary consequential alterations.

(3) The Governor may make provision by regulations as to the application of the provisions of this Act in relation to revised annual accounts or a revised directors’ report.

(4) The regulations may, in particular —

(a) make different provision according to whether the previous accounts or report are replaced or are supplemented by a document indicating the corrections to be made;

(b) make provision with respect to the functions of the company’s auditors or reporting accountant in relation to the revised accounts or report;

(c) require the directors to take such steps as may be specified in the regulations where the previous accounts or report have been —

(i) sent out to members and others under section 238(1),

(ii) laid before the company in general meeting, or

(iii) delivered to the registrar,

or where a summary financial statement based on the previous accounts or report has been sent to members under section 251;

(d) apply the provisions of this Act (including those creating criminal offences) subject to such additions, exceptions and modifications as are specified in the regulations.

(5) Regulations under this section shall be subject to annulment in pursuance of a resolution of Legislative Council.

**245A. Governor's notice in respect of annual accounts**

(1) Where copies of a company's annual accounts have been sent out under section 238, or a copy of a company's annual accounts has been laid before the company in general meeting or delivered to the registrar, and it appears to the Governor that there is, or may be, a question whether the accounts comply with the requirements of this Act, he may give notice to the directors of the company indicating the respects in which it appears to him that such a question arises, or may arise.

(2) The notice shall specify a period of not less than one month for the directors to give him an explanation of the accounts or prepare revised accounts.

(3) If at the end of the specified period, or such longer period as he may allow, it appears to the Governor that no satisfactory explanation of the accounts has been given and that the accounts have not been revised so as to comply with the requirements of this Act, he may if he thinks fit apply to the court.

(4) The provisions of this section apply equally to revised annual accounts, in which case the references to revised accounts shall be read as references to further revised accounts.

**245B. Application to court in respect of defective accounts**

(1) An application may be made to the court —

(a) by the Governor, after having complied with section 245A, or

(b) by a person authorised by the Governor for the purposes of this section, or

(c) by a person authorised for the purposes of this section as it applies in England,

for a declaration that the annual accounts of a company do not comply with the requirements of this Act and for an order requiring the directors of the company to prepare revised accounts.

(2) Notice of the application, together with a general statement of the matters at issue in the proceedings, shall be given by the applicant to the registrar for registration.

(3) If the court orders the preparation of revised accounts, it may give directions with respect to—

(a) the auditing of the accounts,

(b) the revision of any directors' report or summary financial statement, and

(c) the taking of steps by the directors to bring the making of the order to the notice of persons likely to rely on the previous accounts,

and such other matters as the court thinks fit.

(4) If the court finds that the accounts did not comply with the requirements of this Act it may order that all or part of—

(a) the costs of and incidental to the application, and

(b) any reasonable expenses incurred by the company in connection with or in consequence of the preparation of revised accounts,

shall be borne by such of the directors as were party to the approval of the defective accounts.

For this purpose every director of the company at the time the accounts were approved shall be taken to have been a party to their approval unless he shows that he took all reasonable steps to prevent their being approved.

(5) Where the court makes an order under subsection (4) it shall have regard to whether the directors party to the approval of the defective accounts knew or ought to have known that the accounts did not comply with the requirements of this Act, and it may exclude one or more directors from the order or order the payment of different amounts by different directors.

(6) On the conclusion of proceedings on an application under this section, the applicant shall give to the registrar for registration an office copy of the court order or, as the case may be, notice that the application has failed or been withdrawn.

(7) The provisions of this section apply equally to revised annual accounts, in which case the references to revised accounts shall be read as references to further revised accounts.

#### **245C. Other persons authorised to apply to court**

(1) The Governor may authorise for the purposes of section 245B any person appearing to him—

(a) to have an interest in, and to have satisfactory procedures directed to securing, compliance by companies with the accounting requirements of this Act,

(b) to have satisfactory procedures for receiving and investigating complaints about the annual accounts of companies, and

(c) otherwise to be a fit and proper person to be authorised.

(2) A person may be authorised generally or in respect of particular classes of case, and different persons may be authorised in respect of different classes of case.

(3) The Governor may refuse to authorise a person if he considers that his authorisation is unnecessary having regard to the fact that there are one or more other persons who have been or are likely to be authorised.

(4) Authorisation shall be by order made by subsidiary legislation which shall be subject to annulment in pursuance of a resolution of the Legislative Council.

(5) Where authorisation is revoked, the revoking order may make such provision as the Governor thinks fit with respect to pending proceedings.

(6) Neither a person authorised under this section, nor any officer, servant or member of the governing body of such a person, shall be liable in damages for anything done or purporting to be done for the purposes of or in connection with —

(a) the taking of steps to discover whether there are grounds for an application to the court,

(b) the determination whether or not to make such an application, or

(c) the publication of its reasons for any such decision,

unless the act or omission is shown to have been in bad faith.

#### **246. Special provisions for small companies**

(1) Subject to section 247A, this section applies where a company qualifies as a small company in relation to a financial year.

(2) If the company's individual accounts for the year —

(a) comply with the provisions of Schedule 8, or

(b) fail to comply with those provisions only in so far as they comply instead with one or more corresponding provisions of Schedule 4,

they need not comply with the provisions or, as the case may be, the remaining provisions of Schedule 4; and where advantage is taken of this subsection, references in section 226 to compliance with the provisions of Schedule 4 shall be construed accordingly.

(3) The company's individual accounts for the year —

(a) may give the total of the aggregates required by paragraphs (a), (c) and (d) of paragraph 1(1) of Schedule 6 (emoluments and other benefits etc. of directors) instead of giving those aggregates individually; and

(b) need not give the information required by —

(i) paragraph 4 of Schedule 5 (financial years of subsidiary undertakings);

(ii) paragraph 1(2)(b) of Schedule 6 (numbers of directors exercising share options and receiving shares under long term incentive schemes);

(iii) paragraph 2 of Schedule 6 (details of highest paid director's emoluments etc); or

(iv) paragraph 7 of Schedule 6 (excess retirement benefits of directors and past directors).

(4) The directors' report for the year need not give the information required by —

(a) section 234(1)(a) and (b) (fair review of business and amount to be paid as dividend);

(b) paragraph 1(2) of Schedule 7 (statement of market value of fixed assets where substantially different from balance sheet amount);

(c) paragraph 6 of Schedule 7 (miscellaneous disclosures); or

(d) paragraph 11 of Schedule 7 (employee involvement).

(5) Notwithstanding anything in section 242(1), the directors of the company need not deliver to the registrar any of the following, namely —

(a) a copy of the company's profit and loss account for the year;

(b) a copy of the directors' report for the year; and

(c) if they deliver a copy of a balance sheet drawn up as at the last day of the year which complies with the requirements of Schedule 8A, a copy of the company's balance sheet drawn up as at that day.

(6) Neither a copy of the company's accounts for the year delivered to the registrar under section 242(1), nor a copy of a balance sheet delivered to the registrar under subsection (5)(c), need give the information required by —

(a) paragraph 4 of Schedule 5 (financial years of subsidiary undertakings);

(b) paragraph 6 of Schedule 5 (shares of company held by subsidiary undertakings);

(c) Part I of Schedule 6 (directors' and chairmans' emoluments, pensions and compensation for loss of office); or

(d) (does not apply).

(7) The provisions of section 233 as to the signing of the copy of the balance sheet delivered to the registrar apply to a copy of a balance sheet delivered under subsection (5)(c).

(8) Subject to subsection (9), each of the following, namely —

(a) accounts prepared in accordance with subsection (2) or (3),

(b) a report prepared in accordance with subsection (4), and

(c) a copy of accounts delivered to the registrar in accordance with subsection (5) or (6),

shall contain a statement in a prominent position on the balance sheet, in the report or, as the case may be, on the copy of the balance sheet, above the signature required by section 233, 234A or subsection (7), that they are prepared in accordance with the special provisions of this Part relating to small companies.

(9) Subsection (8) does not apply where the directors of the company have taken advantage of the exemption conferred by section 249AA (dormant companies).

#### **247. Qualification of company as small**

(1) A company qualifies as small in relation to a financial year if the qualifying conditions are met —

(a) in the case of a company's first financial year, in that year, and

(b) in the case of any subsequent financial year, in that year and the preceding year.

(2) A company shall be treated as qualifying as small in relation to a financial year —

(a) if it so qualified in relation to the previous financial year under subsection (1) above or was treated as so qualifying under paragraph (b) below; or

(b) if it was treated as so qualifying in relation to the previous year by virtue of paragraph (a) and the qualifying conditions are met in the year in question.

(3) The qualifying conditions are met by a company in a year in which it satisfies two or more of the following requirements —

*Small company*

- |    |                     |                             |
|----|---------------------|-----------------------------|
| 1. | Turnover            | Not more than £5.6 million, |
| 2. | Balance sheet total | Not more than £2.8 million. |

(4) For a period which is a company's financial year but not in fact a year the maximum figures for turnover shall be proportionately adjusted.

(5) The balance sheet total means —

(a) where in the company's accounts Format 1 of the balance sheet formats set out in Part I of Schedule 4 or Part I of Schedule 8 is adopted, the aggregate of the amounts shown in the balance sheet under the headings corresponding to items A to D in that Format, and

(b) where Format 2 is adopted, the aggregate of the amounts shown under the general heading "Assets".

(6) (Does not apply)

That number shall be determined by applying the method of calculation prescribed by paragraph 56(2) and (3) of Schedule 4 for determining the corresponding number required to be stated in a note to the company's accounts.

**247A. Cases in which special provisions do not apply**

(1) Nothing in section 246 or 246A shall apply where —

(a) the company is, or was at any time within the financial year to which the accounts relate—

(i) a public company,

(ii) a banking or insurance company, or

(iii) an authorised person under the Financial Services Act 1986; or

(b) the company is, or was at any time during that year, a member of an ineligible group.

(2) A group is ineligible if any of its members is —

(a) a public company or a body corporate which (not being a company) has power under its constitution to offer its shares or debentures to the public and may lawfully exercise that power,

(b) an authorised institution under the Banking Act 1987,

(c) an insurance company to which Part II of the Insurance Companies Act 1982 applies, or

(d) an authorised person under the Financial Services Act 1986.

(3) A parent company shall not be treated as qualifying as a small company in relation to a financial year unless the group headed by it qualifies as a small group, and shall not be treated as qualifying as a medium-sized company in relation to a financial year unless that group qualifies as a medium-sized group (see section 249).

#### **247B. Special auditors' report**

(1) This section applies where —

(a) the directors of a company propose to deliver to the registrar copies of accounts ("abbreviated accounts") prepared in accordance with section 246(5) or (6) or 246A(3) ("the relevant provision"), and

(b) the directors have not taken advantage of the exemption from audit conferred by section 249A(1) or (2) or section 249AA.

(2) If abbreviated accounts prepared in accordance with the relevant provision are delivered to the registrar, they shall be accompanied by a copy of a special report of the auditors stating that in their opinion —

(a) the company is entitled to deliver abbreviated accounts prepared in accordance with that provision, and

(b) the abbreviated accounts to be delivered are properly prepared in accordance with that provision.

(3) In such a case a copy of the auditors' report under section 235 need not be delivered, but —

(a) if that report was qualified, the special report shall set out that report in full together with any further material necessary to understand the qualification; and

(b) if that report contained a statement under —

(i) section 237(2) (accounts, records or returns inadequate or accounts not agreeing with records and returns), or

(ii) section 237(3) (failure to obtain necessary information and explanations),

the special report shall set out that statement in full.

(4) Section 236 (signature of auditors' report) applies to a special report under this section as it applies to a report under section 235.



(5) If abbreviated accounts prepared in accordance with the relevant provision are delivered to the registrar, references in section 240 (requirements in connection with publication of accounts) to the auditors' report under section 235 shall be read as references to the special auditors' report under this section.

**248. Exemption for small and medium-sized groups**

(1) A parent company need not prepare group accounts for a financial year in relation to which the group headed by that company qualifies as a small or medium-sized group and is not an ineligible group.

(2) A group is ineligible if any of its members is —

(a) a public company or body corporate which (not being a company) has power under its constitution to offer its shares or debentures to the public and may lawfully exercise that power,

(b) an authorised institution under the Banking Act 1987,

(c) an insurance company to which Part II of the Insurance Companies Act 1982 applies, or

(d) an authorised person under the Financial Services Act 1986.

(3), (4) ...

**248A. Group accounts prepared by small company**

(1) This section applies where a small company —

(a) has prepared individual accounts for a financial year in accordance with section 246(2) or (3), and

(b) is preparing group accounts in respect of the same year.

(2) If the group accounts —

(a) comply with the provisions of Schedule 8, or

(b) fail to comply with those provisions only in so far as they comply instead with one or more corresponding provisions of Schedule 4,

they need not comply with the provisions or, as the case may be, the remaining provisions of Schedule 4; and where advantage is taken of this subsection, references in Schedule 4A to compliance with the provisions of Schedule 4 shall be construed accordingly.

(3) For the purposes of this section, Schedule 8 shall have effect as if, in each balance sheet format set out in that Schedule, for item B III there were substituted the following item —

“ B III Investments

- 1 Shares in group undertakings
- 2 Interests in associated undertakings
- 3 Other participating interests
- 4 Loans to group undertakings and undertakings in which a participating interest is held
- 5 Other investments other than loans
- 6 Others.”

(4) The group accounts need not give the information required by the provisions specified in section 246(3).

(5) Group accounts prepared in accordance with this section shall contain a statement in a prominent position on the balance sheet, above the signature required by section 233, that they are prepared in accordance with the special provisions of this Part relating to small companies.

**249. Qualification of group as small or medium-sized**

(1) A group qualifies as small or medium-sized in relation to a financial year if the qualifying conditions are met —

(a) in the case of the parent company’s first financial year, in that year, and

(b) in the case of any subsequent financial year, in that year and the preceding year.

(2) A group shall be treated as qualifying as small or medium-sized in relation to a financial year—

(a) if it so qualified in relation to the previous financial year under subsection (1) above or was treated as so qualifying under paragraph (b) below; or

(b) if it was treated as so qualifying in relation to the previous year by virtue of paragraph (a) and the qualifying conditions are met in the year in question.

(3) The qualifying conditions are met by a group in a year in which it satisfies two or more of the following requirements —

*Small group*

- |                                  |  |
|----------------------------------|--|
| 1. Aggregate turnover            | Not more than £5.6 million net (or £6.72 million gross), |
| 2. Aggregate balance sheet total | Not more than £2.8 million net (or £3.36 million gross). |

*Medium-sized group*

1. Aggregate turnover                      Not more than £22.8 million net (or £27.36 million gross),
2. Aggregate balance sheet total        Not more than £11.4 million net (or £13.68 million gross),
3. Aggregate number of employees      Not more than 250.

(4) The aggregate figures shall be ascertained by aggregating the relevant figures determined in accordance with section 247 for each member of the group.

In relation to the aggregate figures for turnover and balance sheet total, “net” means with the set-offs and other adjustments required by Schedule 4A in the case of group accounts and “gross” means without those set-offs and other adjustments; and a company may satisfy the relevant requirements on the basis of either the net or the gross figure.

(5) The figures for each subsidiary undertaking shall be those included in its accounts for the relevant financial year, that is —

- (a) if its financial year ends with that of the parent company, that financial year, and
- (b) if not, its financial year ending last before the end of the financial year of the parent company.

(6) If those figures cannot be obtained without disproportionate expense or undue delay, the latest available figures shall be taken.

**249A. Exemptions from audit**

(1) Subject to section 249B, a company which meets the total exemption conditions set out below in respect of a financial year is exempt from the provisions of this Part relating to the audit of accounts in respect of that year.

(2) (omitted)

(3) The total exemption conditions are met by a company in respect of a financial year if —

- (a) it qualifies as a small company in relation to that year for the purposes of section 246,
- (b) its turnover in that year is not more than £1.5 million, and
- (c) its balance sheet total for that year is not more than £1 million.

(3A) In relation to any company which is a charity, subsection (3)(b) shall have effect with the substitution —

(a) for the reference to turnover of a reference to gross income, and

(b) for the reference to £1.5 million.

(4) (omitted)

(5) ...

(6) For a period which is a company's financial year but not in fact a year the maximum figures for turnover or gross income shall be proportionately adjusted.

(6A) A company is entitled to the exemption conferred by subsection (1) or (2) notwithstanding that it falls within paragraph (a) or (b) of section 250(1).

(7) In this section —

“balance sheet total” has the meaning given by section 247(5), and

“gross income” means the company's income from all sources, as shown in the company's income and expenditure account.

#### **249AA. Dormant companies**

(1) Subject to section 249B(2) to (5), a company is exempt from the provisions of this Part relating to the audit of accounts in respect of a financial year if —

(a) it has been dormant since its formation, or

(b) it has been dormant since the end of the previous financial year and subsection (2) applies.

(2) This subsection applies if the company —

(a) is entitled in respect of its individual accounts for the financial year in question to prepare accounts in accordance with section 246, or would be so entitled but for the application of section 247A(1)(a)(i) or (b), and

(b) is not required to prepare group accounts for that year.

(3) Subsection (1) does not apply if at any time in the financial year in question the company was —

(a) a banking or insurance company, or

(b) an authorised person for the purposes of the Financial Services Act 1986.

(4) A company is “dormant” during any period in which it has no significant accounting transaction.

(5) “Significant accounting transaction” means a transaction which —

(a) is required by section 221 to be entered in the company’s accounting records; but

(b) is not a transaction to which subsection (6) or (7) applies.

(6) This subsection applies to a transaction arising from the taking of shares in the company by a subscriber to the memorandum as a result of an undertaking of his in the memorandum.

(7) This subsection applies to a transaction consisting of the payment of —

(a) a fee to the registrar on a change of name under section 18 of the 1948 Act (change of name),

(b) a fee to the registrar on the re-registration of a company under Part II (re-registration as a means of altering a company’s status),

(c) a penalty under section 242A (penalty for failure to deliver accounts), or

(d) a fee to the registrar for the registration of an annual return under Chapter III of Part XI.

**249B. Cases where exemptions not available**

(1) Subject to subsections (1A) to (1C), a company is not entitled to the exemption conferred by subsection (1) or (2) of section 249A in respect of a financial year if at any time within that year—

(a) it was a public company,

(b) it was a banking or insurance company,

(c) it was enrolled in the list maintained by the Insurance Brokers Registration Council under section 4 of the Insurance Brokers (Registration) Act 1977,

(d) it was an authorised person or an appointed representative under the Financial Services Act 1986,

(e) it was a special register body as defined in section 117(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 or an employers’ association as defined in section 122 of that Act, or

(f) it was a parent company or a subsidiary undertaking.

(1A) A company which, apart from this subsection, would fall within subsection (1)(f) by virtue of its being a subsidiary undertaking for any period within a financial year shall not be treated as so falling if it is dormant (within the meaning of section 249AA) throughout that period.

(1B) A company which, apart from this subsection, would fall within subsection (1)(f) by virtue of its being a parent company or a subsidiary undertaking for any period within a financial year, shall not be treated as so falling if throughout that period it was a member of a group meeting the conditions set out in subsection (1C).

(1C) The conditions referred to in subsection (1B) are —

(a) that the group qualifies as a small group, in relation to the financial year within which the period falls, for the purposes of section 249 (or if all bodies corporate in such group were companies, would so qualify) and is not, and was not at any time within that year, an ineligible group within the meaning of section 248(2),

(b) that the group's aggregate turnover in that year (calculated in accordance with section 249) is not more than £350,000 net (or £420,000 gross), or where the company so referred to is not a charity not more than £1 million net (or £1.2 million gross), and

(c) that the group's aggregate balance sheet total for that year (calculated in accordance with section 249) is not more than £1.4 million net (or £1.68 million gross).

(2) Any member or members holding not less in the aggregate than 10 per cent in nominal value of the company's issued share capital or any class of it or, if the company does not have a share capital, not less than 10 per cent in number of the members of the company, may, by notice in writing deposited at the registered office of the company during a financial year but not later than one month before the end of that year, require the company to obtain an audit of its accounts for that year.

(3) Where a notice has been deposited under subsection (2), the company is not entitled to the exemption conferred by subsection (1) or (2) of section 249A in respect of the financial year to which the notice relates.

(4) A company is not entitled to the exemption conferred by subsection (1) or (2) of section 249A or by subsection (1) of section 249AA, unless its balance sheet contains a statement by the directors —

(a) to the effect that for the year in question the company was entitled to exemption under subsection (1) or (2) of section 249A or by subsection (1) of section 249AA;

(b) to the effect that members have not required the company to obtain an audit of its accounts for the year in question in accordance with subsection (2) of this section, and

(c) to the effect that the directors acknowledge their responsibilities for —

(i) ensuring that the company keeps accounting records which comply with section 221, and

(ii) preparing accounts which give a true and fair view of the state of affairs of the company as at the end of the financial year and of its profit or loss for the financial year in accordance with the requirements of section 226, and which otherwise comply with the requirements of this Act relating to accounts, so far as applicable to the company.

(5) The statement required by subsection (4) shall appear in the balance sheet above the signature required by section 233.

#### **249E. Effect of exemptions**

(1) Where the directors of a company have taken advantage of the exemption conferred by section 249A(1) or 249AA(1) —

(a) sections 238 and 239 (right to receive or demand copies of accounts and reports) shall have effect with the omission of references to the auditors' report;

(b) no copy of an auditors' report need be delivered to the registrar or laid before the company in general meeting;

(c) subsections (3) to (5) of section 271 (accounts by reference to which distribution to be justified) shall not apply.

(2) Where the directors of a company have taken advantage of the exemption conferred by section 249A(2) —

(a) subsections (2) to (4) of section 236 (which require copies of the auditors' report to state the names of the auditors) shall have effect with the substitution for references to the auditors and the auditors' report of references to the reporting accountant and the report made for the purposes of section 249A(2) respectively;

(b) sections 238 and 239 (right to receive or demand copies of accounts and reports), section 241 (accounts and reports to be laid before company in general meeting) and section 242 (accounts and reports to be delivered to the registrar) shall have effect with the substitution for references to the auditors' report of references to the report made for the purposes of section 249A(2);

(c) subsections (3) to (5) of section 271 (accounts by reference to which distribution to be justified) shall not apply;

(d) section 162 of the 1948 Act (rights to information) shall have effect with the substitution for references to the auditors of references to the reporting accountant.

## **250. Resolution not to appoint auditors**

(1) A company may by special resolution make itself exempt from the provisions of this Part relating to the audit of accounts in the following cases —

- (a) if the company has been dormant from the time of its formation, ...;
- (b) if the company has been dormant since the end of the previous financial year and —
  - (i) is entitled in respect of its individual accounts for that year to prepare accounts in accordance with section 246(2), or would be so entitled but for the application of subsection (1)(a)(i) or (b) of section 247A, and
  - (ii) is not required to prepare group accounts for that year,

by a special resolution passed at a general meeting of the company at any time after copies of the annual accounts and reports for that year have been sent out in accordance with section 238(1).

(2) A company may not pass such a resolution if it is —

- (a) ...
- (b) a banking or insurance company, or
- (c) an authorised person under the Financial Services Act 1986.

(3) A company is “dormant” during a period in which no significant accounting transaction occurs, that is, no transaction which is required by section 221 to be entered into the company’s accounting records; and a company ceases to be dormant on the occurrence of such a transaction.

For this purpose there shall be disregarded any transaction arising from the taking of shares in the company by a subscriber to the memorandum in pursuance of an undertaking of his in the memorandum.

(4) Where a company is, at the end of a financial year, exempt by virtue of this section from the provisions of this Part relating to the audit of accounts —

- (a) sections 238 and 239 (right to receive or demand copies of accounts and reports) have effect with the omission of references to the auditors’ report;
- (b) no copies of an auditors’ report need be laid before the company in general meeting;
- (c) no copy of an auditors’ report need be delivered to the registrar, and if none is delivered, the copy of the balance sheet so delivered shall contain a statement by the directors, in a position above the signature required by section 233(4), to the effect that the company was dormant throughout the financial year; and



(d) the company shall be treated as a company entitled to prepare accounts in accordance with section 246(2) notwithstanding that it is a member of an ineligible group.

(5) Where a company which is exempt by virtue of this section from the provisions of this Part relating to the audit of accounts —

(a) ceases to be dormant, or

(b) would no longer qualify (for any other reason) to make itself exempt by passing a resolution under this section,

it shall thereupon cease to be so exempt.

### **251. Provision of summary financial statement to shareholders**

(1) A public company whose shares or debentures, or any class of whose shares or debentures, are listed need not, in such cases as may be specified by regulations made by the Governor, and provided any conditions so specified are complied with, send copies of the documents referred to in section 238(1) to entitled persons, but may instead send them a summary financial statement.

In this section —

“entitled persons”, in relation to a company, means such of the persons specified in paragraphs (a) to (c) of subsection (1) of section 238 as are or would apart from this section be entitled to be sent copies of those documents relating to the company which are referred to in that subsection; and

“listed” means admitted to the Official List of The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited.

(2) Copies of the documents referred to in section 238(1) shall, however, be sent to any entitled person who wishes to receive them; and the Governor may by regulations make provision as to the manner in which it is to be ascertained (whether before or after he becomes an entitled person) whether an entitled person wishes to receive them.

(3) The summary financial statement shall be derived from the company’s annual accounts and the directors’ report and shall be in such form and contain such information as may be specified by regulations made by the Governor.

(4) Every summary financial statement shall —

(a) state that it is only a summary of information in the company’s annual accounts and the directors’ report;

(b) contain a statement by the company's auditors of their opinion as to whether the summary financial statement is consistent with those accounts and that report and complies with the requirements of this section and regulations made under it;

(c) state whether the auditors' report on the annual accounts was unqualified or qualified, and if it was qualified set out the report in full together with any further material needed to understand the qualification;

(d) state whether the auditors' report on the annual accounts contained a statement under —

(i) section 237(2) (accounting records or returns inadequate or accounts not agreeing with records and returns), or

(ii) section 237(3) (failure to obtain necessary information and explanations),

and if so, set out the statement in full.

(5) Regulations under this section shall be made by subsidiary legislation which shall be subject to annulment in pursuance of a resolution of the Legislative Council.

(6) If default is made in complying with this section or regulations made under it, the company and every officer of it who is in default is guilty of an offence and liable to a fine.

(7) Section 240 (requirements in connection with publication of accounts) does not apply in relation to the provision to entitled persons of a summary financial statement in accordance with this section.

## **252. Election to dispense with laying of accounts and reports before general meeting**

(1) A private company may elect (by elective resolution in accordance with section 379A) to dispense with the laying of accounts and reports before the company in general meeting.

(2) An election has effect in relation to the accounts and reports in respect of the financial year in which the election is made and subsequent financial years.

(3) Whilst an election is in force, the references in the following provisions of this Act to the laying of accounts before the company in general meeting shall be read as references to the sending of copies of the accounts to members and others under section 238(1) —

(a) section 235(1) (accounts on which auditors are to report),

(Remainder of subsection (3) omitted).

(4) If an election under this section ceases to have effect, section 241 applies in relation to the accounts and reports in respect of the financial year in which the election ceases to have effect and subsequent financial years.

**253. Right of shareholder to require laying of accounts**

(1) Where an election under section 252 is in force, the copies of the accounts and reports sent out in accordance with section 238(1) —

(a) shall be sent not less than 28 days before the end of the period allowed for laying and delivering accounts and reports, and

(b) shall be accompanied, in the case of a member of the company, by a notice informing him of his right to require the laying of the accounts and reports before a general meeting;

and section 238(5) (penalty for default) applies in relation to the above requirements as to the requirements contained in that section.

(2) Before the end of the period of 28 days beginning with the day on which the accounts and reports are sent out in accordance with section 238(1), any member or auditor of the company may by notice in writing deposited at the registered office of the company require that a general meeting be held for the purpose of laying the accounts and reports before the company.

(3) If the directors do not within 21 days from the date of the deposit of such a notice proceed duly to convene a meeting, the person who deposited the notice may do so himself.

(4) A meeting so convened shall not be held more than three months from that date and shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(5) Where the directors do not duly convene a meeting, any reasonable expenses incurred by reason of that failure by the person who deposited the notice shall be made good to him by the company, and shall be recouped by the company out of any fees, or other remuneration in respect of their services, due or to become due to such of the directors as were in default.

(6) The directors shall be deemed not to have duly convened a meeting if they convene a meeting for a date more than 28 days after the date of the notice convening it.

**256. Accounting standards**

(1) In this Part “accounting standards” means statements of standard accounting practice issued by such body or bodies as may be prescribed by regulations.

(2) References in this Part to accounting standards applicable to a company’s annual accounts are to such standards as are, in accordance with their terms, relevant to the company’s circumstances and to the accounts.

(3) The Governor may make grants to or for the purposes of bodies concerned with —

(a) issuing accounting standards,

(b) overseeing and directing the issuing of such standards, or

(c) investigating departures from such standards or from the accounting requirements of this Act and taking steps to secure compliance with them.

(4) Regulations under this section may contain such transitional and other supplementary and incidental provisions as appear to the Governor to be appropriate.

(5) In the application of this section as part of the law of the Falkland Islands the accounting standards shall have effect subject to any necessary modifications but, in determining whether a company qualifies as a small company for the purpose of the Financial Reporting Standard for Smaller Entities, the modifications made to section 247 by paragraph 15 of Schedule 1 to the Companies (Amendment) Ordinance 2006 shall be disregarded.

#### **257. Power of Governor to alter accounting requirements**

(1) The Governor may by regulations made by subsidiary legislation modify the provisions of this Part.

(2) Regulations which —

(a) add to the classes of documents required to be prepared, laid before the company in general meeting or delivered to the registrar,

(b) restrict the classes of company which have the benefit of any exemption, exception or special provision,

(c) require additional matter to be included in a document of any class, or

(d) otherwise render the requirements of this Part more onerous,

shall not be made unless a draft of the instrument containing the regulations has been laid before the Legislative Council and approved by resolution.

(3) Otherwise, subsidiary legislation containing regulations under this section shall be subject to annulment in pursuance of a resolution of the Legislative Council.

(4) Regulations under this section may —

(a) make different provision for different cases or classes of cases,

(b) repeal and re-enact provisions with modifications of form or arrangement, whether or not they are modified in substance,

(c) make consequential amendments or repeals in other provisions of this Act, or in other enactments, and

(d) contain such transitional and other incidental and supplementary provisions as the Governor thinks fit.

(5) Any modification by regulations under this section of section 258 or Schedule 10A (parent and subsidiary undertakings) does not apply for the purposes of enactments outside the Companies Acts unless the regulations so provide.

### **258. Parent and subsidiary undertakings**

(1) The expressions “parent undertaking” and “subsidiary undertaking” in this Part shall be construed as follows; and a “parent company” means a parent undertaking which is a company.

(2) An undertaking is a parent undertaking in relation to another undertaking, a subsidiary undertaking, if —

(a) it holds a majority of the voting rights in the undertaking, or

(b) it is a member of the undertaking and has the right to appoint or remove a majority of its board of directors, or

(c) it has the right to exercise a dominant influence over the undertaking —

(i) by virtue of provisions contained in the undertaking’s memorandum or articles, or

(ii) by virtue of a control contract, or

(d) it is a member of the undertaking and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the undertaking.

(3) For the purposes of subsection (2) an undertaking shall be treated as a member of another undertaking —

(a) if any of its subsidiary undertakings is a member of that undertaking, or

(b) if any shares in that other undertaking are held by a person acting on behalf of the undertaking or any of its subsidiary undertakings.

(4) An undertaking is also a parent undertaking in relation to another undertaking, a subsidiary undertaking, if it has a participating interest in the undertaking and —

(a) it actually exercises a dominant influence over it, or

(b) it and the subsidiary undertaking are managed on a unified basis.

(5) A parent undertaking shall be treated as the parent undertaking of undertakings in relation to which any of its subsidiary undertakings are, or are to be treated as, parent undertakings; and references to its subsidiary undertakings shall be construed accordingly.

(6) Schedule 10A contains provisions explaining expressions used in this section and otherwise supplementing this section.

## **259. Meaning of “undertaking” and related expressions**

(1) In this Part “undertaking” means —

(a) a body corporate or partnership, or

(b) an unincorporated association carrying on a trade or business, with or without a view to profit.

(2) In this Part references to shares —

(a) in relation to an undertaking with a share capital, are to allotted shares;

(b) in relation to an undertaking with capital but no share capital, are to rights to share in the capital of the undertaking; and

(c) in relation to an undertaking without capital, are to interests —

(i) conferring any right to share in the profits or liability to contribute to the losses of the undertaking, or

(ii) giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of a winding up.

(3) Other expressions appropriate to companies shall be construed, in relation to an undertaking which is not a company, as references to the corresponding persons, officers, documents or organs, as the case may be, appropriate to undertakings of that description.

This is subject to provision in any specific context providing for the translation of such expressions.

(4) References in this Part to “fellow subsidiary undertakings” are to undertakings which are subsidiary undertakings of the same parent undertaking but are not parent undertakings or subsidiary undertakings of each other.

(5) In this Part “group undertaking”, in relation to an undertaking, means an undertaking which is —

(a) a parent undertaking or subsidiary undertaking of that undertaking, or

(b) a subsidiary undertaking of any parent undertaking of that undertaking.

## **260. Participating interests**

(1) In this Part a “participating interest” means an interest held by an undertaking in the shares of another undertaking which it holds on a long-term basis for the purpose of securing a contribution to its activities by the exercise of control or influence arising from or related to that interest.

(2) A holding of 20 per cent or more of the shares of an undertaking shall be presumed to be a participating interest unless the contrary is shown.

(3) The reference in subsection (1) to an interest in shares includes —

(a) an interest which is convertible into an interest in shares, and

(b) an option to acquire shares or any such interest;

and an interest or option falls within paragraph (a) or (b) notwithstanding that the shares to which it relates are, until the conversion or the exercise of the option, unissued.

(4) For the purposes of this section an interest held on behalf of an undertaking shall be treated as held by it.

(5) For the purposes of this section as it applies in relation to the expression “participating interest” in section 258(4) (definition of “subsidiary undertaking”) —

(a) there shall be attributed to an undertaking any interests held by any of its subsidiary undertakings, and

(b) the references in subsection (1) to the purpose and activities of an undertaking include the purposes and activities of any of its subsidiary undertakings and of the group as a whole.

(6) In the balance sheet and profit and loss formats set out in Part I of Schedule 4, Part I of Schedule 8, Schedule 8A Chapter I of Part I of Schedule 9 and Chapter I of Part I of Schedule 9A, “participating interest” does not include an interest in a group undertaking.

(7) For the purposes of this section as it applies in relation to the expression “participating interest” —

(a) in those formats as they apply in relation to group accounts, and

(b) in paragraph 20 of Schedule 4A (group accounts: undertakings to be accounted for as associated undertakings),

the references in subsections (1) to (4) to the interest held by, and the purposes and activities of, the undertaking concerned shall be construed as references to the interest held by, and the purposes and activities of, the group (within the meaning of paragraph 1 of that Schedule).

#### **261. Notes to the accounts**

(1) Information required by this Part to be given in notes to a company's annual accounts may be contained in the accounts or in a separate document annexed to the accounts.

(2) References in this Part to a company's annual accounts, or to a balance sheet or profit and loss account, includes notes to the accounts giving information which is required by any provision of this Act, and required or allowed by any such provision to be given in a note to company accounts.

#### **262. Minor definitions**

(1) In this Part —

“annual accounts” means —

(a) the individual accounts required by section 226, and

(b) any group accounts required by section 227,

(but see also section 230 (treatment of individual profit and loss account where group accounts prepared));

“annual report”, in relation to a company, means the directors' report required by section 234;

“balance sheet date” means the date as at which the balance sheet was made up;

“capitalisation”, in relation to work or costs, means treating that work or those costs as a fixed asset;

“credit institution” means a credit institution as defined in article 1 of the First Council Directive on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (77/780/EEC), that is to say an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account;

“fixed assets” means assets of a company which are intended for use on a continuing basis in the company's activities, and “current assets” means assets not intended for such use;

“group” means a parent undertaking and its subsidiary undertakings;

“included in the consolidation”, in relation to group accounts, or “included in consolidated group accounts”, means that the undertaking is included in the accounts by the method of full (and not



proportional) consolidation, and references to an undertaking excluded from consolidation shall be construed accordingly;

“purchase price”, in relation to an asset of a company or any raw materials or consumables used in the production of such an asset, includes any consideration (whether in cash or otherwise) given by the company in respect of that asset or those materials or consumables, as the case may be;

“qualified”, in relation to an auditors’ report, means that the report does not state the auditors’ unqualified opinion that the accounts have been properly prepared in accordance with this Act or, in the case of an undertaking not required to prepare accounts in accordance with this Act, under any corresponding legislation under which it is required to prepare accounts;

“true and fair view” refers —

(a) in the case of individual accounts, to the requirement of section 226(2), and

(b) in the case of group accounts, to the requirement of section 227(3);

“turnover”, in relation to a company, means the amounts derived from the provision of goods and services falling within the company’s ordinary activities, after deduction of —

(i) trade discounts, and

(ii) any taxes on the amounts so delivered;

(2) In the case of an undertaking not trading for profit, any reference in this Part to a profit and loss account is to an income and expenditure account; and references to profit and loss and, in relation to group accounts, to a consolidated profit and loss account shall be construed accordingly.

(3) References in this Part to “realised profits” and “realised losses”, in relation to a company’s accounts, are to such profits or losses of the company as fall to be treated as realised in accordance with principles generally accepted, at the time when the accounts are prepared, with respect to the determination for accounting purposes of realised profits or losses.

This is without prejudice to —

(a) the construction of any other expression (where appropriate) by reference to accepted accounting principles or practice, or

(b) any specific provision for the treatment of profits or losses of any description as realised.

## **262A. Index of defined expressions**

The following Table shows the provisions of this Part defining or otherwise explaining expressions used in this Part (other than expressions used only in the same section or paragraph)—

the 1982 Act (in Schedule 9A)	paragraph 81 of Part I of that Schedule
accounting reference date and accounting reference period	section 224
accounting standards and applicable accounting standards	section 256
annual accounts	
(generally)	section 262(1)
(includes notes to the accounts)	section 261(2)
annual report	section 262(1)
associated undertaking (in Schedule 4A)	paragraph 20 of that Schedule
balance sheet (includes notes)	section 261(2)
balance sheet date	section 262(1)
banking group	section 255A(4)
capitalisation (in relation to work or costs)	section 262(1)
credit institution	section 262(1)
current assets	section 262(1)
fellow subsidiary undertaking	section 259(4)
financial fixed assets (in Schedule 9)	paragraph 82 of Part I of that Schedule
financial year	section 223
fixed assets	section 262(1)
general business (in Schedule 9A)	paragraph 81 of Part I of that Schedule
group	section 262(1)
group undertaking	section 259(5)
historical cost accounting rules	
—in Schedule 4	paragraph 29 of that Schedule
—in Schedule 8	paragraph 29 of that Schedule
—in Schedule 9	paragraph 39 of Part I of that Schedule
—in Schedule 9A	paragraph 20(1) of Part I of that Schedule
included in the consolidation and related expressions	section 262(1)
individual accounts	section 226(1)
insurance group	section 255A(5)
land of freehold tenure and land of leasehold tenure	
(in relation to Scotland)	
—in Schedule 4	paragraph 93 of that Schedule
—in Schedule 9	paragraph 86 of Part I of that Schedule
—in Schedule 9A	paragraph 85 of Part I of that Schedule
lease, long lease and short lease	
—in Schedule 4	paragraph 83 of that Schedule

—in Schedule 9	paragraph 82 of Part I of that Schedule
—in Schedule 9A	paragraph 81 of Part I of that Schedule
listed investment	
—in Schedule 4	paragraph 84 of that Schedule
—in Schedule 8	paragraph 54 of that Schedule
—in Schedule 9A	paragraph 81 of Part I of that Schedule
listed security (in Schedule 9)	paragraph 82 of Part I of that Schedule
long term business (in Schedule 9A)	paragraph 81 of Part I of that Schedule
long term fund (in Schedule 9A)	paragraph 81 of Part I of that Schedule
notes to the accounts	section 261(1)
parent undertaking (and parent company)	section 258 and Schedule 10A
participating interest	section 260
pension costs	
—in Schedule 4	paragraph 94(2) of that Schedule
—in Schedule 8	paragraph 59(2) of that Schedule
—in Schedule 9	paragraph 87(b) of Part I of that Schedule
—in Schedule 9A	paragraph 86(b) of Part I of that Schedule
period allowed for laying and delivering accounts and reports	section 244
policy holder (in Schedule 9A)	paragraph 81 of Part I of that Schedule
profit and loss account (includes notes)	section 261(2)
(in relation to a company not trading for profit)	section 262(2)
provision	
—in Schedule 4	paragraphs 88 and 89 of that Schedule
—in Schedule 8	paragraphs 57 and 58 of that Schedule
—in Schedule 9	paragraph 84 of Part I of that Schedule
—in Schedule 9A	paragraph 84 of Part I of that Schedule
provision for unexpired risks (in Schedule 9A)	paragraph 81 of Part I of that Schedule
purchase price	section 262(1)
qualified	section 262(1)
realised losses and realised profits	section 262(3)
repayable on demand (in Schedule 9)	paragraph 32 of that Schedule
reporting accountant	section 249C(1)
reserve (in Schedule 9A)	paragraph 32 of that Schedule
sale and repurchase transaction (in Schedule 9)	paragraph 82 of Part I of that Schedule
sale and option to resell transaction (in Schedule 9)	paragraph 82 of Part I of that Schedule
shares	section 259(2)
social security costs	
—in Schedule 4	paragraph 94(1) and (3) of that Schedule
—in Schedule 8	paragraph 59(1) and (3) of that Schedule
—in Schedule 9	paragraph 87(a) and (c) of Part I of that Schedule
—in Schedule 9A	paragraph 86(a) and (c) of Part I of that Schedule

special provisions for banking and insurance

companies and groups

subsidiary undertakings

true and fair view

turnover

undertaking and related expressions

section 258 and Schedule 10A

section 262(1)

section 262(1)

section 259(1) to (3).

### **363. Duty to deliver annual returns**

(1) Every company shall deliver to the registrar successive annual returns each of which is made up to a date not later than the date which is from time to time the company's "return date", that is—

(a) the anniversary of the company's incorporation, or

(b) if the company's last return delivered in accordance with this Chapter or section 124 of the 1948 Act if no annual return has been delivered under this Chapter was made up to a different date, the anniversary of that date.

(2) Each return shall —

(a) be in the prescribed form,

(b) contain the information required by or under the following provisions of this Chapter, and

(c) be signed by a director or the secretary of the company;

and it shall be delivered to the registrar within 28 days after the date to which it is made up.

(3) If a company fails to deliver an annual return in accordance with this Chapter before the end of the period of 28 days after a return date, the company is guilty of an offence and liable to a fine and, in the case of continued contravention, to a daily default fine.

The contravention continues until such time as an annual return made up to that return date and complying with the requirements of subsection (2) (except as to date of delivery) is delivered by the company to the registrar.

(4) Where a company is guilty of an offence under subsection (3), every director or secretary of the company is similarly liable unless he shows that he took all reasonable steps to avoid the commission or continuation of the offence.

(5) The references in this section to a return being delivered "in accordance with this Chapter" are —

(a) in relation to a return made on or after 1<sup>st</sup> October 1990, to a return with respect to which all the requirements of subsection (2) are complied with;

(b) in relation to a return made before 1<sup>st</sup> October 1990, to a return with respect to which the formal and substantive requirements of this Chapter as it then had effect were complied with, whether or not the return was delivered in time.

**364. Contents of annual return: general**

(1) Every annual return shall state the date to which it is made up and shall contain the following information —

- (a) the address of the company's registered office;
  - (b) the type of company it is and its principal business activities;
  - (c) the name and address of the company secretary;
  - (d) the name and address of every director of the company;
  - (e) in the case of each individual director —
    - (i) his nationality, date of birth and business occupation, and
    - (ii) such particulars of other directorships and former names as are required to be contained in the company's register of directors;
  - (f) in the case of any corporate director, such particulars of other directorships as would be required to be contained in that register in the case of an individual;
  - (g) if the register of members is not kept at the company's registered office, the address of the place where it is kept;
  - (h) if any register of debenture holders (or a duplicate of any such register or a part of it) is not kept at the company's registered office, the address of the place where it is kept;
  - (i) if the company has elected —
    - (i) to dispense under section 252 with the laying of accounts and reports before the company in general meeting, or
    - (ii) to dispense under section 366A with the holding of annual general meetings,
- a statement to that effect.

(2) The information as to the company's type shall be given by reference to the classification scheme prescribed for the purposes of this section.

(3) The information as to the company's principal business activities may be given by reference to one or more categories of any prescribed system of classifying business activities.

(4) A person's "name" and "address" mean, respectively —

(a) in the case of an individual, his Christian name (or other forename) and surname and his usual residential address;

(b) in the case of a corporation, its corporate or firm name and its registered or principal office.

(5) In the case of a peer, or an individual usually known by a title, the title may be stated instead of his Christian name (or other forename) and surname or in addition to either or both of them.

(6) Where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated instead of the names and addresses of the partners.

**364A. Contents of annual return: particulars of share capital and shareholders**

(1) The annual return of a company having a share capital shall contain the following information with respect to its share capital and members.

(2) The return shall state the total number of issued shares of the company at the date to which the return is made up and the aggregate nominal value of those shares.

(3) The return shall state with respect to each class of shares in the company —

(a) the nature of the class, and

(b) the total number and aggregate nominal value of issued shares of that class at the date to which the return is made up.

(4) The return shall contain a list of the names and addresses of every person who —

(a) is a member of the company on the date to which the return is made up, or

(b) has ceased to be a member of the company since the date to which the last return was made up (or, in the case of the first return, since the incorporation of the company);

and if the names are not arranged in alphabetical order the return shall have annexed to it an index sufficient to enable the name of any person in the list to be easily found.

(5) The return shall also state —

(a) the number of shares of each class held by each member of the company at the date to which the return is made up, and

(b) the number of shares of each class transferred since the date to which the last return was made up (or, in the case of the first return, since the incorporation of the company) by each member or person who has ceased to be a member, and the dates of registration of the transfers.

(6) The return may, if either of the two immediately preceding returns has given the full particulars required by subsections (4) and (5), give only such particulars as relate to persons ceasing to be or becoming members since the date of the last return and to shares transferred since that date.

(7) Subsections (4) and (5) do not require the inclusion of particulars entered in an overseas branch register if copies of those entries have not been received at the company's registered office by the date to which the return is made up.

Those particulars shall be included in the company's next annual return after they are received.

(8) Where the company has converted any of its shares into stock, the return shall give the corresponding information in relation to that stock, stating the amount of stock instead of the number or nominal value of shares.

### **365. Supplementary provisions: regulations and interpretation**

(1) The Governor may by regulations make further provision as to the information to be given in a company's annual return, which may amend or repeal the provisions of sections 364 and 364A.

(2) Regulations under this section shall be made by subsidiary legislation which shall be subject to annulment in pursuance of a resolution of the Legislative Council.

(3) For the purposes of this Chapter, except section 363(2)(c) (signature of annual return), a shadow director shall be deemed to be a director.

### **366A. Election by private company to dispense with annual general meetings**

(1) A private company may elect (by elective resolution in accordance with section 379A) to dispense with the holding of annual general meetings.

(2) An election has effect for the year in which it is made and subsequent years, but does not affect any liability already incurred by reason of default in holding an annual general meeting.

(3) In any year in which an annual general meeting would be required to be held but for the election, and in which no such meeting has been held, any member of the company may, by notice to the company not later than three months before the end of the year, require the holding of an annual general meeting in that year.

(4) If such a notice is given, the provisions of section 366(1) and (4) apply with respect to the calling of the meeting and the consequences of default.

(5) If the election ceases to have effect, the company is not obliged under section 366 to hold an annual general meeting in that year if, when the election ceases to have effect, less than three months of the year remains.

This does not affect any obligation of the company to hold an annual general meeting in that year in pursuance of a notice given under subsection (3).

### **379A. Elective resolution of private company**

(1) An election by a private company for the purposes of —

(a) (not applied),

(b) section 252 (election to dispense with laying of accounts and reports before general meeting),

(c) section 366A (election to dispense with holding of annual general meeting),

(d) section 369(4) or 378(3) (election as to majority required to authorise short notice of meeting), or

(e) section 160B of the 1948 Act,

shall be made by resolution of the company in general meeting in accordance with this section.

Such a resolution is referred to in this Act as an “elective resolution”.

(2) An elective resolution is not effective unless —

(a) at least 21 days’ notice in writing is given of the meeting, stating that an elective resolution is to be proposed and stating the terms of the resolution, and

(b) the resolution is agreed to at the meeting, in person or by proxy, by all the members entitled to attend and vote at the meeting.

(2A) An elective resolution is effective notwithstanding the fact that less than 21 days’ notice in writing of the meeting is given if all the members entitled to attend and vote at the meeting so agree.

(3) The company may revoke an elective resolution by passing an ordinary resolution to that effect.

(4) An elective resolution shall cease to have effect if the company is re-registered as a public company.



(5) An elective resolution may be passed or revoked in accordance with this section, and the provisions referred to in subsection (1) have effect, notwithstanding any contrary provision in the company's articles of association.

**652A. Registrar may strike private company off register on application**

(1) On application by a private company, the registrar of companies may strike the company's name off the register.

(2) An application by a company under this section shall —

(a) be made on its behalf by its directors or by a majority of them,

(b) be in the prescribed form, and

(c) contain the prescribed information.

(3) The registrar shall not strike a company off under this section until after the expiration of 3 months from the publication by him in the Gazette of a notice —

(a) stating that he may exercise his power under this section in relation to the company, and

(b) inviting any person to show cause why he should not do so.

(4) Where the registrar strikes a company off under this section, he shall publish notice of that fact in the Gazette.

(5) On the publication in the Gazette of a notice under subsection (4), the company to which the notices relates is dissolved.

(6) However, the liability (if any) of every director, managing officer and member of the company continues and may be enforced as if the company had not been dissolved.

(7) Nothing in this section affects the power of the court to wind up a company the name of which has been struck off the register.

**652B. Duties in connection with making application under section 652A**

(1) A person shall not make an application under section 652A on behalf of a company if, at any time in the previous 3 months, the company has —

(a) changed its name,

(b) traded or otherwise carried on business,

(c) made a disposal for value of property or rights which, immediately before ceasing to trade or otherwise carry on business, it held for the purpose of disposal for gain in the normal course of trading or otherwise carrying on business, or

(d) engaged in any other activity, except one which is —

(i) necessary or expedient for the purpose of making an application under section 652A, or deciding whether to do so,

(ii) necessary or expedient for the purpose of concluding the affairs of the company,

(iii) necessary or expedient for the purpose of complying with any statutory requirement, or

(iv) specified by the Governor by order for the purposes of this sub-paragraph.

(2) For the purposes of subsection (1), a company shall not be treated as trading or otherwise carrying on business by virtue only of the fact that it makes a payment in respect of a liability incurred in the course of trading or otherwise carrying on business.

(3) A person shall not make an application under section 652A on behalf of a company at a time when any of the following is the case —

(a) an application has been made to the court under section 206 on behalf of the company for the sanctioning of a compromise or arrangement and the matter has not been finally concluded;

(b) (not applied),

(c) (not applied),

(d) the company is being wound up under the 1948 Act, whether voluntarily or by the court, or a petition under that Part for the winding up of the company by the court has been presented and not finally dealt with or withdrawn;

(e) there is a receiver or manager of the company's property;

(f) (not applied).

(4) For the purposes of subsection (3)(a), the matter is finally concluded if —

(a) the application has been withdrawn,

(b) the application has been finally dealt with without a compromise or arrangement being sanctioned by the court, or

(c) a compromise or arrangement has been sanctioned by the court and has, together with anything required to be done under any provision made in relation to the matter by order of the court, been fully carried out.

(5) For the purposes of subsection (3)(b), the matter is finally concluded if—

(a) no meetings are to be summoned under section 3 of the Insolvency Act 1986,

(b) meetings summoned under that section fail to approve the arrangement with no, or the same, modifications,

(c) an arrangement approved by meetings summoned under that section, or in consequence of a direction under section 6(4)(b) of that Act, has been fully implemented, or

(d) the court makes an order under subsection (5) of section 6 of that Act revoking approval given at previous meetings and, if the court gives any directions under subsection (6) of that section, the company has done whatever it is required to do under those directions.

(6) A person who makes an application under section 652A on behalf of a company shall secure that a copy of the application is given, within 7 days from the day on which the application is made, to every person who, at any time on that day, is —

(a) member of the company;

(b) an employee of the company,

(c) a creditor of the company,

(d) a director of the company,

(e) a manager or trustee of any pension fund established for the benefit of employees of the company, or

(f) a person of a description specified for the purposes of this paragraph by regulations made by the Governor.

(7) Subsection (6) shall not require a copy of the application to be given to a director who is a party to the application.

(8) The duty imposed by subsection (6) shall cease to apply if the application is withdrawn before the end of the period for giving the copy application.

(9) The Governor may by order amend subsection (1) for the purpose of altering the period in relation to which the doing of the things mentioned in paragraphs (a) to (d) of that subsection is relevant.

**652C. Directors' duties following application under section 652A**

(1) Subsection (2) applies in relation to any time after the day on which a company makes an application under section 652A and before the day on which the application is finally dealt with or withdrawn.

(2) A person who is a director of the company at the end of the day on which a person other than himself becomes —

- (a) a member of the company,
- (b) an employee of the company,
- (c) a creditor of the company,
- (d) a director of the company,
- (e) a manager or trustee of any pension fund established for the benefit of employees of the company, or
- (f) a person of a description specified for the purposes of this paragraph by regulations made by the Governor,

shall secure that a copy of the application is given to that person within 7 days from that day.

(3) The duty imposed by subsection (2) shall cease to apply if the application is finally dealt with or withdrawn before the end of the period for giving the copy application.

(4) Subsection (5) applies where, at any time on or after the day on which a company makes an application under section 652A and before the day on which the application is finally dealt with or withdrawn —

(a) the company —

- (i) changes its name,
- (ii) trades or otherwise carries on business,
- (iii) makes a disposal for value of any property or rights other than those which it was necessary or expedient for it to hold for the purpose of making, or proceeding with, an application under section 652A, or
- (iv) engages in any other activity, except one to which subsection (6) applies;

(b) an application is made to the court under section 206 on behalf of the company for the sanctioning of a compromise or arrangement;

(c) (not applied),

(d) (not applied),

(e) there arise any of the circumstances in which, under section 278 of the 1948 Act, the company may be voluntarily wound up;

(f) a petition is presented for the winding up of the company by the court under the 1948 Act,

(g) a receiver or manager of the company's property is appointed; or

(h) a judicial factor is appointed to administer the company's estate.

(5) A person who, at the end of a day on which an event mentioned in any of paragraphs (a) to (h) of subsection (4) occurs, is a director of the company shall secure that the company's application is withdrawn forthwith.

(6) This subsection applies to any activity which is —

(a) necessary or expedient for the purpose of making, or proceeding with, an application under section 652A,

(b) necessary or expedient for the purpose of concluding affairs of the company which are outstanding because of what has been necessary or expedient for the purpose of making, or proceeding with, such an application,

(c) necessary or expedient for the purpose of complying with any statutory requirement, or

(d) specified by the Governor by order for the purposes of this subsection.

(7) For the purposes of subsection (4)(a), a company shall not be treated as trading or otherwise carrying on business by virtue only of the fact that it makes a payment in respect of a liability incurred in the course of trading or otherwise carrying on business.

**652D. Sections 652B and 652C: supplementary provisions**

(1) For the purposes of sections 652B(6) and 652C(2), a document shall be treated as given to a person if it is delivered to him or left at his proper address or sent by post to him at that address.

(2) For the purposes of subsection (1) and section 7 of the Interpretation Act 1978 (which relates to the service of documents by post) in its application to that subsection, the proper address of any person shall be his last known address, except that —

(a) in the case of a body corporate, other than one to which subsection (3) applies, it shall be the address of its registered or principal office,

(b) in the case of a partnership, other than one to which subsection (3) applies, it shall be the address of its principal office, and

(c) in the case of a body corporate or partnership to which subsection (3) applies, it shall be the address of its principal office in the Falkland Islands.

(3) This subsection applies to a body corporate or partnership which —

(a) is incorporated or formed under the law of a country or territory outside the Falkland Islands, and

(b) has a place of business in the Falkland Islands.

(4) Where a creditor of the company has more than one place of business, subsection (1) shall have effect, so far as concerns the giving of a document to him, as if for the words from “delivered” to the end there were substituted “left, or sent by post to him, at each place of business of his with which the company has had dealings in relation to a matter by virtue of which he is a creditor of the company.”

(5) Any power to make an order or regulations under section 652B or 652C shall —

(a) include power to make different provision for different cases or classes of case,

(b) include power to make such transitional provisions as the Governor considers appropriate, and

(c) be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the Legislative Council.

(6) For the purposes of sections 652B and 652C, an application under section 652A is withdrawn if notice of withdrawal in the prescribed form is given to the registrar of companies.

(7) In sections 652B and 652C, “disposal” includes part disposal.

(8) In sections 652B and 652C and this section, “creditor” includes a contingent or prospective creditor.

#### **652E. Sections 652B and 652C: enforcement**

(1) A person who breaches or fails to perform a duty imposed on him by section 652B or 652C is guilty of an offence and liable to a fine.

(2) A person who fails to perform a duty imposed on him by section 652B(6) or 652C(2) with the intention of concealing the making of the application in question from the person concerned is guilty of an offence and liable to imprisonment or a fine, or both.

(3) In any proceedings for an offence under subsection (1) consisting of breach of a duty imposed by section 652B(1) or (3), it shall be a defence for the accused to prove that he did not know, and could not reasonably have known, of the existence of the facts which led to the breach.

(4) In any proceedings for an offence under subsection (1) consisting of failure to perform the duty imposed by section 652B(6), it shall be a defence for the accused to prove that he took all reasonable steps to perform the duty.

(5) In any proceedings for an offence under subsection (1) consisting of failure to perform a duty imposed by section 652C(2) or (5), it shall be a defence for the accused to prove —

(a) that at the time of the failure he was not aware of the fact that the company had made an application under section 652A, or

(b) that he took all reasonable steps to perform the duty.

#### **652F. Other offences connected with section 652A**

(1) Where a company makes an application under section 652A, any person who, in connection with the application, knowingly or recklessly furnishes any information to the registrar of companies which is false or misleading in a material particular is guilty of an offence and liable to a fine.

(2) Any person who knowingly or recklessly makes an application to the registrar of companies which purports to be an application under section 652A, but which is not, is guilty of an offence and liable to a fine.

#### **699. Channel Islands and Isle of Man companies**

(1) The provisions of this Act requiring documents to be forwarded or delivered to or filed with the registrar of companies and applying to companies formed and registered under Part I apply also (if they would not otherwise) to an overseas company to which section 691 applies incorporated in Great Britain, the Channel Islands or the Isle of Man.

(2) Those provisions apply to such a company —

(a) if it has established a place of business in the Falkland Islands as if it were registered in the Falkland Islands,

(b) (not applied),

(c) (not applied),

with such modifications as may be necessary and, in particular, apply in a similar way to documents relating to things done outside the Falkland Islands as if they had been done in the Falkland Islands.

**699AA. Companies to which the Eleventh Company Law Directive applies**

(1) This section applies to any limited company which —

(a) is incorporated outside the Falkland Islands,

(b) has a branch in the Falkland Islands, and

(c) (not applied).

(2) Schedule 21D to this Act (delivery of accounts and reports) shall have effect in relation to any company to which this section applies.

**730. Punishment of offences**

(1) Schedule 24 to this Act has effect with respect to the way in which offences under this Act are punishable on conviction.

(2) In relation to an offence under a provision of this Act specified in the first column of the Schedule (the general nature of the offence being described in the second column), the third column shows whether the offence is punishable on conviction on indictment, or on summary conviction, or either in the one way or the other.

(3) The fourth column of the Schedule shows, in relation to an offence, the maximum punishment by way of fine or imprisonment under this Act which may be imposed on a person convicted of the offence in the way specified in relation to it in the third column (that is to say, on indictment or summarily), a reference to a period of years or months being to a term of imprisonment of that duration.

(4) The fifth column shows (in relation to an offence for which there is an entry in that column) that a person convicted of the offence after continued contravention is liable to a daily default fine; that is to say, he is liable on a second or subsequent summary conviction of the offence to the fine specified in that column for each day on which the contravention is continued (instead of the penalty specified for the offence in the fourth column of the Schedule).

(5) For the purpose of any enactment in the Companies Acts which provides that an officer of a company or other body who is in default is liable to a fine or penalty, the expression “officer who is in default” means any officer of the company or other body who knowingly and wilfully authorises or permits the default, refusal or contravention mentioned in the enactment.

**731. Summary proceedings**

(1) Summary proceedings for any offence under the Companies Acts may (without prejudice to any jurisdiction exercisable apart from this subsection) be taken against a body corporate at any place at which the body has a place of business, and against any other person at any place at which he is for the time being.



# **Companies (Amendment) Bill 2006**

(No:            of 2006)

## **ARRANGEMENT OF PROVISIONS**

### **Clause**

1.     Short title, commencement and interpretation
2.     Application of provisions of the Companies Act 1985
3.     Interpretation of Companies Act 1948
4.     Appointment of auditors
5.     Reduction in percentage of members required to agree to meetings being called at short notice
6.     Resolutions to be forwarded to Registrar within 15 days of passing
7.     Power of Governor to amend applied Acts and subordinate legislation
8.     Forms, and fees payable to Registrar General
9.     Disapplication of certain imperial enactments
10.    Modifications and transitional provisions

Schedule 1—Disapplication of certain imperial enactments

Schedule 2— Modifications and transitional provisions

# COMPANIES (AMENDMENT) BILL 2006

(No:                      of 2006)

(assented to:                      2006)  
(commencement: 1<sup>st</sup> January 2007)  
(published:                      2006)

A BILL

for

An Ordinance

To amend the law relating to companies.

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 Companies (Amendment) Ordinance 2006.

(2) This Ordinance shall come into force on 1<sup>st</sup> January 2007.

(3) In this Ordinance —

(a) any reference to the 1948 Act is a reference to the Companies Act 1948 as it applies in the Falkland Islands;

(b) any reference to the 1985 Act is a reference to the Companies Act 1985 as it applies in the Falkland Islands

(c) any reference to the applied enactments is a reference to the enactments specified in section 2(1).

## **Application of provisions of the Companies Act 1985**

2.—(1) The provisions of the Companies Act 1985 specified below, as they are in force in England on 1<sup>st</sup> September 2006, shall apply in the Falkland Islands with effect from 1<sup>st</sup> January 2007 —

(a) sections 36 and 36A being provisions relating to the execution of documents;

(b) sections 143, 144, 145(2) and (3), 151 to 162, 163 to 167, 168 to 179 and 181 and Schedule 2, being provisions relating to the acquisition of a company's own shares;

(c) sections 221 to 228, 229 to 242A, 244 to 246, 247 to 249B, 249E to 253, 256 to 262A and Schedules 4 to 10A, being provisions relating to company accounts and audit;

(d) sections 363 to 365 being provisions relating to a company's annual return;

(e) section 366A which permits a private company to dispense with annual general

meetings;

(f) section 379A which makes provision with respect to elective resolutions of companies;

(g) sections 652A to 652F which make provision for the striking off of private companies;

(h) sections 699(1) and (2) and 699AA and Schedule 21D which make provision with respect to oversea companies;

(i) sections 730 and 731(1) and Schedule 24 which make provision with respect to jurisdiction in summary proceedings.

(2) The applied enactments have effect —

(a) subject to Schedule 2 to this Ordinance,

(b) subject to any subordinate legislation made after 1<sup>st</sup> January 2007 by the Governor under this Ordinance or under any of the applied enactments.

(3) Any reference in the applied enactments to the 1948 Act or to the 1985 Act is a reference to that Act as it applies in the Falkland Islands.

(4) Subject to Schedule 2 to this Ordinance, on the coming into force of this Ordinance the Disapplication of Enactments Order 1998<sup>1</sup> shall cease to apply to any applied enactment or to any other provision of the Companies Act 1985 which by virtue of section 81 of the Interpretation and General Clause Ordinance<sup>2</sup> (construction of imperial enactment) applies for the interpretation of any applied enactment.

(5) Sections 80 and 81 of that Ordinance (references to subordinate instruments made under, and construction of, applied imperial enactments) shall apply to any imperial enactment which has effect in the Falkland Islands by virtue of this Ordinance subject to the provisions of Schedule 2.

### **Interpretation of Companies Act 1948**

3.—(1) In the 1948 Act any reference to the 1985 Act is a reference to that Act as it applies in the Falkland Islands.

(2) The provisions of the 1948 Act which continue to apply in the Falkland Islands shall have effect subject to (and be construed in accordance with) the provisions of the 1985 Act applied by section 2(1) and which have effect subject to the provisions of section 2(2).

### **Appointment of auditors**

4.—(1) The following sections shall be inserted in the 1948 Act after section 160 —

---

<sup>1</sup> S R & O No 28 of 1998

<sup>2</sup> 1977 No 14

**“Appointment by private company which is not obliged to lay accounts**

**160A.—**(1) This section applies to a private company which has elected in accordance with section 252 of the 1985 Act to dispense with the laying of accounts before the company in general meeting.

(2) Auditors shall be appointed by the company in general meeting before the end of the period of 28 days beginning with the day on which copies of the company’s annual accounts for the previous financial year are sent to members under section 238 of the 1985 Act or, if notice is given under section 253(2) of that Act requiring the laying of the accounts before the company in general meeting, the conclusion of that meeting.

Auditors so appointed shall hold office from the end of that period or, as the case may be, the conclusion of that meeting until the end of the time for appointing auditors for the next financial year.

(3) The first auditors of the company may be appointed by the directors at any time before —

(a) the end of the period of 28 days beginning with the day on which copies of the company’s first annual accounts are sent to members under section 238 of the 1985 Act, or

(b) if notice is given under section 253(2) of that Act requiring the laying of the accounts before the company in general meeting, the beginning of that meeting;

and auditors so appointed shall hold office until the end of that period or, as the case may be, the conclusion of that meeting.

(4) If the directors fail to exercise their powers under subsection (3), the powers may be exercised by the company in general meeting.

(5) Auditors holding office when the election is made shall, unless the company in general meeting determines otherwise, continue to hold office until the end of the time for appointing auditors for the next financial year; and auditors holding office when an election ceases to have effect shall continue to hold office until the conclusion of the next general meeting of the company at which accounts are laid.

**Election by private company to dispense with annual appointment**

**160B.—**(1) A private company may elect, by elective resolution in accordance with section 379A of the 1985 Act to dispense with the obligation to appoint auditors annually.

(2) When such an election is in force the company’s auditors shall be deemed to be re-appointed for each succeeding financial year on the expiry of the time for appointing auditors for that year, unless —

(a) the directors of the company have taken advantage of the exemption conferred by section 249A or 249AA of the 1985 Act, or

(b) a resolution has been passed under section 160 of this Act to the effect that their appointment should be brought to an end.

(3) If the election ceases to be in force, the auditors then holding office shall continue to hold office —

(a) where section 159 of this Act then applies, until the conclusion of the next general meeting of the company at which accounts are laid;

(b) where section 160A of this Act then applies, until the end of the time for appointing auditors for the next financial year under that section.

(4) No account shall be taken of any loss of the opportunity of further deemed re-appointment under this section in ascertaining the amount of any compensation or damages payable to an auditor on his ceasing to hold office for any reason.

### **Certain companies exempt from obligation to appoint auditors**

**160C.**—(1) A company which by virtue of section 249A (certain categories of small company) or section 249AA (dormant companies) of the 1985 Act is exempt from the provisions of Part VII of that Act relating to the audit of accounts is also exempt from the obligation to appoint auditors.

(2) The following provisions apply if a company which has been exempt from those provisions ceases to be so exempt.

(3) Where section 160 of this Act applies (appointment at general meeting at which accounts are laid), the directors may appoint auditors at any time before the next meeting of the company at which accounts are to be laid; and auditors so appointed shall hold office until the conclusion of that meeting.

(4) Where section 160A of this Act applies (appointment by private company not obliged to lay accounts), the directors may appoint auditors at any time before—

(a) the end of the period of 28 days beginning with the day on which copies of the company's annual accounts are next sent to members under section 238, or

(b) if notice is given under section 253(2) of the 1985 Act requiring the laying of the accounts before the company in general meeting, the beginning of that meeting;

and auditors so appointed shall hold office until the end of that period or, as the case may be, the conclusion of that meeting.

(5) If the directors fail to exercise their powers under subsection (3) or (4), the powers may be exercised by the company in general meeting.

### **Termination of appointment of auditors not appointed annually**

**160D.**—(1) When an election is in force under section 160B (election by private company to dispense with annual appointment), any member of the company may deposit notice in writing at the company's registered office proposing that the appointment of the company's auditors be brought to an end.

No member may deposit more than one such notice in any financial year of the company.

(2) If such a notice is deposited it is the duty of the directors —

(a) to convene a general meeting of the company for a date not more than 28 days after the date on which the notice was given, and

(b) to propose at the meeting a resolution in a form enabling the company to decide whether the appointment of the company's auditors should be brought to an end.

(3) If the decision of the company at the meeting is that the appointment of the auditors should be brought to an end, the auditors shall not be deemed to be re appointed when next they would be and, if the notice was deposited within the period immediately following the distribution of accounts, any deemed re appointment for the financial year following that to which those accounts relate which has already occurred shall cease to have effect.

The period immediately following the distribution of accounts means the period beginning with the day on which copies of the company's annual accounts are sent to members of the company under section 238 of the 1985 Act and ending 14 days after that day.

(4) If the directors do not within 14 days from the date of the deposit of the notice proceed duly to convene a meeting, the member who deposited the notice (or, if there was more than one, any of them) may himself convene the meeting; but any meeting so convened shall not be held after the expiration of three months from that date.

(5) A meeting convened under this section by a member shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(6) Any reasonable expenses incurred by a member by reason of the failure of the directors duly to convene a meeting shall be made good to him by the company; and any such sums shall be recouped by the company from such of the directors as were in default out of any sums payable, or to become payable, by the company by way of fees or other remuneration in respect of their services.

(7) This section has effect notwithstanding anything in any agreement between the company and its auditors; and no compensation or damages shall be payable by reason of the auditors' appointment being terminated under this section."

**Reduction in percentage of members required to agree to meetings being called at short notice**

5.—(1) After section 133(3) of the 1948 Act (which allows not less than 95 per cent of the members of a company to resolve that special resolutions of the company may be passed at meetings of which less than 21 days' notice has been given) there shall be added—

"(4) A private company may elect (by elective resolution in accordance with section 379A of the 1985 Act) that subsection (3)(b) shall have effect in relation to the company as if for the references to 95 per cent there were substituted references to such lesser percentage, but not less than 90 per cent, as may be specified in the resolution or subsequently determined by the company in general meeting."

(2) At the end of section 141(3) of the 1948 Act (which allows not less than 95 per cent of the members of a company to resolve that special resolutions of the company may be passed at meetings of which less than 21 days' notice has been given) there shall be added —

“A private company may elect (by elective resolution in accordance with section 379A of the 1985 Act) that the above provisions shall have effect in relation to the company as if for the references to 95 per cent there were substituted references to such lesser percentage, but not less than 90 per cent, as may be specified in the resolution or subsequently determined by the company in general meeting.”

#### **Resolutions to be forwarded to Registrar within 15 days of passing**

6.—(1) In section 143 of the 1948 Act (certain resolutions to be forwarded to Registrar) at the end of subsection (4) there shall be added —

“(f) an elective resolution under section 379A of the 1985 Act or a resolution revoking such a resolution;

(g) a resolution of the directors passed under section 147(2) of the 1985 Act (alteration of memorandum on company ceasing to be a public company, following acquisition of its own shares);

(h) a resolution conferring, varying, revoking or renewing authority under section 166 of that Act (market purchase of company's own shares).”

#### **Power of Governor to amend applied Acts and subordinate legislation**

7.—(1) The Governor may make regulations —

(a) amending any provision of the applied enactments or of any instrument made under the applied enactments,

(b) applying, in whole or in part, any subordinate legislation coming into effect in England after 1<sup>st</sup> September 2006 which amends or replaces any of the applied enactments,

(c) making consequential amendments to the 1948 Act.

(2) The power conferred on the Governor by this section to amend any enactment includes power to provide for the cessation of the application of the whole or any part of the enactment in the Falkland Islands.

#### **Forms, and fees payable to registrar**

8.—(1) Where any provision of the applied enactments requires a prescribed form to be used and no such form has been prescribed specifically for the Falkland Islands, the form prescribed for the purposes of that provision as it applies in England shall be used in the Falkland Islands with such modifications as the Registrar General may require or approve.

(2) The Governor may make regulations requiring the payment to the Registrar General of such fees as may be specified in the regulations in respect of —

(a) the performance by the registrar of such functions under the 1948 Act and the applied

enactments as may be so specified, including the receipt by him of any document which under that Act or those enactments is required to be delivered to him,

(b) the inspection of documents kept by him under that Act or those enactments, and

(c) services provided by the Registrar General otherwise than in pursuance of an obligation imposed on him by law.

(3) Regulations under this section may repeal in whole or in part section 4 of and Schedule A to the Companies and Private Partnership Ordinance<sup>3</sup>.

(4) Fees paid to the Registrar General in accordance with regulations made under this section shall be paid into the Consolidated Fund.

#### **Disapplication of certain imperial enactments**

9. Subject to Schedule 2, the enactments specified in column 1 of Schedule 1 shall cease to apply in the Falkland Islands to the extent specified in column 3 of that Schedule.

#### **Modifications and transitional provisions**

10. The modifications and transitional provisions set out in Schedule 2 shall have effect.

---

<sup>3</sup> Title 18



## SCHEDULE 1 DISAPPLICATION OF CERTAIN IMPERIAL ENACTMENTS

Chapter	Title	Extent of Disapplication
11 & 12 Geo 6. c.38	The Companies Act 1948	<p>Section 32</p> <p>Section 54</p> <p>In section 56(2) the words “of any redeemable preference shares or”</p> <p>Section 58</p> <p>Section 124 to 129</p> <p>Sections 147 to 158</p> <p>Section 162(1) and (2)</p> <p>In section 163, the proviso</p> <p>Section 196, 197</p> <p>In section 198—</p> <p>(a) in subsection (1) the words from “and one hundred and ninety-six” to the end;</p> <p>(b) subsection (3).</p> <p>In section 455 the definitions of “financial year” and “group accounts”.</p> <p>Schedules 2, 6, 7, 8 and 9</p>

## SCHEDULE 2 MODIFICATIONS AND TRANSITIONAL PROVISIONS

### PART I MODIFICATIONS OF PROVISIONS OF 1985 ACT

1. The provisions of the Companies Act 1985 applied by this Ordinance in the Falkland Islands shall have effect subject to the following provisions of this Part of this Schedule.
2. Any reference to a company formed and registered under the Companies Act 1985 shall be read as a reference to a company within the meaning of section 455 of the 1948 Act.
3. In section 143(3)(c) the words from “court” to “or” shall be omitted.
4. In section 145(2)(b) for “22<sup>nd</sup> December 1980” there shall be substituted “1<sup>st</sup> January 2007”.
5. In section 153(3) —
  - (a) in paragraph (c) for “section 137” there shall be substituted “section 68 of the 1948 Act”;
  - (b) in paragraph (e) for “section 425” there shall be substituted “section 206 of the 1948 Act”;

(c) in paragraph (f) for “section 110 of the Insolvency Act” there shall be substituted “section 287 of the 1948 Act”;

(d) in paragraph (g) for “Part I of the Insolvency Act” there shall be substituted “section 306 of the 1948 Act”;

6. In section 156 —

(a) in subsection (3) for “section 122 of the Insolvency Act” there shall be substituted “section 222 of the 1948 Act”;

(b) in subsection (5) for “section 380” there shall be substituted “section 143 of the 1948 Act”.

7. Section 162 shall have effect with the omission of the second sentence in subsection (2) and subsections (2A) and (2B).

8. In section 166(7) for “section 380” there shall be substituted “section 143 of the 1948 Act”.

9. In section 170(4) for “this Act” there shall be substituted “the 1948 Act”.

10. In section 173(4) for “section 122 of the Insolvency Act” there shall be substituted “section 222 of the 1948 Act”.

11. In section 224 for subsections (2), (3) and (3A) there shall be substituted —

“(2) The accounting reference date of a company incorporated before 1<sup>st</sup> January 2007, that is, the date on which its accounting reference period ends in each calendar year, shall (subject to section 225) be the anniversary of the last day of the company’s last financial year ending before 1<sup>st</sup> January 2007.

(3) The accounting reference date of a company incorporated on or after 1<sup>st</sup> January 2007 is the last day of the month in which the anniversary of its incorporation falls.”

12. Section 225 shall have effect with the omission of subsection (4)(b) and the reference in subsection (6) to a company in administration.

13. In section 244(1) —

(a) in paragraph (a) for “10 months” there shall be substituted “9 months”,

(b) in paragraph (b) for “7 months” there shall be substituted “9 months”.

14. In section 245B(1) at the end of paragraph (b) there shall be inserted —

“or

(c) by a person for the time being authorised for the purposes of this section as it applies in England,”

15. Section 247 which defines small companies and medium sized companies shall apply with the omission of the references to a medium sized company.

16. Section 249 which defines small and medium sized groups shall apply with the omission of paragraph 3 in the Table in subsection (3).

17.—(1) Section 249A which sets out the audit exemptions for small companies shall have effect subject to the following modifications.

(2) Subsection (2) shall be omitted.

(3) In subsection (3) —

(a) in paragraph (b) for “£5.6 million” there shall be substituted “£1.5 million”;

(b) in paragraph (c) for “£2.8 million” there shall be substituted “£1 million”.

(4) In subsection (3A) in paragraph (b) for “£5.6 million” there shall be substituted “£1.5 million”.

(5) Subsection (4) shall be omitted.

18. In section 249AA(7) —

(a) in paragraph (a) for “section 28” there shall be substituted “section 18 of the 1948 Act”;

(b) in paragraph (b) the words following “company” shall be omitted;

(c) in paragraph (d) the words following “return” shall be omitted.

19. In section 249D(1)(b) for “Chapter V of Part XI” there shall be substituted “this Act or the 1948 Act”.

20. In section 249E(2)(d) for “sections 389A(1) and 389B(1) and (5)” there shall be substituted “section 162 of the 1948 Act”.

21. In section 252(3) all the words following paragraph (a) shall be omitted.

22. In section 256 after subsection (4) there shall be inserted —

“(5) In the application of this section as part of the law of the Falkland Islands the accounting standards shall have effect subject to any necessary modifications.”

23. In section 262 in the definition of “turnover” for paragraphs (ii) and (iii) there shall be substituted —

“(i) any taxes based on the amounts so derived.”

24. In section 363(1)(b) after the words “this Chapter” there shall be inserted “or section 124

of the 1948 Act if no annual return has been delivered under this Chapter”.

25. In section 379A in subsection (1) —

(a) paragraph (a) shall be omitted;

(b) in paragraph (e) for “section 386” there shall be substituted “section 160B of the 1948 Act”.

26. In section 652B(3) —

(a) for “section 425” there shall be substituted “section 206”;

(b) paragraphs (b), (c), (ca), (cb) and (cc) shall be omitted;

(c) in paragraph (d) for “Part IV of that Act” there shall be substituted “the 1948 Act”.

27. In section 652C(4) —

(a) for “section 425” there shall be substituted “section 206”;

(b) paragraphs (c), (d), (da) and (db) shall be omitted;

(c) in paragraph (e) for “section 84(1) of that Act” there shall be substituted “section 278 of the 1948 Act”;

(d) in paragraph (d) for “Part IV of that Act” there shall be substituted “the 1948 Act”.

28.—(1) Schedule 24 of the 1985 Act shall have effect subject to the following modifications.

(2) Any reference to the statutory maximum shall be read as a reference to level 6 on the standard scale.

(3) For every reference to trial on indictment there shall be substituted a reference to summary trial (but this does not affect the punishment set out in the Schedule for any offence).

## PART II MODIFICATIONS OF THE COMPANIES ACT 1948

29. The 1948 Act shall have effect subject to the following modifications.

30. After section 212 (liability of contributories) there shall be inserted —

### **“212A. Liability of past directors and shareholders**

(1) This section applies where a company is being wound up and —

(a) it has under Chapter VII of Part V of the 1985 Act (redeemable shares; purchase by a company of its own shares) made a payment out of capital in respect of the

redemption or purchase of any of its own shares (the payment being referred to below as “the relevant payment”), and

(b) the aggregate amount of the company’s assets and the amounts paid by way of contribution to its assets (apart from this section) is not sufficient for payment of its debts and liabilities, and the expenses of the winding up.

(2) If the winding up commenced within one year of the date on which the relevant payment was made, then —

(a) the person from whom the shares were redeemed or purchased, and

(b) the directors who signed the statutory declaration made in accordance with section 173(3) of that Act for purposes of the redemption or purchase (except a director who shows that he had reasonable grounds for forming the opinion set out in the declaration),

are, so as to enable that insufficiency to be met, liable to contribute to the following extent to the company’s assets.

(3) A person from whom any of the shares were redeemed or purchased is liable to contribute an amount not exceeding so much of the relevant payment as was made by the company in respect of his shares; and the directors are jointly and severally liable with that person to contribute that amount.

(4) A person who has contributed any amount to the assets in pursuance of this section may apply to the court for an order directing any other person jointly and severally liable in respect of that amount to pay him such amount as the court thinks just and equitable.

(5) Section 212 of this Act does not apply in relation to liability accruing by virtue of this section.”

31. The following subsection shall be inserted in section 224 of the 1948 Act (application for winding up) after subsection 2 —

“(2A) A person who is liable under section 212A of this Act to contribute to a company’s assets in the event of its being wound up may petition on either of the grounds set out in section 222(e) and (f) of this Act, and the proviso to subsection (1) above does not then apply; but unless the person is a contributory otherwise than under section 212A, he may not in his character as contributory petition on any other ground.”

32. The following section shall be substituted for section 410 —

**“Accounts of overseas companies**

410.—(1) Every overseas company shall in every calendar year prepare accounts in accordance with this Act and the provisions of the 1985 Act as if the overseas company were a company within the meaning of this Act.

(2) Subsection (1) does not apply to any company to which section 699 of the 1985 Act applies. ”

33. In section 699AA(1) paragraph (c) shall be omitted.

34. In section 731(1) for “The Companies Acts” there shall be substituted “the Companies Act 1948 and this Act”.

### PART III TRANSITIONAL PROVISIONS

35.—(1) The applied enactments shall not have effect in relation to the accounts and audit of a company relating to any financial year of the company which began before 1<sup>st</sup> January 2007, but the 1948 Act as in force in the Falkland Islands immediately before that date shall continue to have such effect.

(2) In this paragraph —

(a) “company” means any company which is required by the applied enactments to prepare accounts in accordance with the provisions of those enactments;

(b) “financial year” has the meaning given by section 455 of the 1948 immediately before 1<sup>st</sup> January 2007.

36.—(1) Any preference shares issued before 1<sup>st</sup> January 2007 which but for the disapplication of section 58 of the 1948 Act by Schedule 1 could have been redeemed under that section shall be subject to redemption in accordance with the provisions of the applied enactments.

(2) Where sub-paragraph (1) applies in relation to any shares, any premium payable on redemption of those shares may, notwithstanding the disapplication of the reference to redeemable preference shares in section 56(2) of the 1948 Act by Schedule 1, be paid out of the share premium account instead of out of profits or partly out of that account and partly out of profits (but subject to the provisions of the applied enactments so far as the payment is out of profits).

(3) Any capital redemption reserve fund established before 1<sup>st</sup> January 2007 by any company for the purposes of section 58 of the 1948 Act shall be known as the company’s capital redemption reserve and be treated as if it had been established for the purposes of section 170 of the 1985 Act; and accordingly any reference in any enactment or in the articles of any company or in any other instrument to a company’s capital redemption reserve fund shall be read as a reference to the company’s capital redemption reserve.

37.—(1) Subject to paragraph 35, where any period of time specified in a provision of the 1948 Act is current immediately before the commencement date (a “current period”), the applied enactments shall have effect as if the corresponding provision had been in force when the period began to run; and (without prejudice to the foregoing) any current period is deemed for the purposes of the applied enactments —

(a) to run from the date or event from which it was running immediately before 1<sup>st</sup> January 2007, and

(b) to expire (subject to any provision of the applied enactments for its extension)

whenever it would have expired disregarding those enactments;

and any rights, priorities, liabilities, reliefs, obligations, requirements, powers, duties or exemptions dependent on the beginning, duration or end of a current period shall be under the applied enactments as they were or would have been under the 1948 Act.

(2) Where in any provision of the applied enactments there is a reference to another provision of those enactments, and the first-mentioned provision operates, or is capable of operating, in relation to things done or omitted, or events occurring or not occurring, in the past (including in particular past acts of compliance with any enactment, failures of compliance, contraventions, offences and convictions of offences), the reference to that other provision is to be read as including a reference to the corresponding provision of the 1948 Act.

(3) A contravention of any provision of the 1948 Act committed before 1<sup>st</sup> January 2007 shall not be visited with any severer punishment under or by virtue of the applied enactments than would have been applicable under that provision at the time of the contravention; but —

(a) where an offence for the continuance of which a penalty was provided has been committed under any provision of the 1948 Act, proceedings may be taken under the applied enactments in respect of the continuance of the offence after the commencement date in the like manner as if the offence had been committed under the corresponding provision of the applied enactments; and

(b) the repeal of any transitory provision of the 1948 Act (not replaced by any corresponding provision of the applied enactments) requiring a thing to be done within a certain time does not affect a person's continued liability to be prosecuted and punished in respect of the failure, or continued failure, to do that thing.

---

Published by the Attorney General's Chambers, Cable Cottage, Stanley, Falkland Islands  
Price: Thirteen pounds and Forty pence

© CrownCopyright 2006





**THE  
FALKLAND ISLANDS GAZETTE  
Supplement**

**PUBLISHED BY AUTHORITY**

---

---

*Vol. 17*

*22<sup>nd</sup> December 2006*

*No. 19*

---

---

The following are published in this Supplement –

**Supplementary Appropriation (2006-2007)(No 2) Ordinance 2006 (No 23 of 2006);**

**Companies (Amendment) Ordinance 2006 (No 24 of 2006); and**

**Falkland Islands Status (Amendment) Ordinance 2006 (No 25 of 2006).**

**ELIZABETH II**



**FALKLAND ISLANDS**

---

ALAN EDDEN HUCKLE,  
*Governor.*

**Supplementary Appropriation (2006-2007)(No 2) Ordinance 2006**

(No: 23 of 2006)

**ARRANGEMENT OF PROVISIONS**

**Section**

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

Schedule 1

Schedule 2

**ELIZABETH II**



**FALKLAND ISLANDS**

ALAN EDDEN HUCKLE,  
*Governor.*

**SUPPLEMENTARY APPROPRIATION (2006-2007)(No 2) ORDINANCE 2006**

(No: 23 of 2006)

*(assented to: 15 December 2006)*

*(commencement: upon publication)*

*(published: 22 December 2006)*

**AN ORDINANCE**

To appropriate and authorise the withdrawal from the Consolidated Fund of the additional sum of £1,067,990 for the service of the financial year ending 30 June 2007.

ENACTED by the Legislature of the Falkland Islands as follows —

**Short title**

1. This Ordinance may be cited as the Supplementary Appropriation (2006-2007)(No 2) Ordinance 2006.

**Appropriation of further sum**

2. The Financial Secretary may for the purposes specified in the Schedules cause to be withdrawn from the Consolidated Fund and applied to the service of the year commencing on 1 July 2006 and ending on 30 June 2007 ("the financial year") the further sum of £1,067,990 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 Schedule 1, prior to the commencement of this Ordinance, have been withdrawn from the Contingencies Fund by the authority of Contingencies Warrants Number 2 of 2006-2007 (the authority of which lapses on the commencement of this Ordinance).

## SCHEDULE 1

<u>Number</u>	<u>Head of Service</u>	<u>Amount</u> £
	<b>OPERATING BUDGET</b>	
0600	Central Administration	730,990
	<b>TOTAL SUPPLEMENTARY EXPENDITURE</b>	<u>730,990</u>

## SCHEDULE 2

<u>Number</u>	<u>Head of Service</u>	<u>Amount</u> £
	<b>FUND TRANSFERS/TRANSFER PAYMENTS</b>	
0999	Transfer Payments	337,000
	<b>TOTAL SUPPLEMENTARY EXPENDITURE</b>	<u>337,000</u>

Passed by the Legislature of the Falkland Islands this 15<sup>th</sup> day of December 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**

---

ALAN EDDEN HUCKLE,  
*Governor.*

**Companies (Amendment) Ordinance 2006**

(No: 24 of 2006)

**ARRANGEMENT OF PROVISIONS**

**Section**

1. Short title, commencement and interpretation
2. Application of provisions of the Companies Act 1985
3. Interpretation of Companies Act 1948
4. Appointment of auditors
5. Reduction in percentage of members required to agree to meetings being called at short notice
6. Resolutions to be forwarded to Registrar within 15 days of passing
7. Power of Governor to amend applied Acts and subordinate legislation
8. Forms, and fees payable to Registrar General
9. Disapplication of certain imperial enactments
10. Modifications and transitional provisions

Schedule 1— Disapplication of certain imperial enactments

Schedule 2— Modifications and transitional provisions

ELIZABETH II



FALKLAND ISLANDS

ALAN EDDEN HUCKLE,  
*Governor.*

**COMPANIES (AMENDMENT) ORDINANCE 2006**

(No: 24 of 2006)

*(assented to: 15 December 2006)*

*(commencement: 1 January 2007)*

*(published: 22 December 2006)*

**AN ORDINANCE**

To amend the law relating to companies.

ENACTED by the Legislature of the Falkland Islands as follows —

**Short title, commencement and interpretation**

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

(2) This Ordinance shall come into force on 1<sup>st</sup> January 2007.

(3) In this Ordinance —

(a) any reference to the 1948 Act is a reference to the Companies Act 1948 as it applies in the Falkland Islands;

(b) any reference to the 1985 Act is a reference to the Companies Act 1985 as it applies in the Falkland Islands

(c) any reference to the applied enactments is a reference to the enactments specified in section 2(1).

### **Application of provisions of the Companies Act 1985**

2.—(1) The provisions of the Companies Act 1985 specified below, as they are in force in England on 1<sup>st</sup> September 2006, shall apply in the Falkland Islands with effect from 1<sup>st</sup> January 2007 —

- (a) sections 36 and 36A being provisions relating to the execution of documents;
- (b) sections 143, 144, 145(2) and (3), 151 to 162, 163 to 167, 168 to 179 and 181 and Schedule 2, being provisions relating to the acquisition of a company's own shares;
- (c) sections 221 to 228, 229 to 242A, 244 to 246, 247 to 249B, 249E to 253, 256 to 262A and Schedules 4 to 10A, being provisions relating to company accounts and audit;
- (d) sections 363 to 365 being provisions relating to a company's annual return;
- (e) section 366A which permits a private company to dispense with annual general meetings;
- (f) section 379A which makes provision with respect to elective resolutions of companies;
- (g) sections 652A to 652F which make provision for the striking off of private companies;
- (h) sections 699(1) and (2) and 699AA and Schedule 21D which make provision with respect to overseas companies;
- (i) sections 730 and 731(1) and Schedule 24 which make provision with respect to jurisdiction in summary proceedings.

(2) The applied enactments have effect —

- (a) subject to Schedule 2 to this Ordinance,
- (b) subject to any subordinate legislation made after 1<sup>st</sup> January 2007 by the Governor under this Ordinance or under any of the applied enactments.

(3) Any reference in the applied enactments to the 1948 Act or to the 1985 Act is a reference to that Act as it applies in the Falkland Islands.

(4) Subject to Schedule 2 to this Ordinance, on the coming into force of this Ordinance the Disapplication of Enactments Order 1998<sup>1</sup> shall cease to apply to any applied enactment or to any other provision of the Companies Act 1985 which by virtue of section 81 of the Interpretation and General Clause Ordinance<sup>2</sup> (construction of imperial enactment) applies for the interpretation of any applied enactment.

---

<sup>1</sup> S R & O No 28 of 1998

<sup>2</sup> 1977 No 14

(5) Sections 80 and 81 of that Ordinance (references to subordinate instruments made under, and construction of, applied imperial enactments) shall apply to any imperial enactment which has effect in the Falkland Islands by virtue of this Ordinance subject to the provisions of Schedule 2.

### **Interpretation of Companies Act 1948**

3.—(1) In the 1948 Act any reference to the 1985 Act is a reference to that Act as it applies in the Falkland Islands.

(2) The provisions of the 1948 Act which continue to apply in the Falkland Islands shall have effect subject to (and be construed in accordance with) the provisions of the 1985 Act applied by section 2(1) and which have effect subject to the provisions of section 2(2).

### **Appointment of auditors**

4.—(1) The following sections shall be inserted in the 1948 Act after section 160 —

#### **“Appointment by private company which is not obliged to lay accounts**

**160A.—**(1) This section applies to a private company which has elected in accordance with section 252 of the 1985 Act to dispense with the laying of accounts before the company in general meeting.

(2) Auditors shall be appointed by the company in general meeting before the end of the period of 28 days beginning with the day on which copies of the company’s annual accounts for the previous financial year are sent to members under section 238 of the 1985 Act or, if notice is given under section 253(2) of that Act requiring the laying of the accounts before the company in general meeting, the conclusion of that meeting.

Auditors so appointed shall hold office from the end of that period or, as the case may be, the conclusion of that meeting until the end of the time for appointing auditors for the next financial year.

(3) The first auditors of the company may be appointed by the directors at any time before—

(a) the end of the period of 28 days beginning with the day on which copies of the company’s first annual accounts are sent to members under section 238 of the 1985 Act, or

(b) if notice is given under section 253(2) of that Act requiring the laying of the accounts before the company in general meeting, the beginning of that meeting;

and auditors so appointed shall hold office until the end of that period or, as the case may be, the conclusion of that meeting.

(4) If the directors fail to exercise their powers under subsection (3), the powers may be exercised by the company in general meeting.

(5) Auditors holding office when the election is made shall, unless the company in general meeting determines otherwise, continue to hold office until the end of the time for appointing auditors for the next financial year; and auditors holding office when an election ceases to



have effect shall continue to hold office until the conclusion of the next general meeting of the company at which accounts are laid.

**Election by private company to dispense with annual appointment**

**160B.**—(1) A private company may elect, by elective resolution in accordance with section 379A of the 1985 Act to dispense with the obligation to appoint auditors annually.

(2) When such an election is in force the company's auditors shall be deemed to be re-appointed for each succeeding financial year on the expiry of the time for appointing auditors for that year, unless —

(a) the directors of the company have taken advantage of the exemption conferred by section 249A or 249AA of the 1985 Act, or

(b) a resolution has been passed under section 160 of this Act to the effect that their appointment should be brought to an end.

(3) If the election ceases to be in force, the auditors then holding office shall continue to hold office —

(a) where section 159 of this Act then applies, until the conclusion of the next general meeting of the company at which accounts are laid;

(b) where section 160A of this Act then applies, until the end of the time for appointing auditors for the next financial year under that section.

(4) No account shall be taken of any loss of the opportunity of further deemed re-appointment under this section in ascertaining the amount of any compensation or damages payable to an auditor on his ceasing to hold office for any reason.

**Certain companies exempt from obligation to appoint auditors**

**160C.**—(1) A company which by virtue of section 249A (certain categories of small company) or section 249AA (dormant companies) of the 1985 Act is exempt from the provisions of Part VII of that Act relating to the audit of accounts is also exempt from the obligation to appoint auditors.

(2) The following provisions apply if a company which has been exempt from those provisions ceases to be so exempt.

(3) Where section 160 of this Act applies (appointment at general meeting at which accounts are laid), the directors may appoint auditors at any time before the next meeting of the company at which accounts are to be laid; and auditors so appointed shall hold office until the conclusion of that meeting.

(4) Where section 160A of this Act applies (appointment by private company not obliged to lay accounts), the directors may appoint auditors at any time before—

(a) the end of the period of 28 days beginning with the day on which copies of the company's annual accounts are next sent to members under section 238, or

(b) if notice is given under section 253(2) of the 1985 Act requiring the laying of the accounts before the company in general meeting, the beginning of that meeting;

and auditors so appointed shall hold office until the end of that period or, as the case may be, the conclusion of that meeting.

(5) If the directors fail to exercise their powers under subsection (3) or (4), the powers may be exercised by the company in general meeting.

#### **Termination of appointment of auditors not appointed annually**

**160D.**—(1) When an election is in force under section 160B (election by private company to dispense with annual appointment), any member of the company may deposit notice in writing at the company's registered office proposing that the appointment of the company's auditors be brought to an end.

No member may deposit more than one such notice in any financial year of the company.

(2) If such a notice is deposited it is the duty of the directors —

(a) to convene a general meeting of the company for a date not more than 28 days after the date on which the notice was given, and

(b) to propose at the meeting a resolution in a form enabling the company to decide whether the appointment of the company's auditors should be brought to an end.

(3) If the decision of the company at the meeting is that the appointment of the auditors should be brought to an end, the auditors shall not be deemed to be re appointed when next they would be and, if the notice was deposited within the period immediately following the distribution of accounts, any deemed re appointment for the financial year following that to which those accounts relate which has already occurred shall cease to have effect.

The period immediately following the distribution of accounts means the period beginning with the day on which copies of the company's annual accounts are sent to members of the company under section 238 of the 1985 Act and ending 14 days after that day.

(4) If the directors do not within 14 days from the date of the deposit of the notice proceed duly to convene a meeting, the member who deposited the notice (or, if there was more than one, any of them) may himself convene the meeting; but any meeting so convened shall not be held after the expiration of three months from that date.

(5) A meeting convened under this section by a member shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(6) Any reasonable expenses incurred by a member by reason of the failure of the directors duly to convene a meeting shall be made good to him by the company; and any such sums

shall be recouped by the company from such of the directors as were in default out of any sums payable, or to become payable, by the company by way of fees or other remuneration in respect of their services.

(7) This section has effect notwithstanding anything in any agreement between the company and its auditors; and no compensation or damages shall be payable by reason of the auditors' appointment being terminated under this section."

#### **Reduction in percentage of members required to agree to meetings being called at short notice**

**5.—**(1) After section 133(3) of the 1948 Act (which allows not less than 95 per cent of the members of a company to resolve that special resolutions of the company may be passed at meetings of which less than 21 days' notice has been given) there shall be added —

"(4) A private company may elect (by elective resolution in accordance with section 379A of the 1985 Act) that subsection (3)(b) shall have effect in relation to the company as if for the references to 95 per cent there were substituted references to such lesser percentage, but not less than 90 per cent, as may be specified in the resolution or subsequently determined by the company in general meeting."

(2) At the end of section 141(3) of the 1948 Act (which allows not less than 95 per cent of the members of a company to resolve that special resolutions of the company may be passed at meetings of which less than 21 days' notice has been given) there shall be added —

"A private company may elect (by elective resolution in accordance with section 379A of the 1985 Act) that the above provisions shall have effect in relation to the company as if for the references to 95 per cent there were substituted references to such lesser percentage, but not less than 90 per cent, as may be specified in the resolution or subsequently determined by the company in general meeting."

#### **Resolutions to be forwarded to Registrar within 15 days of passing**

**6.—**(1) In section 143 of the 1948 Act (certain resolutions to be forwarded to Registrar) at the end of subsection (4) there shall be added —

"(f) an elective resolution under section 379A of the 1985 Act or a resolution revoking such a resolution;

(g) a resolution of the directors passed under section 147(2) of the 1985 Act (alteration of memorandum on company ceasing to be a public company, following acquisition of its own shares);

(h) a resolution conferring, varying, revoking or renewing authority under section 166 of that Act (market purchase of company's own shares)."

#### **Power of Governor to amend applied Acts and subordinate legislation**

**7.—**(1) The Governor may make regulations —

(a) amending any provision of the applied enactments or of any instrument made under the applied enactments,

(b) applying, in whole or in part, any subordinate legislation coming into effect in England after 1<sup>st</sup> September 2006 which amends or replaces any of the applied enactments,

(c) making consequential amendments to the 1948 Act.

(2) The power conferred on the Governor by this section to amend any enactment includes power to provide for the cessation of the application of the whole or any part of the enactment in the Falkland Islands.

### **Forms, and fees payable to registrar**

8.—(1) Where any provision of the applied enactments requires a prescribed form to be used and no such form has been prescribed specifically for the Falkland Islands, the form prescribed for the purposes of that provision as it applies in England shall be used in the Falkland Islands with such modifications as the Registrar General may require or approve.

(2) The Governor may make regulations requiring the payment to the Registrar General of such fees as may be specified in the regulations in respect of —

(a) the performance by the registrar of such functions under the 1948 Act and the applied enactments as may be so specified, including the receipt by him of any document which under that Act or those enactments is required to be delivered to him,

(b) the inspection of documents kept by him under that Act or those enactments, and

(c) services provided by the Registrar General otherwise than in pursuance of an obligation imposed on him by law.

(3) Regulations under this section may repeal in whole or in part section 4 of and Schedule A to the Companies and Private Partnership Ordinance<sup>3</sup>.

(4) Fees paid to the Registrar General in accordance with regulations made under this section shall be paid into the Consolidated Fund.

### **Disapplication of certain imperial enactments**

9. Subject to Schedule 2, the enactments specified in column 1 of Schedule 1 shall cease to apply in the Falkland Islands to the extent specified in column 3 of that Schedule.

### **Modifications and transitional provisions**

10. The modifications and transitional provisions set out in Schedule 2 shall have effect.

---

<sup>3</sup> Title 18

## SCHEDULE 1 DISAPPLICATION OF CERTAIN IMPERIAL ENACTMENTS

Chapter	Title	Extent of Disapplication
11 & 12 Geo 6. c.38	The Companies Act 1948	<p>Section 32</p> <p>Section 54</p> <p>In section 56(2) the words “of any redeemable preference shares or”</p> <p>Section 58</p> <p>Section 124 to 129</p> <p>Sections 147 to 158</p> <p>Section 162(1) and (2)</p> <p>In section 163, the proviso</p> <p>Section 196, 197</p> <p>In section 198—</p> <p>(a) in subsection (1) the words from “and one hundred and ninety-six” to the end;</p> <p>(b) subsection (3).</p> <p>In section 455 the definitions of “financial year” and “group accounts”.</p> <p>Schedules 2, 6, 7, 8 and 9</p>

## SCHEDULE 2 MODIFICATIONS AND TRANSITIONAL PROVISIONS

### PART I MODIFICATIONS OF PROVISIONS OF 1985 ACT

1. The provisions of the Companies Act 1985 applied by this Ordinance in the Falkland Islands shall have effect subject to the following provisions of this Part of this Schedule.
2. Any reference to a company formed and registered under the Companies Act 1985 shall be read as a reference to a company within the meaning of section 455 of the 1948 Act.
3. In section 143(3)(c) the words from “court” to “or” shall be omitted.
4. In section 145(2)(b) for “22<sup>nd</sup> December 1980” there shall be substituted “1<sup>st</sup> January 2007”.
5. In section 153(3) —
  - (a) in paragraph (c) for “section 137” there shall be substituted “section 68 of the 1948 Act”;
  - (b) in paragraph (e) for “section 425” there shall be substituted “section 206 of the 1948 Act”;

(c) in paragraph (f) for “section 110 of the Insolvency Act” there shall be substituted “section 287 of the 1948 Act”;

(d) in paragraph (g) for “Part I of the Insolvency Act” there shall be substituted “section 306 of the 1948 Act”;

6. In section 156 —

(a) in subsection (3) for “section 122 of the Insolvency Act” there shall be substituted “section 222 of the 1948 Act”;

(b) in subsection (5) for “section 380” there shall be substituted “section 143 of the 1948 Act”.

7. Section 162 shall have effect with the omission of the second sentence in subsection (2) and subsections (2A) and (2B).

8. In section 166(7) for “section 380” there shall be substituted “section 143 of the 1948 Act”.

9. In section 170(4) for “this Act” there shall be substituted “the 1948 Act”.

10. In section 173(4) for “section 122 of the Insolvency Act” there shall be substituted “section 222 of the 1948 Act”.

11. In section 224 for subsections (2), (3) and (3A) there shall be substituted —

“(2) The accounting reference date of a company incorporated before 1<sup>st</sup> January 2007, that is, the date on which its accounting reference period ends in each calendar year, shall (subject to section 225) be the anniversary of the last day of the company’s last financial year ending before 1<sup>st</sup> January 2007.

(3) The accounting reference date of a company incorporated on or after 1<sup>st</sup> January 2007 is the last day of the month in which the anniversary of its incorporation falls.”

12. Section 225 shall have effect with the omission of subsection (4)(b) and the reference in subsection (6) to a company in administration.

13. In section 244(1) —

(a) in paragraph (a) for “10 months” there shall be substituted “9 months”,

(b) in paragraph (b) for “7 months” there shall be substituted “9 months”.

14. In section 245B(1) at the end of paragraph (b) there shall be inserted —

“or

(c) by a person for the time being authorised for the purposes of this section as it applies in England.”.

15. Section 247 which defines small companies and medium sized companies shall apply with the omission of the references to a medium sized company.

16. Section 249 which defines small and medium sized groups shall apply with the omission of paragraph 3 in the Table in subsection (3).

17.—(1) Section 249A which sets out the audit exemptions for small companies shall have effect subject to the following modifications.

(2) Subsection (2) shall be omitted.

(3) In subsection (3) —

(a) in paragraph (b) for “£5.6 million” there shall be substituted “£1.5 million”;

(b) in paragraph (c) for “£2.8 million” there shall be substituted “£1 million”.

(4) In subsection (3A) in paragraph (b) for “£5.6 million” there shall be substituted “£1.5 million”.

(5) Subsection (4) shall be omitted.

18. In section 249AA(7) —

(a) in paragraph (a) for “section 28” there shall be substituted “section 18 of the 1948 Act”;

(b) in paragraph (b) the words following “company” shall be omitted;

(c) in paragraph (d) the words following “return” shall be omitted.

19. In section 249D(1)(b) for “Chapter V of Part XI” there shall be substituted “this Act or the 1948 Act”.

20. In section 249E(2)(d) for “sections 389A(1) and 389B(1) and (5)” there shall be substituted “section 162 of the 1948 Act”.

21. In section 252(3) all the words following paragraph (a) shall be omitted.

22. In section 256 after subsection (4) there shall be inserted —

“(5) In the application of this section as part of the law of the Falkland Islands the accounting standards shall have effect subject to any necessary modifications.”

23. In section 262 in the definition of “turnover” for paragraphs (ii) and (iii) there shall be substituted —

“(i) any taxes based on the amounts so derived.”

24. In section 363(1)(b) after the words “this Chapter” there shall be inserted “or section 124 of the 1948 Act if no annual return has been delivered under this Chapter”.

25. In section 379A in subsection (1) —

(a) paragraph (a) shall be omitted;

(b) in paragraph (e) for “section 386” there shall be substituted “section 160B of the 1948 Act”.

26. In section 652B(3) —

(a) for “section 425” there shall be substituted “section 206”;

(b) paragraphs (b), (c), (ca), (cb) and (cc) shall be omitted;

(c) in paragraph (d) for “Part IV of that Act” there shall be substituted “the 1948 Act”.

27. In section 652C(4) —

(a) for “section 425” there shall be substituted “section 206”;

(b) paragraphs (c), (d), (da) and (db) shall be omitted;

(c) in paragraph (e) for “section 84(1) of that Act” there shall be substituted “section 278 of the 1948 Act”;

(d) in paragraph (d) for “Part IV of that Act” there shall be substituted “the 1948 Act”.

28.—(1) Schedule 24 of the 1985 Act shall have effect subject to the following modifications.

(2) Any reference to the statutory maximum shall be read as a reference to level 6 on the standard scale.

(3) For every reference to trial on indictment there shall be substituted a reference to summary trial (but this does not affect the punishment set out in the Schedule for any offence).

## PART II MODIFICATIONS OF THE COMPANIES ACT 1948

29. The 1948 Act shall have effect subject to the following modifications.

30. After section 212 (liability of contributories) there shall be inserted —

### **“212A. Liability of past directors and shareholders**

(1) This section applies where a company is being wound up and —



(a) it has under Chapter VII of Part V of the 1985 Act (redeemable shares; purchase by a company of its own shares) made a payment out of capital in respect of the redemption or purchase of any of its own shares (the payment being referred to below as "the relevant payment"), and

(b) the aggregate amount of the company's assets and the amounts paid by way of contribution to its assets (apart from this section) is not sufficient for payment of its debts and liabilities, and the expenses of the winding up.

(2) If the winding up commenced within one year of the date on which the relevant payment was made, then —

(a) the person from whom the shares were redeemed or purchased, and

(b) the directors who signed the statutory declaration made in accordance with section 173(3) of that Act for purposes of the redemption or purchase (except a director who shows that he had reasonable grounds for forming the opinion set out in the declaration),

are, so as to enable that insufficiency to be met, liable to contribute to the following extent to the company's assets.

(3) A person from whom any of the shares were redeemed or purchased is liable to contribute an amount not exceeding so much of the relevant payment as was made by the company in respect of his shares; and the directors are jointly and severally liable with that person to contribute that amount.

(4) A person who has contributed any amount to the assets in pursuance of this section may apply to the court for an order directing any other person jointly and severally liable in respect of that amount to pay him such amount as the court thinks just and equitable.

(5) Section 212 of this Act does not apply in relation to liability accruing by virtue of this section."

31. The following subsection shall be inserted in section 224 of the 1948 Act (application for winding up) after subsection 2 —

"(2A) A person who is liable under section 212A of this Act to contribute to a company's assets in the event of its being wound up may petition on either of the grounds set out in section 222(e) and (f) of this Act, and the proviso to subsection (1) above does not then apply; but unless the person is a contributory otherwise than under section 212A, he may not in his character as contributory petition on any other ground."

32. The following section shall be substituted for section 410 —

**"Accounts of overseas companies**

**410.—**(1) Every overseas company shall in every calendar year prepare accounts in accordance with this Act and the provisions of the 1985 Act as if the overseas company were a company within the meaning of this Act.

(2) Subsection (1) does not apply to any company to which section 699 of the 1985 Act applies.”

33. In section 699AA(1) paragraph (c) shall be omitted.

34. In section 731(1) for “The Companies Acts” there shall be substituted “the Companies Act 1948 and this Act”.

### PART III TRANSITIONAL PROVISIONS

35.—(1) The applied enactments shall not have effect in relation to the accounts and audit of a company relating to any financial year of the company which began before 1<sup>st</sup> January 2007, but the 1948 Act as in force in the Falkland Islands immediately before that date shall continue to have such effect.

(2) In this paragraph —

(a) “company” means any company which is required by the applied enactments to prepare accounts in accordance with the provisions of those enactments;

(b) “financial year” has the meaning given by section 455 of the 1948 immediately before 1<sup>st</sup> January 2007.

36.—(1) Any preference shares issued before 1<sup>st</sup> January 2007 which but for the disapplication of section 58 of the 1948 Act by Schedule 1 could have been redeemed under that section shall be subject to redemption in accordance with the provisions of the applied enactments.

(2) Where sub-paragraph (1) applies in relation to any shares, any premium payable on redemption of those shares may, notwithstanding the disapplication of the reference to redeemable preference shares in section 56(2) of the 1948 Act by Schedule 1, be paid out of the share premium account instead of out of profits or partly out of that account and partly out of profits (but subject to the provisions of the applied enactments so far as the payment is out of profits).

(3) Any capital redemption reserve fund established before 1<sup>st</sup> January 2007 by any company for the purposes of section 58 of the 1948 Act shall be known as the company’s capital redemption reserve and be treated as if it had been established for the purposes of section 170 of the 1985 Act; and accordingly any reference in any enactment or in the articles of any company or in any other instrument to a company’s capital redemption reserve fund shall be read as a reference to the company’s capital redemption reserve.

37.—(1) Subject to paragraph 35, where any period of time specified in a provision of the 1948 Act is current immediately before the commencement date (a “current period”), the applied enactments shall have effect as if the corresponding provision had been in force when the period began to run; and (without prejudice to the foregoing) any current period is deemed for the purposes of the applied enactments —

(a) to run from the date or event from which it was running immediately before 1<sup>st</sup> January 2007, and

(b) to expire (subject to any provision of the applied enactments for its extension) whenever it would have expired disregarding those enactments;

and any rights, priorities, liabilities, reliefs, obligations, requirements, powers, duties or exemptions dependent on the beginning, duration or end of a current period shall be under the applied enactments as they were or would have been under the 1948 Act.

(2) Where in any provision of the applied enactments there is a reference to another provision of those enactments, and the first-mentioned provision operates, or is capable of operating, in relation to things done or omitted, or events occurring or not occurring, in the past (including in particular past acts of compliance with any enactment, failures of compliance, contraventions, offences and convictions of offences), the reference to that other provision is to be read as including a reference to the corresponding provision of the 1948 Act.

(3) A contravention of any provision of the 1948 Act committed before 1<sup>st</sup> January 2007 shall not be visited with any severer punishment under or by virtue of the applied enactments than would have been applicable under that provision at the time of the contravention; but —

(a) where an offence for the continuance of which a penalty was provided has been committed under any provision of the 1948 Act, proceedings may be taken under the applied enactments in respect of the continuance of the offence after the commencement date in the like manner as if the offence had been committed under the corresponding provision of the applied enactments; and

(b) the repeal of any transitory provision of the 1948 Act (not replaced by any corresponding provision of the applied enactments) requiring a thing to be done within a certain time does not affect a person's continued liability to be prosecuted and punished in respect of the failure, or continued failure, to do that thing.

Passed by the Legislature of the Falkland Islands this 15<sup>th</sup> day of December 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**

---

ALAN EDDEN HUCKLE,  
*Governor.*

**Falkland Islands Status (Amendment) Ordinance 2006**

(No: 25 of 2006)

**ARRANGEMENT OF PROVISIONS**

Section

1. Short title and commencement
2. Amendment of the Falkland Islands Status Ordinance

Schedule

**ELIZABETH II**



**FALKLAND ISLANDS**

ALAN EDDEN HUCKLE,  
*Governor.*

**FALKLAND ISLANDS STATUS (AMENDMENT) ORDINANCE 2006**

(No: 25 of 2006)

*(assented to: 15 December 2006)*

*(commencement: upon publication)*

*(published: 22 December 2006)*

**AN ORDINANCE**

To amend the Falkland Islands Status Ordinance.

ENACTED by the Legislature of the Falkland Islands as follows —

**Short title and commencement**

1. This Ordinance may be cited as the Falkland Islands Status (Amendment) Ordinance 2006 and shall come into force on 1<sup>st</sup> January 2007.

**Amendment of the Falkland Islands Status Ordinance**

2. The Falkland Islands Status Ordinance (Title 52.3) is amended in the manner specified in the Schedule to this Ordinance.

**SCHEDULE**

***Amendment of the Falkland Islands Status Ordinance***

1. In this Schedule “the principal Ordinance” means the Falkland Islands Status Ordinance (Title 52.3).

2. Section 4(1) of the principal Ordinance is replaced by the following —

“(1) The Governor shall during the months of January, April, July and October in each year cause the Executive Council to consider and advise him upon any applications for Falkland Islands status forwarded to him by the Principal Immigration Officer for decision and remaining undetermined and after such consideration the Governor shall determine any such application by granting or refusing it but the Governor shall not refuse an application unless he has —

(a) notified the applicant in writing of his intention to refuse the application and of the ground or grounds on which he intends to refuse it;

(b) given the applicant a reasonable opportunity to make representations in relation to the intended refusal of the application on that ground or those grounds;

(c) caused any such representations to be considered by the Executive Council.”

3. Section 4 of the principal Ordinance is further amended by inserting the following subsection at the end of section 4 —

“(3) A grant of Falkland Islands status shall not take effect unless the Governor otherwise determines having regard to the circumstances of the particular applicant (for example because of the infirmity of mind or body of the applicant) until the applicant has at a Falkland Islands status ceremony held in accordance with section 4A made the Falkland Islands status pledge and a certificate of Falkland Islands status has been delivered to him thereat.”

4. The following sections are inserted in the principal Ordinance after section 4 —

**“Falkland Islands status ceremony and Falkland Islands status pledge**

**4A.—**(1) A Falkland Islands status ceremony shall be held within approximately one month after any grant of Falkland Islands status and shall be presided over by the Governor or such person as he may delegate for the purpose.

(2) Subject to subsection (3), every person who after the commencement of this section has been granted Falkland Islands status but has not yet made the Falkland Islands status pledge before the person presiding at a Falkland Islands status ceremony shall be invited to attend every such ceremony until he has made such a pledge.

(3) Subsection (2) does not apply to a person in respect of whom a grant of Falkland Islands status has taken effect by virtue of a determination made by the Governor under section 4(3).

(4) The Falkland Islands status pledge shall be made by the person concerned reading aloud and thereafter signing in the presence and hearing of the person presiding at a Falkland Islands status ceremony a pledge in the following form —

“I, ..... pledge my loyalty to the Falkland Islands and will respect its rights and freedoms. I will uphold its democratic values. I will obey its laws and fulfil my duties and obligations under its Constitution.” ”

(5) If a person to whom subsection (2) applies fails within twelve months after the grant to him of Falkland Islands status to make the Falkland Islands status pledge in accordance with subsection (4), the Governor may give notice in writing to him that he intends to annul that grant unless the person concerned within six months after the service of that notice makes that pledge at a Falkland Islands status ceremony.

(6) If a person upon whom a notice has been given in accordance with subsection (5) fails within six months thereafter to make the Falkland Islands status pledge in accordance with that notice, the Governor may annul the grant to that person of Falkland Islands status.

**Register of persons who have been granted Falkland Islands status and persons who have made the Falkland Islands status pledge**

**4B.** The Principal Immigration Officer shall maintain a register of persons who have been granted Falkland Islands status under this Ordinance and persons who have made the Falkland Islands status pledge and that register shall be open to inspection during normal office hours on payment of such fee as may be prescribed by regulations under section 7."

5. Section 7 of the principal Ordinance is amended —

(a) by omitting the words in parentheses in paragraph (b) of that section;

(b) by replacing the full stop at the end of that paragraph with a comma and the word "and"; and

(c) by inserting thereafter the following paragraph —

"(c) the fee payable for inspection of the register maintained under section 4B."

Passed by the Legislature of the Falkland Islands this 15<sup>th</sup> day of December 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.*

---

Published by the Attorney General's Chambers, Cable Cottage, Stanley, Falkland Islands  
Price: Five pounds and Forty pence

© **CrownCopyright 2006**