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**Explanatory Memorandum to the Crimes Bill 2014; and
Crimes Bill 2014**

CRIMES BILL 2014

EXPLANATORY MEMORANDUM

GENERAL INTRODUCTION

Background

The criminal laws of the Falkland Islands are at present contained in a few local Ordinances and a large number of United Kingdom enactments that apply by their own force, by Order in Council, by virtue of Chapter X of the Interpretation and General Clauses Ordinance or by virtue of the Crimes Ordinance. Section 3 of the Crimes Ordinance makes offences at common law offences in the Falkland Islands and section 6 adopts as laws of the Falkland Islands the English Acts listed in Schedule 1 to the Ordinance

The local Ordinances are out of date in many respects and the UK enactments are often complex and difficult to apply in the Falkland Islands context. They are difficult to find and are phrased in archaic language. Some have been amended or repealed in the UK. There are also several recent criminal laws in the UK that do not apply to the Falkland Islands but should do so if the laws of the Falkland Islands are to keep abreast of modern criminal jurisprudence.

The Government therefore proposes to codify and consolidate the majority of criminal offences by means of this Crimes Bill. It is a companion Bill to the larger Criminal Procedure and Evidence Bill which will be introduced in the Legislative Assembly at the same time (and is referred to in these Notes as the ‘Criminal Procedure and Evidence Ordinance 2014’.) For a full account of the background to and reasons for this legislative initiative, see the General Introduction to that Bill.

This Bill seeks to update and consolidate legislation that creates criminal offences in the Falkland Islands. It re-states in modern language the provisions of relevant local Ordinances, which will be repealed. They are:

- Crimes Ordinance, including the UK enactments listed in Schedule 1
- Contempt of Court Ordinance
- Sexual Offences Ordinance (which incorporated into Falkland Islands law the UK Sexual Offences Act 2003)
- Some provisions of the Police Ordinance and Road Traffic Ordinance.

The Bill enacts as local law provisions of UK enactments that apply to the Falkland Islands by their own force or by virtue of Chapter X of the IGCO. It then disapplies those enactments.

A Destination Table shows where equivalent provisions are found in the Bill, if they have been replaced. The table also shows the disposal of the English laws listed in Schedule 1

The origins of each clause, whether a Falkland Islands law or a UK law, or both, are shown at the foot of the clause with the amendments. They are listed in the Derivation Table. Subsidiary legislation made under the repealed Ordinances or the disapplied Acts, and which remains relevant, is saved by the savings and transitional provisions in Part 26.

Scope of the Bill

The Bill incorporates provisions of several recent UK enactments that do not apply to the Falkland Islands (because the application mechanism did not operate after 1 July 2004) but which are part of current criminal legislation in the UK. They include:

- Domestic Violence, Crime and Victims Act 2004
- Fraud Act 2006
- Racial and Religious Hatred Act 2006
- Serious Crime Act 2007
- Corporate Manslaughter and Corporate Homicide Act 2007
- Coroners and Justice Act 2009
- Bribery Act 2010
- Crime & Security Act 2010
- Anti-social Behaviour, Crime and Policing Act 2014

These and other UK laws include recent amendments made by the Policing & Crime Act 2009, Protection of Freedoms Act 2012, Legal Aid, Sentencing and Punishment of Offenders Act 2012, Crimes and Courts Act 2013, etc., some of which are not yet fully in force in the UK. They also include adaptations and changes to make the provisions more applicable to the Falkland Island context. Where this occurs the Notes on Clauses below highlight the changes. Where appropriate, the jurisprudence emanating from relevant courts is also reflected in this Bill. (Note: A reference to 'UK' is in fact to the law in England and Wales.)

The Bill consolidates all offences that apply in FI now by virtue of the Crimes Ordinance, if they are still law in the UK. It incorporates new UK laws including crimes against humanity and 'hate crimes'. It includes Domestic Violence Protection Orders, Sexual Risk Orders and Forced Marriage Orders.

The Bill puts on a statutory footing common law offences that are still appropriate and repeals others; there will not be any common law offences in the Falkland Islands in future.

The Bill does not include animal welfare legislation which is being done separately.

It does not include drugs offences or firearms offences. Nor does it deal with regulatory offences, such as road traffic, environmental, shipping and aviation offences. The Bill does not include emergency powers provisions, or all the Orders in Council offences such as biological weapons and taking of hostages, nor Official Secrets Acts. These will be dealt with in a more general exercise to localise all UK laws that apply to the Falkland Islands.

The Ordinance will be supplemented by criminal procedure rules made by the Chief Justice after consulting the Criminal Justice Council. Framework rules have already been drafted for the consideration of the CJC.

Penalties

The Bill adopts the modern practice of placing the penalty at the foot of each offence. The penalty stated is the maximum (as provided in section 480(3) of the Criminal Procedure and

Evidence Ordinance 2014.) There will be sentencing guidelines issued under section 482 of that Ordinance.

The maximum sentences reflect the seriousness of the offence, generally in line with penal policy in the UK. Some maxima are set as high as 18 years, because offences carrying a life sentence are treated as indictment-only, while others are summary; see Appendix 2 to the Explanatory Notes to the Criminal Procedure and Evidence Ordinance 2014 for a fuller discussion of this aspect of the Bills.

If an offence is indictment-only no mention is made of a fine (unless the defendant is a company in which case imprisonment is not an option.) This is because the Supreme Court has power to fine in addition to imposing a sentence of imprisonment, under section 480 of the Criminal Procedure and Evidence Ordinance 2014. However, if the offence is a summary one, the power to fine instead, or in addition, is generally stated, so as to give the lower courts this power. The level (i.e. on the standard scale of fines in Schedule 8 to the CPE Ordinance) is specified where the sentence of imprisonment is up to 12 months. Above that limit no level is specified as the power to fine is unlimited for the Magistrate's Court and is limited to £5,000 in the Summary Court (section 589 of the CPE Ordinance.) Both courts are limited in their fining power when sitting as a Youth Court; see section 733 of the CPE Ordinance.

Other matters

Powers of arrest without warrant are in the PACE provisions of the CPE Ordinance so are not included in this Bill unless the offence is not imprisonable in which case the power is stated.

Powers of search and seizure are also included in the PACE provisions of the CPE Ordinance and are not repeated in this Bill unless they have special features which justify that.

Powers of forfeiture are included in this Bill although the CPE Ordinance empowers courts to make deprivation orders (see clauses 617 on.). The UK laws (and Schedule 1 to this Bill) continue to include express forfeiture provisions and clause 622 of the CPE Ordinance makes provision for the disposal of forfeited items (see clause 622.)

The Bill confers several functions on the Governor. In accordance with s.66 of the Constitution, the Governor must consult the Executive Council before performing functions. See the General Introduction to the CPE Bill for a fuller discussion of this topic.

A similar exercise has recently been successfully undertaken in St Helena and Gibraltar. The legislative drafter, John Wilson, who drafted the Criminal Bills for both those Overseas Territories, has drafted this Bill and the Criminal Procedure and Evidence Ordinance.

The Bill is drafted in gender-neutral language and in what is known as a 'Plain English' style. This makes it more readily understood by ordinary readers and is the drafting style adopted in many Commonwealth countries nowadays, including the UK.

For a commentary on the UK laws, reference has been made to Archbold, Criminal Pleading, Evidence & Practice 2013 Edition and supplements to the end of 2013.

The Bill is divided into 4 Chapters and 26 Parts. The Chapters deal with preliminary and general principles; then with crimes against the individual; then with crimes against the general public; and supplementary provisions.

There are also 5 Schedules, which are set out at the end of the whole Bill, in line with the usage in the UK.

The Bill begins with the Long Title which describes the purpose of the Ordinance, and the enacting formula.

CHAPTER 1 – PRELIMINARY

PART 1 – PRELIMINARY AND INTERPRETATION

Introduction

This Part has only two clauses – the Title and commencement, and Interpretation. The Interpretation clause contains definitions applicable to the whole Bill and is an important component of the legislative scheme.

The Part is preceded by the Long Title, which sets out the purpose of the Bill, and the enacting formula. The long title uses the term ‘consolidate’ as the Bill in effect consolidates the various UK enactments on criminal law that apply to the Falkland Islands. It uses ‘partially codify’ in relation to the common law.

Notes on clauses

Clause 1 states the short title of the Ordinance. Sub-clause (2) empowers the Governor to set a date for the Ordinance to come into operation. Sub-clause (3) is a power to prescribe different dates for different provisions.

Clause 2 contains definitions of various terms that are used in the Bill. Individual Parts also have interpretation clauses, and there are definitions in clauses within Parts as well. This clause therefore defines only those terms that are used in more than one Part, and that are not defined in the Interpretation and General Clauses Ordinance. To the extent appropriate, the same definitions have been used in both this Bill and the Criminal Procedure and Evidence Ordinance to ensure consistency across the criminal legislation. Some of the terms, such as ‘child’, are defined differently in particular Parts in which case the phrase ‘unless the context otherwise requires’ comes into play.

An ‘adult’ means a person aged 18 years or more, a ‘young person’ is someone who has attained the age of 14 but is under 18 years of age, and a ‘child’ is someone under 14 years of age. A “youth” means a person aged below 18 years, whether a child or a young person.

The definition of ‘property’ is deliberately broad and will apply unless there is a definition for a particular purpose. The definition of ‘spouse’ includes ‘civil partner’ which is also defined. There is no legal provision for civil partnership in the Falkland Islands, but people coming to or living in the Falkland Islands might be in a civil partnership recognised by UK or other law.

The term ‘Falkland Islands status’ is defined by reference to the Constitution.

Sub-cause (2) provides that any terms defined in clause 2 of the Criminal Procedure and Evidence Ordinance 2014 but not in this Ordinance have the same meaning in this Ordinance.

Sub-clauses (3) to (6) are similar to subsections of section 2 of the Criminal Procedure and Evidence Ordinance 2014 but are repeated for ease of reference and to ensure consistency.

PART 2 - GENERAL PROVISIONS

Introduction

This Part sets out general principles about criminal liability, alternative verdicts, spouses, civil proceedings and corporate liability. The provisions bring together a number of statements of the rules in the existing Falkland Islands law and apply them to all offences.

The Part does not seek to codify common law rules on defences such as drunkenness or insanity, mistake of fact, duress or self-defence. See under clause 5 for the defence of automatism.

Other general principles applicable to offences as well as procedure are included in the Criminal Procedure and Evidence Ordinance. See for example clause 780 on the use of force, clause 781 on the criminal liability of corporations, and clause 782 on service of documents. (For a separate statement of the rule about corporations see clause 431 which relates to computer misuse offences committed by someone who is not an officer or member of the corporation.)

There are also some principles about criminal prosecutions in section 6 of the Constitution – see section 6(5) which is the rule against retrospective effect and section 6(6) which is the rule against double jeopardy (*ne bis in idem*). These provisions mean that sections 53 and 9 respectively of the Crimes Ordinance can be repealed.

The Part incorporates some provisions of the Crimes Ordinance, which in turn were based on UK provisions, as indicated under each clause.

Some general principles about criminal prosecutions are contained in Chapter I of the Constitution; see in particular section 6 – Provisions to secure protection of law.

Notes on clauses

Criminal liability

Clause 3 states the age of criminal responsibility as being 10 years which is the current position in the Falkland Islands. This is the rule in the UK Children and Young Persons Act 1933 as amended in 1963. Sub-clause (2) abolishes a rebuttable presumption about children aged 10 or over.

Clause 4 is a rule about inferences as to criminal intent based on section 8 of the UK Criminal Justice Act 1967. It is still the law in the UK.

Clause 5 is a definition of automatism based on English case law (see Archbold paras. 17-85 on.) It was included in the Crimes Ordinance and is reproduced in this Part. However the case law interpreting this definition continues to develop and no attempt has been made to refine it beyond

the basic definition. Reference to the common law will still be necessary to assist in the application of the definition to fact-specific situations.

Note that there has been no attempt in this Part to codify the law on insanity, self-induced intoxication etc. or other defences, apart from self-defence which is in Part. Marital coercion (both as a statutory and a common law defence) is no longer a defence in the Falkland Islands, in line with its abolition in the UK.

Offences outside the Falkland Islands

Clause 6 states the common law rule about extraterritorial jurisdiction.

Clauses 7 to 13 make extended provisions about extraterritorial jurisdiction in relation to offences of dishonesty, conspiracy, incitement and attempts. They are based on sections 1 to 6 of the UK Criminal Justice Act 1993. These provisions do not affect the operation of any specific rules about jurisdiction that apply to particular offences under any provision of the Ordinance. The terms 'Group A offence' and 'Group B offence' are defined in clause 2. The Group B offences involve more than one person so that different rules about jurisdiction might apply.

Clause 7 updates the list of offences in Group A – the UK has not yet done so. The Governor is given power to add to the offences in each group.

Part 10 on Sexual Offences also has provisions on extraterritorial jurisdiction in relation to sexual offences – see clauses 290 and 291.

Alternative verdicts

Clause 14 is based on section 6 of the UK Criminal Law Act 1967. Sub-clause (6) is the rule about alternative verdicts in murder cases, from section 6(2) of the 1967 Act.

Clause 15 is the rule about convicting as an accessory from section 4(2) of the UK Criminal Law Act 1967, which unlike in the UK, is available for all trials in all courts. The power to return an alternative verdict is also given to all courts.

Miscellaneous

Clause 16 uses the term 'spouses' rather than 'husband and wife' so as to be gender-neutral and simpler. The rule is based on the UK Theft Act 1968 but covers more than theft as it also applies to criminal damage. It is widened to apply to all offences under the Crimes Ordinance and includes civil partners.

Clause 17 makes it clear that the Ordinance is capable of applying to corporate bodies, whatever they are called. It states that corporate liability applies to all offences capable of being committed by a corporate body, or by an individual officer on behalf of a body. The rule is stated in various ways in the UK Acts where it appears, and is of general application.

The rule is sometimes stated separately, as in clause 431 which is about corporate bodies benefitting from an offence committed by someone who is not an officer or member. See also clause 508 about bribery by corporate bodies.

Clause 18 is based on two recent UK enactments. It abrogates the common law requirement for corroboration in relation to the evidence of the complainant in a sexual offence case or the evidence of a child and it makes savings in relation to other warnings to the jury about other types of evidence. The clause applies equally to summary trials. This rule is stated in section 49 of the Crimes Ordinance and is repeated here for the avoidance of doubt.

PART 3 – ANCILLARY OFFENCES

This Part deals with the topics of attempts, conspiracy, and accessories (aiding and abetting, etc.) It includes a new offence of encouraging offenders, which replaces the common law offence of incitement and is adapted from the UK Serious Crime Act 2007 which came into force on 1 October 2008.

These offences are sometimes called ‘inchoate offences’ as they are not complete in themselves. However, in the Criminal Procedure and Evidence Ordinance 2014 and in explanatory notes there are references to ‘ancillary offences’ by which is meant attempts etc., so it is appropriate to refer to them as such.’ Strictly, an inchoate offence is one where the substantive offence is not complete, so ancillary offences might relate to completed offences (e.g. accessory after the fact) or to an inchoate offence that is not in fact committed (e.g. encouragement.) However, an attempt to commit an ancillary offence is not itself an offence.

The Crimes Ordinance contains some provisions about attempts etc. which are incorporated in this Part and combined with provisions of the UK Criminal Attempts Act 1981. The scope of the offence has been broadened to include attempting to commit summary as well as indictable offences (because most offences are summary in the Falkland Islands). It does not extend to inchoate offences.

The conspiracy provisions are based on sections 1 to 5 of the UK Criminal Law Act 1977. The common law offence of conspiracy to defraud is abolished as it is not required as a separate offence; there will still be the offence of conspiracy to commit any of the fraud offences in Part 12 which are now broad enough to cover all behaviour previously covered in common law conspiracy to defraud.

The ‘encouragement’ provisions are adapted from the UK Serious Crime Act 2007 which introduced the offence of ‘encouraging or assisting’, but which has been criticised as noted below. In this Part, therefore, the new offence is one of ‘encouraging’ another offence, and there are separate offences of ‘assisting’. There are several sections of Archbold which deal with these offences, but see in particular Part 33 paras. 33-1 to 146.

Notes on clauses

Attempts

Clause 19 combines and modifies provisions of section 10 of the Crimes Ordinance and of section 1 of the UK Criminal Attempts Act, 1981. It makes attempt a general offence and says that every substantive offence can be the subject of a charge of attempt, and can result in a conviction for attempt, even if not charged. This is a broad statement but appropriate in the

Falkland Islands where even very serious offences are summary. It means that no other provisions need not mention attempt as a separate or additional offence, although they might sometimes do so when listing offences.

Clause 20 says that procedural and other provisions about substantive laws (time limits etc.) apply to attempts. See also clause 45 for a general rule about forfeiture

Clause 21 makes procedural rules about prosecuting attempts.

Clause 22 abolishes the common law offence of attempt.

Conspiracy

Clauses 23 to 30 are based on the UK Criminal Law Act 1977 as amended by the Criminal Attempts Act 1981, Criminal Justice (Terrorism and Conspiracy) Act 1998 and Criminal Justice Act 1987. Conspiracy is triable only on indictment in England, but is triable according to the nature of the main offence in the Falkland Islands. So it is an indictment-only offence if the main offence is indictment-only – see clause 181 Criminal Procedure and Evidence Bill.

Clause 23 creates the offence of conspiracy. Sub-clause (4) provides that the Part does not apply to any conspiracy under the common law of England. However, section 5 of the Criminal Law Act 1977 (clause 30) abolishes common law conspiracy so the provision is not strictly necessary. The transitional provisions at (2) of the UK section are in Part 26 of the Bill.

Clause 24 concerns conspiracies to commit offences outside the Falkland Islands. It is based on section 1A of the Criminal Law Act 1977 as added by the Criminal Justice (Terrorism and Conspiracy) Act 1998. The extension of jurisdiction outside the UK is applied by analogy to conspiracies to commit offences outside the Falkland Islands. The term ‘agent’ in sub-clause (5) will have its ordinary meaning.

Sub-clause (12) says it is immaterial whether a person has Falkland Islands status. That term is defined in clause 2.

Clause 25 provides general exemptions. Sub-clause (2)(b) refers to a person under the age of criminal responsibility, which is stated in clause 3 as age 10.

Clause 26 specifies the maximum sentences for conspiracy, in relation to the relevant offence, whether it is indictment-only or summary.

Clauses 27 to 29 are procedural provisions based on the UK Criminal Law Act 1977.

Clause 30 is based on section 5 of the Criminal Law Act 1977. It abolishes common law conspiracy, including incitement. This will also abolish the offence of conspiracy to defraud (see Introduction above.) Note that section 12 of the UK Criminal Justice Act 1987 did not create the offence but only regulated it.)

Encouraging offences

Clauses 31 to 41 are adapted from Part 2 of the UK Serious Crime Act 2007 (sections 44 to 59 and Schedules 3 and 4.) This was based on a 2006 Law Commission Report on Inchoate Liability for Assisting and Encouraging Crime. It abolished the common law offence of incitement and in its place created new offences of intentionally encouraging or assisting crime and encouraging or assisting crime believing that an offence, or one or more offences, will be committed.

The UK law has been much criticised, for confusing the difference between completed and incomplete substantive offences, and for creating an offence which has inherent duplicity namely 'encouraging' or 'assisting'. It also overlaps with other offences of assisting which replace the previous accessories offences. Various proposals for improvement have been made, including reverting to 'incitement' as the term, or using 'facilitating'. None of these seems satisfactory, and the proposal for this Part is that the words 'or assisting' be removed, leaving the offence as one of 'encouraging' another offence. This would apply whether the other offence is actually committed or not.

Clause 31 therefore creates 3 new offences –

- Sub-clause (1) - intentionally encouraging an offence;
- Sub-clause (3) - encouraging an offence believing it will be committed;
- Sub-clause (4) - encouraging offences believing that one or more will be committed.

For a subsection (1) offence a person must do an act capable of encouraging the commission of an offence and intend to encourage its commission. Sub-clause (2) makes it clear that foresight of consequences is not sufficient.

A subsection (3) offence is committed if a person does an act capable of encouraging an offence and believes both that the offence will be committed and that his act will encourage its commission.

For a subsection (4) offence a person must do an act capable of encouraging one or more offences believing that one or more offences will be committed and that his or her act will encourage one or more of them.

Clause 32 sets out what needs to be proved to establish guilt for each of the offences in clause 31. It includes a defence where the encouragement is considered to be reasonable in the circumstances and an exemption from liability where the offence encouraged was created in order to protect a category of people (and the person doing the encouraging falls into that category). None of the offences requires the anticipated offence (or 'reference offence', if more than one) to be committed in fact – see clause 33(1).

Clause 33 makes supplemental provisions.

Sub-clause (1) provides that the offences can be committed whether or not any offence capable of being encouraged by the person's act is committed.

Sub-clause (2) provides that if a person's act is capable of encouraging a number of criminal offences, and the person either intends or believes that each of those offences will happen, he or she can be prosecuted and convicted in relation to every offence that the person intends to encourage, or believes will be encouraged.

Sub-clause (3) provides that a person may, in relation to the same act, commit an offence under more than one provision of section 31.

Sub-clauses (4) and (5) provide that a person cannot be guilty of encouraging an offence under section 32(2) or (3) believing that an offence under that section or a similar offence of assisting etc. will happen. This means it will not be an offence to encourage another person believing that that person will commit the offence of encouraging another to commit an offence. This is in line with the principle that there is no offence of attempt to commit an ancillary offence.

Sub-clause (6) provides that the requirement that a person believes that a criminal offence, or a number of criminal offences, be committed is satisfied if he or she believes that the criminal offence, or that one or more criminal offences, would be done if certain conditions are met.

Clause 34 provides two defences.

Sub-clause (1) provides that it will be a defence that the defendant acted reasonably, in the circumstances he was aware of, or in the circumstances he reasonably believed existed.

Sub-clause (4) incorporates a common law exemption from liability relating to 'protected' persons. A person cannot be guilty of the offences in section 31 if, in relation to an offence that is a "protective" offence, the person who does the act capable of encouraging that offence falls within the category of persons that offence was designed to protect and would be considered as the victim.

Clause 35 provides the rules that will govern jurisdiction over the offences in section 31. A person may be convicted of the offences in section 31, regardless of his or her own location, if the person knew or believed that the act which would amount to the commission of an offence would take place, at least in part, in the Falkland Islands. If it is not possible to establish the circumstances required for jurisdiction to arise under subsection (1), it may be possible to convict a person of an offence under section 31 if the facts of the case fall within section 36]. The general jurisdictional rules for section 31 offences do not affect any specific jurisdictional rules which already exist for certain offences on the statute book.

Clause 36 confers extended jurisdiction in certain cases. It is based on Schedule 4 to the UK Serious Crime Act 2007.

Sub-clause (1) confers jurisdiction where a person does an act in the Falkland Islands, capable of encouraging an offence, and knows or believes that what the person anticipates might take place outside the Falkland Islands but the offence is one for which a perpetrator

could be tried in the Falkland Islands if the anticipated offence were committed outside the Falkland Islands, or relevant conditions exist that would make it so triable.

Sub-clause (3) confers jurisdiction where a person does an act in the Falkland Islands, capable of encouraging an offence, and knows or believes that what he or she anticipates might take place in a country outside the Falkland Islands but what he or she anticipates is also an offence under the law in force in that country.

Sub-clause (8) confers jurisdiction where a person does an act outside the Falkland Islands, capable of encouraging an offence, and knows or believes that what the person anticipates might take place outside the Falkland Islands but the offence is one for which it would be possible to prosecute the person who provides encouragement in the Falkland Islands if he or she were to commit the offence as a principal in that place.

Note that this clause uses 'place outside the Falkland Islands' rather than 'country or territory' (so as to include e.g. Hong Kong). This wording is also adopted elsewhere except where a national government is intended.

Clause 37 governs the institution and conduct of proceedings.

Sub-clause (1) provides that any ancillary powers that apply to a substantive offence will apply to an offence of encouraging that substantive offence e.g. consent to proceedings, forfeiture, etc. This duplicates what is said in clause 45 about procedural rules applying, but does not contradict it.

Some provisions of s.54 of the UK Serious Crime Act give effect to an E-commerce Directive of the European Union which allows for a derogation on the grounds of public policy. Those provisions are not included in this Part. A non-Falkland Islands internet service provider could therefore be prosecuted for an offence under section 31.

Clause 38 provides that if an anticipated offence has been committed and it cannot be proved whether a person has either encouraged the offence on the one hand, or committed the offence as a principal on the other, the person can be convicted of an offence under section 31.

Clause 39 specifies the offences in relation to which a person may be found guilty as an alternative where the person has been prosecuted for an offence under section 31. This is to produce the same effect as the rules in relation to alternative verdicts in relation to a trial for the offences encouraged or assisted. The clause applies to summary proceedings as well as proceedings on indictment.

Sub-clause (10) provides that a person may plead guilty to an offence which would be encompassed by the offence with which the person was charged.

Clause 40 prescribes the penalties that will apply to the offences created in section 31. The maximum penalty for encouraging an offence of murder is imprisonment for life. The general rule is that the maximum penalty available for an offence under section 31 will be the same as

the maximum available on conviction for the relevant anticipated or reference offence. If none of the offences is punishable by imprisonment then the maximum sentence will be a fine.

Clause 41 abolishes the common law offence of incitement, as it is replaced by the provisions of sections 31 to 40. It also provides that a reference in any enactment to the offence of incitement is to be read as a reference to the offence of encouragement and the conduct which amounts to incitement can be prosecuted as encouragement.

Accessories

Clause 42 is based on the Accessories and Abettors Act 1861, as amended by the Criminal Law Act 1977. It is combined with the provision of the Magistrates' Courts Act 1981 so as to cover both indictment-only and summary offences. It includes the word 'suborns' so that subornation of perjury under section 7 of the Perjury Act 1911 will continue to be an offence (see also clause 449.)

This offence is equivalent to what used to be called 'accessory before the fact' and the offender can be prosecuted as a principal.

Clause 43 is based on section 4(1) of the Criminal Law Act 1967, but omitting the words "or attempts" as an attempt is itself an offence. It is still an offence, separate from encouraging, etc. This offence is equivalent to what used to be called 'accessory after the fact'.

Clause 44 states the offence of concealing an offence and giving false information to the police which is in s.5 of the Criminal Law Act 1967.

Clause 45 is derived from s.11 of the Crimes Ordinance and makes it clear that conviction of an ancillary offence (other than assisting or concealing) can lead to the same consequences as conviction of the substantive offence i.e. forfeiture, disqualification, etc.

Note that attempts, conspiracy and aiding and abetting are triable in the same manner as the main offence i.e. indictment-only or summary. See the definition of 'indictment-only' offence in section 181 of the Criminal Procedure and Evidence Ordinance 2014.

Policy issue

MLAs are invited to agree to the term 'encouraging' an offence rather than the term 'encourage or assist' as in the UK.

CHAPTER 2 – CRIMES AGAINST THE INDIVIDUAL

PART 4 – OFFENCES AGAINST THE PERSON

Introduction

This Part creates or perpetuates a number of offences against the person, ranging from murder to common assault, and including infanticide, wounding with intent, assault occasioning actual bodily harm, child abduction, torture, kidnapping, bigamy and genocide. Some of the offences are still common law offences in England and Wales (murder, manslaughter, kidnapping) but they are restated as written law in modern language by this Part.

Some of the offences carry life sentences (murder being a mandatory life sentence.) They are triable on indictment only. Others carry maximum sentences ranging from 18 years to a fine.

The Part incorporates some sections of the Crimes Ordinance but does not include sections 22 to 24 governing the penalty and procedure for murder as they are not correct statements of the UK law as applied to the Falkland Islands. Nor does it include section 25 on provocation as provocation has been abolished in the UK and replaced with the partial defence of loss of self control. Section 26 on automatism is included as a general defence in Part 2.

The Part includes provisions of the UK Homicide Act 1957 (as amended by the Coroners and Justice Act 2009), the Infanticide Act 1938, Infant Life Preservation Act 1929, Suicide Act 1961, Children and Young Persons Act 1933, Abortion Act 1967, Criminal Justice Act 1988, Police Act 1996, Child Abduction Act 1984, Domestic Violence, and Crime and Victims Act 2004 as amended in 2012. It also includes offences under the Female Genital Mutilation Act 2003 and the Asylum and Immigration (Treatment of Claimants) Act 2004.

Several of the clauses are based on provisions of the UK Offences against the Person Act 1861 that are still law in England and Wales and that apply to the Falkland Islands. Some minor offences in the 1861 Act are omitted, e.g. assaults on seamen and assaults to obstruct sale, as they are covered by the general law on assaults. The offence of failure to provide for apprentices in 26 of the OAPA is omitted as being obsolete and irrelevant in the Falkland Islands.

The Part includes the offence of assault on a police officer and section 55 of the Police Ordinance will accordingly be repealed.

The Part includes some provisions that are new to Falkland Islands law, namely –

- Trafficking people for labour: clause 87
- Forced marriage offence: clause 90
- Forced marriage protection orders: clauses 92 to 101
- Slavery and servitude: clause 117.

Some of these are recent additions to the UK statute book and arise out of international agreements. The Part also includes the offence of being drunk in charge of a child - clause 81 - which has been on the statute book in the UK as section 2 of the Licensing Act 1902. It is commonly used, but does not appear to have been applied in the Falkland Islands, despite its clear child protection benefits.

The provisions in clauses 87 to 101 are new to the Falkland Islands legislation. They reinforce international commitments to equal treatment and human rights and seek to provide a solution for some types of so-called ‘honour based’ crimes.

The Part includes the offence of torture, which was created for the Falkland Islands by the Criminal Justice (Torture) (Application to Overseas Territories) Order 1988, and the offences of genocide and crimes against humanity, created for the Falkland Islands by the International Criminal Court Act 2001 (Overseas Territories) Order 2009. It does not include other

international offences applied to the Falkland Islands by Order in Council such as hijacking, aviation security and maritime security. These will continue to apply directly.

The Part includes the offence of bigamy as it is not included in the Marriage Ordinance and fits appropriately with offences against the person.

Note that the maximum penalties are reduced from life to 18 years in some cases and to 14 years in others. Note also that some offences are indictment-only.

There is a commentary on offences against the person in Archbold 2013 Ed. paras. 19-1 to 19-435.

Notes on clauses

Clauses 46 to 51 enact in the Falkland Islands the common law offences of murder and manslaughter as modified by the UK Homicide Act 1957 and the Murder (Abolition of Death Penalty) Act 1965.

Clause 46 defines murder as causing death with intent to kill or to cause grievous bodily harm to any person by an unlawful act or omission. This avoids the use of the phrase ‘malice aforethought’. It includes the word ‘unlawful’, so that self-defence etc remain as defences. (For self-defence, see clause 120.) This formulation also includes transferred malice, which is still the law, though constructive malice is not.

The penalty for murder is the only one that is fixed by law, and is life imprisonment. Section 577 of the Criminal Procedure and Evidence Ordinance 2014 requires the court to recommend the minimum period a prisoner must serve before being eligible for release on licence. Release on licence is governed by section 581 of that Ordinance.

Sub-clause (3) states the rule that there is no requirement that the death should occur within a year and a day after the infliction of injury.

Clauses 47 and 48 incorporate the provisions of the UK Homicide Act 1957 as amended about constructive malice and diminished responsibility. Clause 48 does not mention insanity as a defence to a charge of murder. In the UK the rules are stated in the Criminal Procedure (Insanity) Act 1964 but that Act is covered in Part 34 of the Criminal Procedure and Evidence Bill dealing with mentally disordered offenders.

Clause 49 sets out the new provisions of the Coroners and Justice Act 2009 which replace the concept of provocation with that of loss of self-control.

Clause 50 creates two statutory types of manslaughter - killing by an unlawful act likely to cause bodily harm (involuntary manslaughter) and killing by gross negligence. Voluntary manslaughter is constituted by diminished responsibility (clause 48), loss of control (clause 49), or a suicide pact (clause 54.) The maximum penalty for any kind of manslaughter is life imprisonment – clause 50(3). It applies also to manslaughter arising by virtue of any of clauses 48(5), 49(7), 54(1) or 56(3).

Clause 51 makes murder and manslaughter extraterritorial offences if committed by a person with Falkland Islands status.

Clauses 52 and 53 are based on provisions of the OAP Act 1861 as amended by the Criminal Law Act 1977. Clause 52 deals with soliciting for murder and clause 53 deals with threats to kill. Sub-clause (3) of 52 is a protection against double jeopardy as the facts could amount to aiding and abetting which is an ancillary offence under Part 3.

Clauses 54 and 55 are about suicide. They do not make suicide illegal but make it an offence to enter into a suicide pact or to encourage, aid or abet suicide. They are based respectively on section 4 of the UK Homicide Act 1957 and section 2 of the Suicide Act 1961.

Clause 56 is based on section 1 of the UK Infanticide Act 1938 and creates the offence of infanticide. There is some doubt about the amendment made by the Coroners and Justice Act 2009 (see Archbold at para. 19-195) but the best view of the intended text seems to be as in the clause.

Clause 57 is based on section 1 of the UK Infant Life Preservation Act 1929, and creates the offence of child destruction. The defence of lawful termination of pregnancy is in clause 60.

Clauses 58 to 61 relate to termination of pregnancy and are based on the UK Abortion Act 1967 as amended and adapted. The term 'medical practitioner' is not defined as it is defined in the Interpretation and General Clauses Ordinance. Regulations made by the Secretary of State under the UK Act will have effect, rather than local regulations having to be made.

Clause 62 makes it an offence to conceal the birth of a child.

Endangering life

Clauses 63 to 69 relate to activities that could endanger life, such as wounding with intent, or simple wounding. They are mostly based on the 1861 Act and the Police Act 1996.

Clause 64 is section 18 of the OAPA as amended by the CLA 1967.

In clause 67 'serious offence' will be defined in clause 2 to mean an offence carrying a maximum sentence of at least 5 years imprisonment.

Clause 69 is based on s.31 of the 1861 Act and makes it an offence to set spring guns, etc.

Assaults

Clauses 70 to 76 deal with the various types of assault, including common assault and assault occasioning actual bodily harm, based on the 1861 Act.

Clause 70 converts the common law offence of common assault into a statutory offence. The terms 'assault' and 'battery' are defined in sub-clause (3), based respectively on the English cases of *R v Burstow* (1998) and *R v Norman* (1994).

There is a procedure for granting a certificate of dismissal in clause 76. The use of 'complaint' implies that assault is only a civil action, which it is not; but it is sometimes brought by a private person so is hybrid in nature.

See Part 22 hate crimes (i.e. racially and religiously aggravated assaults, etc.)

Endangering lives of children, etc.

Clauses 77 to 83 relate to neglect or endangering the lives of children and vulnerable adults of various ages. Some are based on old UK law and are still useful protective provisions. Others are based on sections of the UK Domestic Violence, Crime and Victims Act 2004 as amended in 2012.

Clause 77 creates the offence of causing or allowing the death of or serious harm to a child or vulnerable adult. If death results, it is an indictment-only offence. The prosecution does not have to prove which of the two possible alternatives applies. The defendant is equally liable to conviction whether he or she was the perpetrator of the act that actually caused the victim's death or serious physical harm or simply failed to protect the victim from a foreseeable risk of serious physical harm from another member of the household who had frequent contact with the victim. The dual basis for criminal liability was introduced in the UK to remedy one of the main difficulties with the law relating to other possible charges such as murder or manslaughter in a domestic context when both parents were potential perpetrators, but the degree of involvement of each parent in the acts or omissions was unclear.

Clause 78 says what inferences can be drawn from and verdicts delivered on the facts that would amount to such an offence in a murder or manslaughter case.

Clause 79 says what inferences can be drawn from and verdicts delivered and verdicts delivered on the facts that would amount to such an offence in cases of serious physical harm to be drawn.

Clause 80 is the offence of abandoning a child under the age of 5.

Clause 81 is the offence of being drunk while in charge of a child under the age of 7 in a public place, section 2 of the UK Licensing Act 1902, which was disappplied in Falkland Islands but as a useful provision for child protection should be reinstated.

Clause 82 incorporates at (1) to (3) the provisions of the UK Child Maltreatment Bill which has not yet been enacted but which reflects the latest thinking on child cruelty in the UK. The current criminal offence of child neglect is set out in section 1 of the Children and Young Persons Act 1933. This provides that any person aged 16 or over who has responsibility for a child under that age commits an offence if the person wilfully assaults, ill-treats, neglects, abandons or exposes the child (or causes or procures the child to be so treated) in a manner likely to cause the child unnecessary suffering or injury to health.

In April 2012 the UK charity Action for Children launched a campaign calling for reform of the 1933 Act. It argued that the law needed to be modernised to align with society's current understanding of parenting, child protection and neglect as a form of child abuse, which has

evolved in the 80 years since the 1933 Act was introduced. The Act seeks only to protect children's very basic physical needs and fails to reflect their emotional and developmental needs or the current recognition of children as individuals with rights. The issue has been debated several times in the House of Commons, and the government has now significantly shifted its position, from initially resisting any amendment. The *Child Maltreatment Bill 2013-14*, a Private Members' Bill sponsored by Mark Williams, was presented to Parliament through the ballot procedure on 19 June 2013 but was not moved for debate and the order to read the Bill a second time lapsed. However, in the Queen's Speech on 4 June 2014 the Government announced that a provision to introduce a change to the law, to include emotional abuse and developmental neglect, will be included in the Serious Crime Bill in the current Parliamentary session.

The wording of clause 82 replicates the wording of the Child Maltreatment Bill. The offence is committed if a person with responsibility for a child intentionally or recklessly subjects the child, or allows the child to be subjected to maltreatment (whether by act or omission) and the child suffers, or is likely to suffer, significant harm. Maltreatment would include neglect, physical abuse, sexual abuse, exploitation and emotional abuse. Harm would mean impairment of physical or mental health or physical, intellectual, emotional, social or behavioural development.

Clause 83 is the offence of illegal tattooing of youths based on an extant UK law which applied to the Falkland Islands by virtue of Schedule 1 to the Crimes Ordinance.

Child abduction

Clauses 84 to 86 are based on the UK Child Abduction Act 1984 but adapted to match with the Children Ordinance 2014.

Clause 84 creates the offence of abduction of a child by parent or someone in a similar relationship and clause 85 creates the offence of abduction of a child by persons other than parents.

Clause 86 explains key terms and removes the distinction between legitimate and illegitimate relationships in relation to child abduction. It also incorporates provisions that are in the Schedule to the 1984 Act and the definitions in section 1 of that Act.

Clause 87 is about trafficking people for labour exploitation. It is based on the UK Asylum and Immigration (Treatment of Claimants) Act 2004 as amended by the Crimes and Courts Act 2013. The equivalent offence in relation to sex trafficking is at clause 276.

Clause 88 and 89 are about female genital mutilation and are based on the UK Female Genital Mutilation Act 2003 which already applies in the Falkland Islands under the provisions of s78 (1)(b) of the IGCO.

Forced marriages

Clauses 90 and 91 introduce into Falkland Islands law the offence of forced marriage.

Clauses 92 to 101 provide for the making of forced marriage protection orders on the application of a person who fears being forced into a marriage, or of the Attorney General, or on the court's

own initiative. The provisions are based on provisions in the UK Family Law Act 1996 as recently amended.

Domestic violence protection

Clauses 102 to 108 are derived from provisions of the UK Crime and Security Act 2010 which were brought into force in March 2014. They enable a senior police officer to issue a domestic violence protection notice (DVPN), without any offence having been committed, if there is a risk of violence in a domestic context i.e. by one 'associated person' to another. The notice must be followed up by an application by the Attorney General to the court for a domestic violence protection order (DVPO), breach of which is treated as a contempt in the UK, but is made a criminal offence in clause 107 with a similar penalty as for contempt. The court will normally be the Summary Court, but the Magistrate's Court if the Summary Court is not sitting, as the procedure is meant to be an urgent one.

The procedure is similar to that for a forced marriage protection order under clauses 92 to 101. It is also similar to the procedure for sexual risk orders (SROs) under Part 11. The availability of this procedure should help to reduce the risk of domestic violence, as application is not made by the victim, who is often reluctant or fearful of seeking a non- molestation order in the civil courts for various reasons.

The Governor is given power to issue guidance about the use of DVPNs, as in the case of forced marriage orders and SROs.

Human organ transplants

Clauses 109 to 111 are based on the UK Human Organs Transplant Act 1989 which applies to the Falkland Islands.

Clause 109 prohibits commercial dealings in human organs.

Clause 110 restricts transplants between persons not genetically related.

Clause 111 makes supplementary provisions, and gives the Governor power by regulations to establish an authority to control human organ transplant activity and makes other supplementary provisions.

Crimes against humanity

Clauses 112 and 113 relate to genocide, crimes against humanity and war crimes, as created for the Falkland Islands by the International Criminal Court Act 2001 (Overseas Territories) Order 2009 Schedule 2.

Clause 112 creates the offences and clause 113 makes supplementary provisions, including definitions by reference to the Rome Statute. Article 57 of Schedule 2 prescribes 30 years as the maximum penalty, but if murder is involved, the penalty is as for murder, i.e. mandatory life sentence.

Miscellaneous offences

Clause 114 is the offence of piracy with intent to murder or involving life-threatening violence. It carries a maximum sentence of life imprisonment.

Clause 115 creates as statutory offences the common law offences of kidnapping and false imprisonment. The kidnapping offence at (1) is based on the common law offence as in R v D [1984] AC 778. The false imprisonment offence at (2) is based on the common law offence as in R v Rahman 81 CR App R. The maximum penalty for kidnapping is stated as 18 years and for false imprisonment is 14 years. (In the UK there is no sentencing guideline at present, but the leading case, R v Spence and Thomas (1983) 5 Cr App R (S) 423 indicates a range between 5 and 15 years although there is no maximum penalty.)

Clause 116 creates the offence of torture derived from sections 134 and 135 of the UK Criminal Justice Act 1988. It implements in the Falkland Islands the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 1985.

Clause 117 makes it an offence to keep someone in slavery, servitude or forced or compulsory labour, in line with the UK Coroners and Justice Act 2009.

Clause 118 is the offence of bigamy, under s.57 of the 1861 Act.

Clause 119 permits the use of reasonable force in making an arrest, etc. by cross-referring to section 782 of the Criminal Procedure and Evidence Ordinance 2014.

Clause 120 is derived from section 76 of the Criminal Justice and Immigration Act 2008 as amended by the LASPO Act 2012 and regulates self-defence as a defence to a charge under this Part.

Policy issues

- Whether to introduce offences which are new to the Falkland Islands as listed above
- Whether to adopt the new provisions of the UK Child Maltreatment Bill for clause 82 or to keep section 1 Children and Young Persons Act 1933.
- Whether the maximum sentences are appropriate

PART 5 - CORPORATE MANSLAUGHTER

Introduction

This Part derives from the UK Corporate Manslaughter and Corporate Homicide Act 2007. (The offence is called corporate manslaughter in England and Wales; corporate homicide in Scotland.) It creates a statutory offence, not previously known to the English law. It covers cases where death is caused by the activities of a corporation; where the civil remedy in negligence is inadequate, but where individuals cannot be singled out for prosecution

The Part does not follow the sequence of sections of the 2007 Act. The Interpretation clause is put first as with other Parts of this Bill and other clauses are rearranged to make a more logical order.

The term ‘public authority’ is defined as in the UK Human Rights Act 1998. The term ‘employers association’ is not used in Falkland Islands law so the definition in the UK Trade Union Consolidation Act 1992 (which is used in the 2007 Act) is used, but in shorter form. The term ‘premises’ is defined in clause 2.

For purposes of this Part, a corporation includes –

- (a) a government department or other body that is not exempted;
- (b) the police force;
- (c) a partnership;
- (d) a trade union; or
- (e) an employers’ association that is not a corporation.

Any statutory provision about criminal proceedings applies in relation to proceedings under this Part against a corporation as so defined.

As the term ‘corporation’ includes government departments, and as it is appropriate for activities of HMG in the UK to come under Falkland Islands law in this regard, the Part uses the term ‘Crown’ which includes the UK and the Falkland Islands Governments. Conversely, clause 125 (which excludes activities of the armed forces) is included because the Government of the Falkland Islands needs to protect HM forces from being prosecuted under this Act. (The term ‘armed forces’ is defined as in section 12 of the Act.)

The powers of the Governor under this Part will require consultation with ExCo, in accordance with the Constitution and the IGCO.

Notes on clauses

Clause 122 creates the offence and makes it indictment-only. The penalty is an unlimited fine.

Clauses 123 to 129 set out the relevant duty of care, breach of which gives rise to criminal liability. Clauses 125 to 128 set out certain functions that are excluded from the scope of the Part. They include activities of the armed forces, emergency services and certain child protection functions.

In clause 128(3) the term ‘supervision’ is used instead of ‘probation’.

Clauses 130 to 132 state how the Part applies to public bodies, the police force and partnerships.

Clauses 133 to 136 are about evidence and procedure.

Clauses 133 and 134 give the court power to order a convicted corporation to take steps to remedy matters that gave rise to the death and to order that publicity is to be given to a corporation’s conviction for an offence.

Clause 135 applies existing procedural rules, but says that an individual cannot be prosecuted as an accessory to corporate manslaughter.

Clause 136 enables prosecutions to be brought under health and safety legislation as well as under this Part.

Clause 137 says who becomes liable if there is a transfer of the functions of a corporation.

Clause 138 abolishes the common law offence of manslaughter by a corporation.

Clauses 139 and 140 enable the Governor to vary the application of sections 122 and 123 respectively.

PART 6 - PROTECTION FROM HARASSMENT

Introduction

This Part is mainly based on the UK Protection from Harassment Act 1997, as amended, and is intended to protect people from harassing behaviour in all its forms and from whatever source, including hate mail or even excessive adulation. It is related to Part 22 which deals with harassment arising out of racial abuse, etc.

The Part includes amendments to the 1997 Act made by the Serious Organised Crime and Police Act 2005. It also includes the new offence of stalking created by the Protection of Freedoms Act 2012.

The Part includes clauses based on the operative provisions of the UK Protection from Harassment Act 1997.

It also includes 3 further offences that relate to harassment. They are –

- a) the offence under the Criminal Justice and Police Act 2001 of harassing a person at the person's home, with a view to getting the person out (clause 147);
- b) the offence under the Malicious Communications Act 1988 of sending letters intended to cause distress or anxiety (clause 152);
- c) the offence under the Communications Act 2003 of improper use of an electronic communications network by sending offensive, indecent, obscene, threatening or false messages by phone, fax or over the internet (clause 153).

(Other provisions of that Act are contained in Part 14 on computer misuse.)

Provisions of the Protection from Eviction Act 1977 although akin to harassment are not included as they deal with landlord and tenant law and are probably not needed in the Falkland Islands.

The arrest without warrant powers in the UK Acts were repealed by the Serious and Organised Crime and Police Act 2005 with effect from 1 January 2006 and are not included as they are in the Criminal Procedure and Evidence Bill.

There is a commentary on the relevant UK provisions in Archbold 2013 Ed paras. 19-19-337 to 19-357 (clauses PH5 to 15).

Notes on clauses

Clause 141 defines terms used in the Part that are not defined in clause 2 or elsewhere. It applies the interpretation section 7 of the UK 1997 Act to the whole Part and incorporates other definitions from the UK Acts. It does not define 'harassment', a term which has been the subject of much case law in the UK. The decision as to whether behaviour amounts to harassment is a matter for the court to decide on a case by case basis. There is general agreement that for conduct to constitute harassment it must be objectively judged as oppressive and unacceptable; that what is oppressive and unacceptable may depend upon the social or working context in which the conduct occurs; and that a line is to be drawn between conduct which is unattractive and unreasonable and conduct which amounts to 'torment' of the victim or is of a degree that should sustain criminal liability. See *Dawson v Northumbria Police* unreported 20.10.2010 QBD

Clauses 142 to 146 create offences of harassment derived from the UK Protection from Harassment Act 1997 as amended.

Clauses 142 and 143 create an offence of pursuing a course of conduct which amounts to harassment. The term 'course of conduct' means on at least 2 occasions – see the definition in clause 141.

Clause 144 creates the offence of stalking, which consists of harassment plus other elements, such as following, contacting, watching etc. the victim.

Clause 145 creates a more serious offence of pursuing a course of conduct which puts people in fear of violence. It carries a maximum penalty of 5 years imprisonment.

Clause 146 creates a more serious offence of stalking, involving fear of violence or serious alarm or distress

Clause 147 is the offence of harassing a person at their home mentioned above.

Clauses 148 to 150 are ancillary provisions relating to all these offences.

Clause 148 provides for a civil penalty by way of damages for harassment of a single individual, and for an injunction. It is not strictly a criminal provision although there is a criminal penalty for breach of an injunction.

Clause 149 empowers a court to grant an injunction for harassment of 2 or more persons.

Clause 150 confers a power of entry in relation to offence of stalking. The power can only be exercised on a warrant issued by a justice of the peace. The term 'premises' is defined in clause 2.

Clause 151 is based on section 5 of the Protection from Harassment Act 1997 as amended. It empowers a court to impose a restraining order on a person convicted of 'an offence'. The

offence in question might be under other legislation e.g. drugs or firearms. There is UK case law that a restraining order can be imposed for any offence if the court considers it appropriate in order to protect the victim from harassment or fear of violence. It is a useful power in relation to domestic violence cases.

Clause 152 empowers a court to impose a restraining order on a person acquitted of an offence. The courts in UK can impose a RO if they find behaviour requiring restraint but not sufficient for a criminal conviction. The power is equivalent to a civil injunction without the victim having to make a separate application.

Clause 153 creates the offence of sending letters intended to cause distress or anxiety which is a summary offence under the UK Malicious Communications Act 1988.

Clause 154 is based on section 127 of the UK Communications Act 2003 and makes it an offence to send offensive, indecent, obscene, threatening or false messages by phone, fax or over the internet. The definition is from section 32 of the 2003 Act. The exemption in (3) is for a programme service as defined in clause 2.

PART 7 - OFFENSIVE WEAPONS

Introduction

This Part groups together a number of UK legislative provisions on offensive weapons and combines them with provisions of the Crimes Ordinance on offensive weapons. The UK provisions include sections 139 to 141 of the Criminal Justice Act 1988, as amended by the Offensive Weapons Act 1996; section 1 of the Prevention of Crime Act 1953 as amended by the 1996 Act; sections 60 and 60A of the Criminal Justice and Public Order Act 1994; provisions of the Knives Act 1997; and the Crossbows Act 1987. As the topic of knives and weapons is of considerable public concern, and is not just a public order issue, it is appropriate that these clauses are gathered together into a separate Part on offensive weapons.

The Crimes Ordinance provisions are sections 16 to 21 and concern possession, school premises, and crossbows.

The Part places knives offences in one group and offensive weapons offences in another. The provision about manufacture of offensive weapons (which is about flick knives) therefore appears as clause 160, and the provision of the Criminal Justice Act 1988 about sale of knives etc. to persons under 16 appears as clause 161. However, some of the offensive weapons provisions apply also to knives, as they are within the category of offensive weapons, if used offensively. The more general provision about manufacture etc. based on the Criminal Justice Act 1988 therefore appears as clause 174.

The Governor is given power to prescribe categories of knives that are exempt from some of the provisions (clause 158(3)) and to amend the categories of weapons that are subject to stricter controls (clause 174(3)). The Governor is required to consult the Criminal Justice Council, rather than ExCo, in the exercise of these powers.

Powers to stop and search and seize offensive weapons, including crossbows, are contained in the PACE provisions of the Criminal Procedure and Evidence Ordinance 2014. However, express powers to stop and search in anticipation of violence under this Part are included and are placed at the end of the Part as they are about weapons generally.

Notes on clauses

Clause 155 contains definitions which relate to the whole Part. The definitions of ‘school’ and ‘school premises’ are based on s.2 of the Education Ordinance and s.16A of the Crimes Ordinance, and are similar to the definition in s.4 of the UK Education Act 1996. The definition of ‘offensive weapon’ adopts the concept in UK law that anything can be an offensive weapon if intended to be used for offence. The definition does not mention firearms or crossbows or knives or bladed/pointed articles as these are controlled by specific provisions in this Part or the Firearms Ordinance. Clause 160 relates specifically to flick knives. This offence is not in the UK legislation, but is in some other criminal codes (notably Gibraltar) and appears to be appropriate for the Falkland Islands.

The definition of ‘vehicle’ is needed because it is different from other definitions in the Bill.

Clause 156 prohibits the marketing of knives in a way which encourages their use for combat.

Clause 157 prohibits the publication of material that promotes knives for the purposes of combat.

Clauses 158 and 159 provide for the exemption of certain trades and for other defences. Under clause 158(3) the Governor may prescribe categories of knife that are exempt.

Clause 160 relates specifically to flick knives. This offence is not in the UK legislation, but is in some other criminal codes, notably Gibraltar, and appears to be appropriate for the Falkland Islands.

Clause 161 is based on section 141A of the Criminal Justice Act 1988 as added by the Offensive Weapons Act 1996.

Clause 162 includes powers of entry and seizure and detention similar to those in Part 21 (Public Order). The word ‘implement’ is added to include items to which clauses 160(2) and 162(2)(2) apply, such as axes.

Clause 163 empowers a court to order forfeiture of articles. This and clause 164 will attract the provisions of section 622 of the Criminal Procedure and Evidence Ordinance 2014.

Clause 164 provides for applications for the return of forfeited articles.

Clauses 165 to 168 are based on sections 17 to 20 of the Crimes Ordinance, which in turn were based on sections 1, 2, 3 and 6 of the UK Crossbows Act 1987. They prohibit sale to, hiring of or possession by person under 17 of crossbows. The offence in clause 167 of prohibited use is not in the UK Act.

Clause 169 prohibits the possession of articles with blades or points in a public place, with an exception for small folding pocket knives (with a blade not exceeding 3 inches) and subject to certain defences about use of the article, etc. The UK penalty has been increased to 2 years, rather than 12 months as in this clause.

Clause 170 prohibits the possession on school premises of an article to which clause 169 applies and any other offensive weapon, with similar exceptions as in clause 169.

Clause 171 is the offence of threatening with an offensive weapon or an article with a blade or point on school premises. It was introduced by the UK LASPO Act 2012. The minimum sentence requirement has not been included but this provision carries a higher penalty than charges of simple possession and threatening behaviour charged separately.

Clause 172 confers a power of entry and search of school premises (which are not always a public place so express power has to be conferred.)

Clause 173 is a general prohibition on carrying an offensive weapon in a public place. As even a small penknife or any other bladed/pointed article can be an offensive weapon if intended for offence, this, the oldest provision of the Part, based on the Prevention of Crime Act 1953, is still the most useful, particularly as it includes a reverse onus of proof provision.

Clause 174 derives from the Criminal Justice Act 1988. It is wider than clauses 160 and 161 about knives, etc. and makes it an offence to deal in the specified weapons (mostly exotic martial arts-type weapons.) The Governor, after consulting the Criminal Justice Council, can amend the list of weapons.

Clause 175 empowers the Chief Police Officer to authorise a police officer to exercise powers to stop and search persons and vehicles if the officer considers that incidents involving serious violence may occur in any area of the Falkland Islands and that persons are carrying knives or offensive weapons there.

Clause 176 sets out the powers that can be exercised by a police officer under an order made under section 175. Any exercise of the power must be notified to the Chief Police Officer.

Policy issues

Whether to prohibit the possession of firearms and crossbows on school premises i.e. to include them in clause 170 along with knives and offensive weapons, given the potential for serious harm and/or fear generated by such weapons despite being legal to possess in other contexts.

PART 8 - EXPLOSIVE SUBSTANCES

Introduction

This Part incorporates UK provisions about explosive substances that are still extant, and provisions of the Crimes Ordinance about explosives endangering public safety. The UK criminal offences related to explosive substances (other than manufacture and keeping) are comparatively few and rather ancient. There are some provisions relating to explosive substances in the UK Offences against the Person Act (sections 28, 29, 30 and 64.) There are

also provisions in the UK Explosive Substances Act 1883 (sections 2 to 9), as amended by the Criminal Jurisdiction Act 1975, which replaced sections 2 and 3 of the 1883 Act, and by the Criminal Law Act 1977. The 1883 Act is listed under Explosives in the Laws of Falkland Islands as applying to the Falkland Islands

A few of the provisions of the UK Explosives Act 1875 relate to explosives generally and are included in this Part (clauses 192 and 193 dealing with forfeiture etc.) The rest of the 1875 Act relates to the manufacture and keeping and conveyance of gunpowder and other explosives and will continue to apply to the Falkland Islands as imperial enactments.

The UK Explosives Act 1923 has 2 sections relating to occupiers and employers and will also continue to apply.

The offence of causing an explosive substance to explode near Her Majesty is included in the Part on Treason and Sedition.

The offence of being in possession of a noxious or dangerous thing with intent to commit an offence is included in Part 4.

Clauses 181 to 185 have been placed in a sequence of descending gravity, and clauses 183 and 184 have been modified to distinguish between manufacturing and possessing explosives.

Clauses 187 to 190 are taken from the Crimes Ordinance ss. 12 to 15 and are a result of the military activity in 1982. They appear to be of local origin.

There is a commentary on the UK Acts at Archbold 2013 Ed. paras.23-62 to 23-86

Notes on clauses

Clause 177 contains definitions derived from section 9 of the 1883 Act. It defines 'explosive' as in section 3 of the 1875 Act. It defines 'explosive substance' as in section 9 of the 1883 Act. There is a power to extend the definition of 'explosive' based on s.104 of the 1875 Act.

Clauses 178 to 183 create offences based on sections 29 to 30 of the 1861 Act and sections 2 to 4 of the Explosive Substances Act 1883. These offences are still law in the UK and remain relevant to the Falkland Islands.

Clause 178 creates an offence of causing bodily harm. Clause 179 only requires an intention to harm, as sub-clause (2) makes clear. The penalties in clauses 178 and 179 are reduced from life imprisonment to 14 years, so that they are triable summarily.

Clause 180 - causing an explosion likely to endanger life or property - does not include the UK provision about citizens of dependent territories outside the UK planning to do harm in the UK. The UK Act will still apply to Falkland Islanders intending harm in the UK. Attempts to commit any of these offences will be offences under the general law. The offence is an indictment-only offence, and attempts etc. will also be indictment-only under section 181 of the Criminal Procedure and Evidence Ordinance 2014.

Clause 181 creates 2 offences -- acting or conspiring to cause explosion, or making or keeping explosives with intent. They are both indictment only

Clause 182 uses the phrase 'building, ship or aircraft', which widens the scope of the section from the UK rule. Sub-clause (2) clarifies the rule about whether the explosion etc. takes place.

Clause 183 adapts section 3 of the 1883 Act (omitting 'machine') and creates an offence of making explosives for an unlawful purpose. This would include making them for another person for such a purpose. The word 'knowingly' in the UK Act is omitted as knowledge must exist where a specific intention is required.

Clause 184 is about possession of explosive substances and is based on section 64 of the UK Offences against the Person Act, 1861. The reverse onus rule in the UK text is replaced by a formulation which makes prosecution harder but is not open to human rights challenge. The phrase 'under this Ordinance' makes this a very wide-ranging offence.

Clause 185 is about accessories. It includes sub-clause (2) to enact the rule about aiding and abetting in R. v. McCarthy, 48 Cr. App. R. 111 and Mok Wei Tak v. R [1990] 2 A.C.333 PC. The clause is not strictly necessary as there is a general offence of aiding and abetting in Part 3 of the Bill, but it is still in the UK law and identifies the elements of the offence in this context.

Clause 186 enacts in local law section 8 of the 1883 Act. It is more concerned with the safety of ships than with explosives, and the term 'dangerous goods' is used instead. However, it is included for completeness as the rule it states about liability is an important protection for masters and owners of ships dealing with explosives.

Clause 187 is derived from the Crimes Ordinance and relates to minefields of which there are still many in Falkland Islands.

Clause 188 is also derived from the Crimes Ordinance and relates to unexploded ordnance.

Clause 189 relates to the sale of explosives.

Clause 190 prohibits the throwing of fireworks.

Clause 191 enacts in local law section 7 of the 1883 Act except for section 7(3) which is an extraterritorial provision and is not appropriate for the Falkland Islands. Sub-clause (2) refers to the Explosives Acts 1875 and 1923 as there are provisions about the manufacture etc. of explosives in those Acts, and in regulations made under them.

Clauses 192 and 193 are based on sections 74 and 89 of the UK Explosives Act 1975 which are still law in the UK and which apply in the Falkland Islands. The powers in these clauses are in addition to the powers of search and seizure and forfeiture in the Criminal Procedure and Evidence Bill.

Clause 192 provides for seizure and detention of explosive substances found on premises, vehicles, vessels and aircraft.

Clause 193 provides for the forfeiture of all explosive substances. See section 622 of the Criminal Procedure and Evidence Ordinance 2014 for the disposal of forfeited property.

PART 9 - CRIMINAL DAMAGE

Introduction

This Part is based on the UK Criminal Damage Act 1971 which is still the latest UK law on the subject.

The Part does not include the provisions of the Malicious Damage Act 1861 which deals with placing wood on railways, etc. and is not relevant to the Falkland Islands.

Clause 194 in defining 'property' mentions damage to computers; the offence of misuse of computers is in Part 14.

Offences relating to explosive substances are in Part 8.

The penalties are stated in each clause that creates an offence, rather than having them separately as in s.4 of the UK Act.

There is a commentary on the Criminal Damage Act at Archbold 2013 Ed. paras 23.1 to 23.55.

Notes on clauses

Clause 194 defines 'property', based on section 10 of the UK Act. The term 'damage' is not defined as it has been defined in UK case law; it means not only permanent or temporary physical harm, but also permanent or temporary impairment of value or usefulness.

Clause 195 creates two groups of offences – the basic group of causing damage with intent to cause damage or being reckless as to whether damage is caused, and the aggravated group of causing damage or being reckless as to causing damage intending to endanger life or being reckless as to life being endangered. Offences in the first group are triable summarily but those in the second are not; the penalty is life imprisonment and they are triable on indictment only. The definition of 'damage' in sub-clause (3) is based on dicta in R v Whiteley 93 CrAppR25.

Clause 196 creates arson (criminal damage by fire) as a separate offence. In the UK Act it is merely stated that criminal damage by fire must be charged as arson, but it is a separate offence, is subject to a separate count on an indictment and therefore has been stated separately here. Arson may be simple or aggravated. Aggravated arson carries a sentence of life imprisonment and is triable on indictment only.

Clause 197 creates the offence of threats to destroy or damage property and possessing anything with intent to destroy or damage property. They are derived from sections 2 and 3 of the UK Act.

Clause 198 is the offence of possessing things with intent to destroy or damage property.

Clause 199 is derived from section 5 of the UK Act. It provides a defence of lawful excuse for destruction of or damage to property (except for arson or threats of violence). The defence is available if the person genuinely thought the owner of the property consented to its destruction or damage, or that it was necessary to protect other property.

Clause 200 gives a power of seizure of things intended for causing damage and is based on section 6 of the Criminal Damage Act. It is probably otiose as it has the same effect as the search and seizure provisions of the Criminal Procedure and Evidence Ordinance 2014 but it is included for good measure.

Clause 201 displaces the rule against self-incrimination in relation to offences under this Part. It is based on s.9 of the Criminal Damage Act and is similar to clause 378 relating to fraud.

Clause 202 is about damaging public gardens and is derived from a similar offence in the Gibraltar Crimes Act that was also included in the St Helena Crimes Bill, and is thought might be a useful addition in the Falkland Islands.

Policy issue

Whether to include the offence of damaging public gardens as in clause 202.

PART 10 – SEXUAL OFFENCES

Introduction

The UK Sexual Offences Act 2003 replaced the Sexual Offences Act 1956 which applied to the Falkland Islands as an imperial enactment. Most of the 2003 Act was incorporated in Falkland Islands law with minor modifications by the Sexual Offences Ordinance 2005 (“SOO”). Part 1 of the Act creates a large number of sexual offences. Part 2 deals with notification requirements and other orders that can be imposed on persons convicted of sexual offences.

This Part 10 incorporates into the Crimes Bill all the provisions of Part 1 of the 2003 Act, with some modifications, including those made in the Schedule to the SOO, in updated language. Part 11 on Sex Offence Orders incorporates the provisions of Part 2 of the SOO with similar modifications.

This Part also replaces section 4 of the SOO which incorporated into Falkland Islands law the UK Protection of Children Act 1978, which makes provision about indecent photographs of children.

The Part includes amendments made to the 2003 Act by the Criminal Justice and Immigration Act 2008 and the Policing and Crime Act 2009. It includes an offence of possession of prohibited images based on sections 62 to 67 of the Coroners and Justice Act 2009 - see clauses 253 to 256. It includes the concept of a ‘pseudo-photograph’ introduced by that Act, and extends the age of the victim for all such offences to 17, as in the SOO Schedule. The Part also includes the offences in the Criminal Justice and Immigration Act 2008 of possession of extreme pornographic images.

The Part includes a number of older provisions on related offences that are still law in the UK but which were not included in the SOO. They are –

Clauses 260 to 264 (child pornography) based on sections 160 and 160A of the Criminal Justice Act 1988 and section 1 and other sections of the Protection of Children Act 1978;

Clause 268 (loitering etc. for prostitution) based on s.1 of the Street Offences Act 1959;

Clauses 271 to 274 (brothel-keeping) based on sections 33 to 36 of the Sexual Offences Act 1956; and

Clause 275 (allowing young persons to be in a brothel) based on section 3 of the Children and Young Persons Act 1993.

The offence under the 1956 Sexual Offences Act and the Offences against the Person Act 1861 of indecency between males was abolished by the 2003 Act. Homosexuality has therefore been decriminalised in Falkland Islands since 2004. There is a consequential provision in Part 29 on rehabilitation of offenders in the Criminal Procedure and Evidence ordinance 2014. See also the provisions on ending of the requirement for notification of homosexual offences in Part 11 of this Bill.

The 2003 Act abolished the distinction between the sexes in the commission of sexual offences, and equalised the ages of consent for both heterosexual and homosexual activity. This Part is therefore drafted in gender-neutral language, except where the conduct is gender-specific in nature.

Age of consent, etc.

The Part follows the previous law and the UK Act in differentiating the offence of rape regarding the age of the complainant. It is a matter of fact for the jury whether there is capacity to consent within the meaning of clause 204. However, sexual relations with a child under certain ages are offences irrespective of consent. The policy incorporated in the Part, following that in the UK is—

- a) that sexual relations with a child under 13 is an offence irrespective of any apparent agreement by the child or belief in consent on the part of the defendant as a child under 13 has no capacity in law to consent;
- b) that if the child is 13 or over but is under 16 and consents, it is an offence if the accused did not reasonably believe the child was over 16. This means that in the case of a child of 14 or 15, the prosecution must prove either that there was no consent (which would be rape), or that there was consent but that the accused did not reasonably believe the child was over 16 (i.e. 16 years or over.)

Note that the age of the defendant is not relevant to his or her belief regarding the age of the child. There is also a distinction between offences against those under 16 and those under 13 as regards belief of age in relation to persons in positions of trust (clauses 219 to 226). This is

because the circumstances of the offences involving abuse of trust are specialised and do not apply to everyone.

Extraterritoriality

Clauses 217 and 218 include an extraterritorial element in that they relate to an intention to commit a crime anywhere in the world. The intended activity must be one that, whether or not it is a crime in the local jurisdiction, would be a crime in the Falkland Islands. So an intention to engage in or arrange sexual activity with a child under 13 in another country would be caught, because the activity would be a crime in the Falkland Islands.

The converse is that a person who goes to another country to arrange sex tours to the Falkland Islands in relation to children between 13 and 16 would be committing an offence in the Falkland Islands (and could be prosecuted on their return) although the person might not be committing an offence in the other country if the age of consent there is lower. It would depend on the wording of the law of the other country as to the scope of the jurisdiction there.

Clauses 276 to 279 create offences relating to sex trafficking into, within, and out of the Falkland Islands. They create extraterritorial jurisdiction in relation to sex trafficking which by its nature involves cross-border activity. The definition of 'relevant offence' in clause [SO74] limits the prohibited conduct to that which would be an offence if committed in Falkland Islands; it does not include all conduct which is an offence in another country.

Clauses 290 and 291 confer extraterritorial jurisdiction over certain sexual offences.

Clause 290 provides that relevant conduct is an offence in Falkland Islands and can be tried there, wherever committed, if it would be an offence in Falkland Islands, even if it is not an offence in the other country. But conduct that might be an offence in another place is not triable in Falkland Islands if it is not an offence in Falkland Islands. The relevant offences are listed in Schedule 1. The term 'place' is used rather than 'country' or 'territory' to avoid problems of political identity

Penalties

The Part adopts the penalties prescribed in the SO Act 2003 as modified by the SOO Schedule. There is no distinction between summary and indictable offences. The statement of penalty is generally in the simplified version provided for by section 6 of the CJO, but it is spelled out in full if there are any variants e.g. whether penetration etc.

The maximum sentence for various offences varies, depending on the age of the victim. Following the 2003 Act and the SOO, the Part specifies a higher maximum penalty for certain offences if the victim is younger.

Under the procedure in the Criminal Procedure and Evidence Ordinance 2014, all the offences will be triable summarily except those that are indictment-only (as to which see section 181 Part of the Criminal Procedure and Evidence Ordinance 2014. All the sexual offences that carry a life sentence are indictment-only. They include rape, offences under clauses 205, 207, 208 and 209, and aggravated offences under clauses 232, 233, 236, 237, 240, 260 and 281.

There are some offences that only carry low penalties, such as e.g. loitering for prostitution (clause 268).

The offences of 'inciting' a child or other person to engage in sexual acts is replaced by 'encouraging' as that is the term used in Part 3 as one of the ancillary offences. As the offence of 'inciting' is abolished by that Part it seems appropriate to be consistent in the use of terms across the Bill.

The word 'counsel' is not used, but term 'aid and abet' is used by itself, as in Part 3 on ancillary offences. The terms 'encourage' and 'aid and abet' are defined in clause 2.

There is a commentary on Part 1 of the Sexual Offences Act 2003 in Archbold 2013 Ed. paras. 20-1 to 20-257. There is a commentary on possession of indecent photos at paras. 31-115 to 119.

The offences of prostitution etc. as in clauses 265 to 269 are summary only so do not appear in Archbold Criminal Pleading and Practice. They are however discussed in Archbold's Magistrates' Courts Criminal Practice at paras.14-40 to 43.

Notes on clauses

Clause 203 defines some terms used in the Part that are not defined elsewhere in the Bill or in the IGCO. It includes a definition of 'indecent' based on UK case law, such as R v Stamford 1972 2 QB 391; R v Court 1988 87 CrAppR 144; R v Neal 2011 EWCA Crim 461.

Clauses 204 to 207 create the main sexual offences against person of any age. They include rape, assault by penetration, sexual assault and causing a person to engage in sexual activity without consent.

Clauses 208 to 211 create the offences of rape, assault etc. against a child under the age of 13, who is unable to give consent. It will be an offence to penetrate or have other sexual relations with a child under 13, irrespective of consent. The existing offence of unlawful sexual intercourse is therefore expanded to include boys and to include sexual activity short of penetration.

Clauses 212 to 215 apply to people aged 18 or over. They create offences of engaging in sexual activity with a child of under 13, or a child of 13 but under 16 if the offender does not reasonably believe the child is over 16.

Clause 216 provides that if young people aged 18 or under commit the offences in clauses 204 to 215, lower penalties apply. However, a custodial sentence can still be imposed on a youth by virtue of section 729 of the Criminal Procedure and Evidence Ordinance 2014 relating to offences with a carrying a maximum sentence of 14 years or more.

Clause 217 creates an offence of arranging or facilitating sexual activity by children under 16. The defence in (2) as amplified by (3) is to cover the situation where e.g. a health worker knows that someone intends to have sex with a child, and does not condone it but provides the person with a condom so that the sex will at least be protected.

Clause 218 creates the offence of meeting a child following sexual grooming. The wording of this offence has attracted much criticism since its implementation in the UK. For the offence to have been committed two previous contacts have to have occurred prior to the meeting or travelling to the meeting. This means that significant grooming may have taken place particularly via social media or SMS messaging which is discovered but may not be prosecuted even as an attempt, depending upon the circumstances. Proposals have been made in a recent parliamentary report that the number of contacts should be reduced to one and that a new offence of 'sexualised contact' be considered. However it is right to say that if parents report inappropriate internet contact to the police, the police can consider applying for a Sexual Risk Order to prevent such activity (see part SNO). Further consideration of the Dr Barnardo's parliamentary report can be found at:

http://www.barnardos.org.uk/cse_parliamentary_inquiry_report.pdf

Clauses 219 to 226 create offences by persons in a position of trust in who abuse the trust by engaging in sexual activity with a child etc. The categories of persons in a position of trust are adapted to Falkland Islands. Some terms, such as 'independent clinic' and 'residential care home' are not defined, but have an established meaning. Strict liability is imposed on care workers in relation to children under 16, but in respect of young people aged 16 or 17, the prosecution needs to show that the accused did not reasonably believe that the person was 18 or over. The age of the defendant is irrelevant to this requirement, and there is a rebuttable presumption that the accused did not reasonably believe the person was 18 or over. The prosecution must also show in certain cases that the defendant knew or could reasonably be expected to know that he or she was in a position of trust.

Under clause 223(10) the Governor, after consulting the Criminal Justice Council, can declare additional positions to be positions of trust for purposes of these sections.

Clauses 227 to 231 deal with child sex offences in the family context, including child incest. See clause 283 for adult incest.

Clauses 232 to 235 make it an offence for any person to engage in sexual activity with a person with a mental disability that impedes choice.

Clauses 236 to 239 create various other offences in relation to persons with a mental disorder, including offering inducements etc. to procure sexual activity.

Clauses 240 to 246 make it an offence for a care worker to engage in sexual activity with a person with a mental disorder and create other sexual offences by care workers in relation to persons in their care.

Clauses 247 to 252 make it an offence to take or possess or publish indecent photographs of youths, i.e. a person under the age of 18. Clause 251 gives powers of entry, search and seizure and Schedule 1 sets out a procedure for disposal of seized items. The term 'indecent' is not defined in UK statute law but is defined in clause 203 on the basis of UK case law as mentioned above.

Clauses 253 to 256 make it an offence to possess prohibited images of youths. There is exclusion for classified films and a defence of having a legitimate excuse for possession.

Clause 253 implements Article 9 of the Council of Europe Convention on Cybercrime. See also Part 14 for other provisions implementing that Convention.

Clauses 257 to 259 relate to the possession of extreme pornographic images. They are derived from sections 63 to 67 of the Criminal Justice and Immigration Act 2008. It is an offence for a person to be in possession of an extreme pornographic image, moving or still. An 'extreme' image is one which portrays an act which threatens a person's life, or results, or is likely to result, in serious injury to a person's anus, breasts or genitals; an act which involves sexual interference with a human corpse; or a person performing an act of intercourse or oral sex with an animal. Defences are provided for extracts from classified movies, and for persons who are themselves portrayed in such images, who are not aware of the images, or who have a legitimate reason for possessing them, etc.

Clause 258 omits the UK rules about classification of videos (which are no longer law in the UK) and clause 259 omits the exception about providers of information services. But see Part 25 for offences relating to obscene publications generally.

Clauses 260 to 264 create offences relating to the abuse of children through prostitution and pornography. Clause 261 retains the distinction between children under 13 and those under 18 for sentencing purposes.

Clause 260(1) is varied from the UK version to make it an offence to pay a child for sexual services not only for the payer but for another person.

Clauses 265 to 270 create various offences relating to prostitution, such as kerb-crawling and persistent soliciting. The offences can be committed by either sex and include men soliciting prostitutes, but do not include prostitution itself.

The term 'street' is defined in the IGCO.

The power of arrest in clause 268(4) is needed because the offence is not imprisonable so the general arrest power in Part 4 of the Criminal Procedure and Evidence Ordinance 2014 does not apply.

Clauses 271 to 275 create offences relating to the keeping of a brothel and permitting premises to be used as a brothel. The offences are framed so as to cover people who are in the process of gender reassignment.

Clause 276 creates a composite offence relating to sex trafficking into, within, and out of the Falkland Islands. The offence is made extraterritorial as noted above. Clauses 277 and 278 empower courts to forfeit land vehicles, ships and aircraft used for sex trafficking and clause 279 defines some terms.

Clauses 280 to 282 create certain preparatory offences such as administering a substance with intent to stupefy.

Clauses 283 and 284 create the offence of incest i.e. sexual relations with an adult relative. The list of prohibitions is limited to direct blood relationships, and is similar to the proscribed degrees of relationship for marriage. See clauses 227 to 231 for sexual activity with children of the family.

Clauses 285 to 289 create certain other sexual offences, including genital exposure (called simply 'exposure' in the UK Act), voyeurism, bestiality and sexual penetration of a corpse.

Clause 287 varies from the UK version in that the penetration is prohibited of or by an animal, whether alive or dead. This parallels the offence in clause 257 in relation to 'extreme images'.

Clauses 290 confers extraterritorial jurisdiction in respect of certain sexual offences as listed in Schedule 2. It uses the term 'place outside Falkland Islands' to avoid any question about the country status of a jurisdiction.

Clause 291 relates to encouraging, aiding and abetting the commission of certain sexual offences outside the Falkland Islands.

Clause 292 provides certain exceptions to the rules about encouraging, aiding and abetting, in order to protect people who are advising children, etc. Clauses 293 and 294 define 'consent', and clause 295 lists the acts that are relevant for the purposes of that definition.

Schedule 1 sets out the procedure for dealing with indecent photographs etc. that are ordered to be forfeited.

Schedule 2 lists the sexual offences which attract the extraterritorial jurisdiction under clauses 290 and 291.

Policy issues

There are no policy issues as such, if Falkland Islands law is to follow the UK law, with necessary modifications. However, MLAs are requested to give consideration to improving the provision regarding sexual grooming – see above under clause 218.

PART 11 – SEX OFFENCE ORDERS

Introduction

This Part re-enacts as part of the Crimes Ordinance Part 2 of the UK Sexual Offences Act 2003, which was applied to the Falkland Islands by the Sexual Offences Ordinance 2005 ('SOO'), with exceptions and modifications set out in a Schedule. It provides for the creation of what is commonly known as a 'sex offenders' register', though that term is not used in the Part. It also provides various types of order that can be used to protect children, young persons and vulnerable adults from sexual predators.

The Part incorporates significant changes made to the sex offenders' notification and orders regime by the Anti-social Behaviour, Crime and Policing Act 2014 s.113. This gave effect to Schedule 5 which repealed 3 of the previous orders – the sexual offences prevention order (SOPO), the risk of sexual harm order (RSHO) and the foreign travel order. It replaced them

with 2 new orders – the sexual harm prevention order (SHPO) and the sexual risk order (SRO.) Each of these orders can include a prohibition on foreign travel.

The new orders have a lower risk requirement than the previous orders and allow both orders to be used to manage risk against adults and vulnerable adults abroad, as well as children. In addition, their remit is wider, enabling, for example, foreign travel restrictions to be applied under either order. These changes address matters raised in an independent review of the existing powers carried out in the UK by Hugh Davies QC, which was published in May 2013. The aim of streamlining the orders is to provide the police and practitioners with greater clarity and flexibility.

The notification regime in the UK remains the same as before and is set out in clauses 297 to 321. They impose a notification requirement on all sex offenders i.e. people convicted of any of the offences listed in Schedule 3.

Clauses 322 to 332 empower courts to impose SHPOs, and clauses 333 to 342 empower courts to impose SROs.

Clauses 343 to 346 are miscellaneous provisions as noted below.

The Part provides that offences committed outside the Falkland Islands and committed before the commencement of the Part are to be taken into account. In addition to sentences of fines or imprisonment, community service orders for 120 hours or more, conditional discharges and cautions are to be taken into account. Absolute discharges do not count as convictions, however.

The Part provides for orders to be made on the basis of convictions outside the Falkland Islands of offences equivalent to sexual offences in the Falkland Islands, if the offender comes to the Falkland Islands to live. See e.g. clause 317.

The jurisdiction scheme is that the court that convicts a person of a sex offence can make an order when convicting, but that an order on separate application of the Attorney General can only be made by the Magistrate's Court. Only the Attorney General can apply to the court for the various orders (except on conviction) and for amendment or discharge of them. The Attorney General can also apply for a parental direction.

All orders made under this Part can be the subject of applications for variation, renewal or discharge, and there can be appeals from the making of them. The appeal would go to the court that hears appeals from verdicts and sentences in the normal way.

The Part does not include transitional provisions to cover older UK laws as in the Schedule to the SOO, but it does include a saving for orders made under the 2003 Act as applied by the SOO – see clause 346. The Part also applies some provisions retrospectively to 10 June 2005 which was the date of commencement of the SOO.

As well as the 2014 amendment noted above, the Part includes other amendments to the UK legislation including the Sexual Offenders (Remedial) Order 2012 which provided for a review

of indefinite notification requirements. This is to comply with an ECHR decision that is binding on the UK.

There is a commentary on Part 2 of the SO Act 2003 in Archbold 2013 Ed. paras. 20-263 to 20-345. There is no detailed commentary on notification orders etc. but the Part follows the latest UK text of the relevant legislation.

Notes on clauses

Clause 296 defines various terms used in the Part that are not defined elsewhere in the Bill or in the IGCO. Sub-clauses (3) and (4) set out rules of equivalence as between detention for young offenders and other sentences. Sub-clause (5) sets out rules of equivalence in relation to mentally disordered defendants.

Sexual harm is defined to mean physical or psychological harm resulting from an offence listed in Schedule 3.

Sub-clause (2) provides that time-limits for making complaints to the Magistrate's court (e.g. under s.182 of the Criminal Procedure and Evidence Ordinance 2014 or s. 127 of the UK Magistrates' Courts Act 1980) do not apply to complaint under this Part.

Clauses 297 to 307 impose notification requirements on offenders in respect of most sexual offences committed in the Falkland Islands. They set out the requirements for notification, and what the notification must include. Notification must be given to the police after a conviction, and every year for the duration of the requirement. Notification must also be given of certain changes, and of any proposed travel outside the Falkland Islands.

Clause 297 specifies as persons who are subject to notification requirements those who have been convicted of an offence listed in Schedule 4. An absolute discharge does not count as a conviction. There is a retrospective provision to the date of commencement of the SOO.

Clause 298 specifies by means of a Table the period for which the notification requirement continues. The last item in the Table - 'a person of any other description' – would include someone convicted but sentenced only to community service.

Note that the term 'detained in a hospital' is used instead of 'admitted' as the Mental Health Ordinance uses the term 'detained' in Part 3.

Clauses 299 to 302 specify the details that are to be given in a notification. The terms 'home address' and 'passport' are defined in clause 296. No regulations prescribing additional requirements are contemplated except under Clause 302(5) relating to travel outside the Falkland Islands.

Clause 303 enables notification to be given at a place of lawful custody (as defined in clause 2 on a form to be approved by the Governor.

Clauses 304 and 305 provide that in the case of young offenders, the notification must be given by a parent, who can also apply for a variation or discharge of the order.

Clause 306 makes it an offence to fail to give notification when and as required.

Clause 307 is about certification. It contemplates that when dealing with a Schedule 3 offence the presiding officer will, in addition to announcing the decision of the court in the usual way at the end of a case, state that the offence is a Schedule 3 offence.

Clauses 308 to 310 impose an obligation to review indefinite periods of notification as required by the ECHR.

Clauses 311 and 312 are a consequence of the decriminalisation of homosexuality by the 2003 Act. They enable the Governor to make a declaration about the nature of an earlier homosexual offence which results in it not being subject to notification. There are similar provisions about rehabilitation regarding homosexual offences in sections 639 to 645 of the Criminal Procedure and Evidence Ordinance 2014 Bill.

Clauses 313 to 316 relate to the supply of information to and by the Governor and to other courts.

Clauses 317 to 321 provide for the making of notification orders in respect of sexual offences committed outside the Falkland Islands if the offender is in or intends to come to the Falkland Islands. They specify the grounds on which a notification order can be sought, and its effect, and provide for interim notification orders and appeals.

Clauses 322 to 332 empower a court to make a sexual harm prevention order (SHPO) if the person is convicted of an offence listed in Schedule 3 or 4 and the court is satisfied that it is necessary to make such an order for the purpose of protecting youths, vulnerable people or the public or any particular members of those groups from sexual harm from the person. The order prohibits the defendant from doing anything described in the order and has effect for not less than 5 years. The only prohibitions that may be included in the order are those necessary for the purpose of protecting the protected groups or any particular members of them from sexual harm from the defendant.

Clause 325 enables a court to include in a SHPO a foreign travel prohibition, prohibiting the person from travelling outside the Falkland Islands in order to prevent sexual harm being caused by the defendant doing, outside the Falkland Islands, anything which would constitute a sexual offence if done in the Falkland Islands.

Clause 326 enables either party to apply for a variation, renewal or discharge of a SHPO.

Clause 327 provides for the making of interim SHPOs pending a final determination on the application.

Clauses 333 to 342 empower a court to make a sexual risk order (SRO). The court must be satisfied that it is necessary to make the order for the purpose of protecting people generally or any particular person from physical or psychological harm caused by the defendant doing the acts mentioned.

A SHPO is made on a conviction/special verdict/finding of fact by a court for a qualifying offence as per the schedules. A SRO has a lower test (behaviour of a sexual nature but falling short of offending) which covers much wider types of behaviour.

Like a SHPO, a SRO can include a foreign travel prohibition and can be the subject of an application to vary, renew or discharge. The court can make an interim SRO.

Both types of order can be the subject of an appeal, and the Governor can issue guidance in respect of the deployment of such orders.

A person on whom a SHPO or SRO is made becomes liable to the notification requirements of clauses 297 to 307.

Clause 343 empowers the Governor to amend Schedule 3 or 4 and clause 344 contains interpretative rules for them. In the UK Act these rules are stated in additional Schedules, but as they are rules of general application they are stated in the body of the Part. There is a presumption in clause 344(3) about the age of a child.

Clause 345 sets out the rules for ascertaining the date of a conviction and other matters relevant under the Schedules.

Clause 346 is a saving for orders etc. made under the Sexual Offences Ordinance, as that Ordinance will be repealed by this Bill when it is enacted.

Schedule 3 lists the sexual offences that attract the requirements for notification. They include offences under the UK Sexual Offences Act 1956 so that persons convicted of historic offences under that Act in the Falkland Islands (or elsewhere if the court so orders) will still come under the notification requirements.

Schedule 4 lists other offences that are relevant in the context of clauses 322 and 323 to determine whether a person is a ‘qualifying offender’ for the making of a SHPO. Hijacking and other UK anti-terrorism laws that apply to the Falkland Islands are included as the Schedule seeks to include all offences which show a propensity for violence towards people, particularly women and children, and which might mean that a person convicted of them could pose a sexual danger to people in the Falkland Islands.

PART 10 -THEFT AND FRAUD

Introduction

This Part enacts in Falkland Islands law the current UK law on theft and fraud contained in the Theft Act 1968, the Theft (Amendment) Act 1996, and the Fraud Act 2006, with necessary adaptations and modifications for the circumstances of the Falkland Islands. It also includes some provisions of the common law that are not in the UK Acts.

The Part also restates in modern language some ancient offences that are still law in the UK, including poaching.

The language of the UK Acts has been modernised and made gender-neutral in the Part. However, if the perpetrator or victim of an offence of theft or fraud might be a body corporate, the term 'he or she' is not appropriate. To avoid repeated use of the word 'person', the letters 'A' and 'B' are used to describe the perpetrator and the victim in many of the offences. The phrase 'another' is expanded to 'another person' except in the basic definition of theft which is well established in the criminal law.

Mortgage fraud

The question might be asked whether the Part covers mortgage fraud. Clause 376 uses the word 'services' as in section 11 of the Fraud Act 2006. The UK Court of Appeal has held that that term is wide enough to embrace professional services, commercial services and financial services. The essential condition is that the service must confer a benefit and be rendered on the basis that it has been or will be paid for. By enacting the Fraud Act using the word 'services' and not defining it, Parliament accepted the wide meaning of the word. In the circumstances, there is no need to define the word 'services', leaving the prosecution to argue for the wide meaning of the term.

Obtaining a money transfer by deception

This offence was only created in the UK in 1996, by the Theft (Amendment) Act 1996 which added sections 15A and 15B to the Theft Act 1968. Those sections are repealed by the Fraud Act 2006 as the new wider provisions of the Fraud Act covered the lacuna in the previous Theft Acts. The Fraud Act seeks to conceptualise and generalise the offence, rather than having a number of offences relating to different types of service and different monetary transactions. Obtaining a money transfer by deception is covered in this Part, either as fraud by a false representation (clause 370) or obtaining services dishonestly (clause 376). In this connection, it should be noted that Clause 377 defines 'property' to mean money or other property whether real or personal, including things in action and other intangible property.

Transnational fraud

The UK Criminal Justice Act 1993 confers extraterritorial jurisdiction in respect of a long list of offences which are mostly deception or fraud offences. This issue is dealt with in Part [GP] (General Provisions).

Common law conspiracy to defraud is repealed. Statutory conspiracy to commit Fraud will continue under the provisions of Part 3 on ancillary offences.

The term 'civil partner' is used in various places in the UK laws. The term is adopted in this Part and will be defined in clause 2, although formal civil partnership status cannot be conferred in the Falkland Islands.

There is a commentary on theft and fraud laws in Archbold 2013 Ed. paras. 21-1 to 21-415.

Notes on clauses

Clause 347 defines various terms used in the Part but not defined elsewhere in the Bill or in the IGCO.

Clause 348 creates the offence of theft, which it defines as “dishonestly appropriating property belonging to another with the intention of permanently depriving the other of it.” The maximum penalty is 7 years imprisonment.

Clauses 349 to 353 then define the terms used in that definition of theft.

Clauses 354 to 357 create various other offences involving theft, ranging from robbery and aggravated burglary which carry a maximum sentence of 18 years, to going equipped for stealing, which carries a sentence of 3 years.

Clause 358 is about theft of or from mails outside the Falkland Islands. It includes some definitions based on the UK Postal Services Act 2000.

Clauses 359 to 362 create offences relating to stolen goods, including handling (receiving) and advertising rewards.

Clause 359 does not create an offence but has an extraterritorial element. It says that offences in the Falkland Islands relating to stolen goods are committed in the Falkland Islands wherever the goods were stolen, if the stealing amounted to a crime in the place where they were stolen.

Note that in Clause 360 the maximum penalty, following the UK law, is 14 years which is double the maximum for theft. This reflects Parliament’s desire to deter the professional ‘fence’ so that the market for stolen goods diminishes and the incidents of theft decrease: ‘without handlers there would be fewer thieves’. It should also be borne in mind that handlers receive the proceeds of burglary as well as theft; and dwelling house burglary also carries a maximum sentence of 14 years.

Clause 361 is required because taking a reward and doing nothing to earn it is covered by the definition of fraud, but taking a reward with a promise that no questions will be asked is not. This clause makes it an offence to advertise a reward with no questions asked (as this effectively makes one an abettor to an offence). Sub-clause (2) creates an offence of taking a reward in response to an unlawful advertisement.

The power of search in clause 362 is retained as it is still in the UK Theft Act and is not inconsistent with the proposed search etc. provisions in the Criminal Procedure and Evidence Bill.

Clauses 363 to 367 restate in modern terms existing offences that are similar to theft but do not amount to theft. They include taking vehicles, making off without payment and abstracting electricity.

Clause 363 on taking vehicles without authority is based on s.30 of the Road Traffic Ordinance, which replaced s.12 of the Theft Act and will need to be repealed. The clause does not include the 3-year limitation that appears in the equivalent UK provision. The reason for it in the UK is the practical difficulty of tracing a vehicle ownership etc., and does not apply in the Falkland Islands. The clause extends to the taking of pedal bicycles. On a charge of theft of a vehicle,

the court can convict for taking the vehicle if they are not satisfied that there was an intention to permanently deprive the owner of the vehicle.

Clause 364 is a new offence of aggravated vehicle-taking. It consists of taking a vehicle and driving it dangerously, or so as to cause injury to a person or damage to property or damage to the vehicle. In other words, more than just a 'joy ride' which is covered by Clause 363. The test under the provision is one of driving dangerously rather than recklessly, which has been the test in the UK since 1991. The offence of reckless driving remains unchanged in the Road Traffic Ordinance, but is likely to be subject to a review of that Ordinance in due course under the wider reform programme. The test for dangerous driving is lower than that of reckless driving. To commit the offence of dangerous driving the person must drive in a way that falls far below what would be expected of a competent and careful driver and it would be obvious to a competent and careful driver that driving in that way would be dangerous. A person is also to be regarded as driving dangerously if it would be obvious to a competent and careful driver that driving the vehicle in its current state would be dangerous. This would cover a scenario where a person took a vehicle, crashed it causing severe damage, but then continued to drive it in its damaged state as a result of which a further collision occurred causing injury or fatality. This is what is known as an objective test. This is to be contrasted with the higher, subjective test of the state of mind necessary for reckless driving where it has to be proved that the driver was aware of the risk of driving in such a manner and that in the circumstances known to him or her at the time it was unreasonable to take that risk.

Clause 365 is the offence of removing articles from public places. This would include a person removing an item from e.g. a public museum. Dishonesty but not an intention to permanently deprive must be proved; the offence is to 'remove' rather than to 'steal'. This offence also covers the difficulties with proving a burglary where a building or part of a building is open to the general public and the requisite act of trespass cannot necessarily be proved.

Clause 366 is the offence of making off without payment. This covers a person who has a job done but refuses to pay for it, or orders goods and doesn't pay for them, neither of which is covered by the definition of theft. (See clause 376 for the offence of obtaining services dishonestly.)

Clause 367 is the offence of abstracting electricity and means that a person who uses electricity without authority, or dishonestly causes electricity to be wasted or diverted, commits an offence.

Clause 368 restates the existing offence of blackmail based on s.21 of the Theft Act 1968. The offence is committed by a person who, with a view to gain or to cause loss to another, makes unwarranted demands with menaces relating to action by any person.

Fraud offences

Clauses 369 to 378 deal with the offence of fraud and are based on the UK Fraud Act 2006. They set out the various ways in which fraud can be committed. All of them require the intention to make a gain or cause a loss.

The aim of these clauses is to conceptualise and generalise the offence, rather than having a number of offences relating to different types of service and different monetary transactions as at present.

Clause 370 says that fraud by misrepresentation requires a dishonest false representation of fact or law, express or implied.

Clause 371 says that fraud by failing to disclose information requires a failure to disclose information the person has a duty to disclose.

Clause 372 says that fraud by abuse of position requires dishonest abuse (by act or omission) of a position the person holds in which he or she is expected to safeguard the financial interests of another person.

Clause 373 creates the offence of possession of articles for use in fraud.

Clause 374 creates the offence of making or supplying articles for use in frauds.

Clause 375 creates the offence of participating in a fraudulent business carried on by a sole trader, i.e. a company outside the scope of the Companies Acts. It is in addition to the powers of investigation of fraudulent conduct under the UK Companies Act 1948 as applied to the Falkland Islands.

[Note – the Companies Act 1948 has been replaced in UK by the Companies Act 2006.]

Clause 376 creates the offence of obtaining services dishonestly, i.e. without making payment and not intending to pay. (This differs from the offence of making off without payment in clause 366. See notes above about mortgage fraud and obtaining by deception.

Clause 377 defines the terms “gain”, “loss”, “property” and “article” as used in the preceding clauses.

Clause 378 is about evidence in proceedings relating to any of clauses 370 to 377. A person is not excused from answering questions or complying with an order about property on the ground that to do so might incriminate him or his spouse; but a statement or admission made by the person is not admissible against him or his spouse in a prosecution for fraud.

Clauses 379 to 382 create four offences that are similar to fraud – false accounting, false statements by company directors, suppression of documents and retaining a wrongful credit.

The definition of ‘wrongful credit’ in clause 382 does not cover money credited to an account in error, because keeping money paid by mistake amounts to theft. The reason for this offence is that the ‘owner’ of the money cannot rightfully claim it. If there is a rightful owner, the money must be returned or the recipient dishonestly appropriates property belonging to another i.e. commits theft.

Clause 383 puts into statutory form the common law offence of cheating the public revenue, which dates back to the reign of Edward III. For the English case law see Archbold para.25-409.

Clause 384 restates an offence in the Crimes Ordinance about unlawful interception of communications, whether by post or wireless telegraphy. It originates from section 1 of the UK Regulation of Investigatory Powers Act 2000. See also clause 413 for a similar offence in relation to computer services.

Clauses 385 and 386 are miscellaneous provisions relating to procedure and evidence and the effect of a prosecution on civil proceedings.

Policy issues

- Whether to include clause 364 on aggravated vehicle taking. It is based on s.12A of the Theft Act which was disappplied. (Note the concept of ‘dangerous’ rather than ‘reckless’ driving as defined in sub-clause (7)).
- Whether 18 years imprisonment is a suitable maximum penalty for robbery and assault with intent to rob (clause 354) and aggravated burglary (clause 356) as in the UK both offences carry a discretionary life term and are triable on indictment.

PART 13 - FORGERY AND COUNTERFEITING

Introduction

Forgery and counterfeiting (coinage offences) were formerly covered by separate UK enactments - the Forgery Act 1913 and the Coinage Offences Act 1931. Both those Acts were repealed and replaced by the UK Forgery and Counterfeiting Act 1981 and this Part is based on that Act. The Part contains three groups of offences – forgery in clauses 388 to 396, counterfeiting (including counterfeiting of currency notes) in clauses 397 to 404, and offences in relation to identity documents, based on the UK Identity Documents Act 2010 – see clauses 405 to 408.

Terms used in the clauses creating the offences of forgery are defined before the offences are created. The definition of forgery does not extend to currency notes, as those come under the offence of counterfeiting. However, counterfeiting includes coinage offences. References to the Commissioners of Currency are replaced by the relevant authority empowered to issue notes or coins. This includes authorities in places other than the Falkland Islands. Euros are covered by para. (b) of the definition of ‘currency note’ as they are issued in countries outside the UK and the Falkland Islands and used as legal tender in those countries.

The penalties in relation to all 3 groups are set out in each clause, unlike in the UK where they are grouped together in sections 6 and 22 of the 1981 Act.

The police powers provisions in the Criminal Procedure and Evidence Ordinance 2014 will confer search and seizure powers in relation to offences under this Part. No powers of arrest without warrant are included as they are in the Criminal Procedure and Evidence Ordinance 2014. The deprivation provisions in section 617 of that Ordinance will also apply. The specific powers in the Forgery and Counterfeiting Act 1981 are not therefore required.

There is a commentary on the relevant UK law in Archbold 2013 Ed. paras. 25-300 to 25-319.

Notes on clauses

Clause 387 contains definitions that apply to the whole Part, including ‘relevant authority’ and ‘postal operator’. The UK Act references to ‘British coin’ are replaced by ‘protected coin’. The references to ‘British currency note’ are replaced by ‘currency note.’ This includes pounds sterling and Falkland Islands notes issued under the Currency Ordinance. The definition of ‘share certificate’ includes bodies incorporated outside the Falkland Islands.

Clauses 388 to 395 are the forgery offences.

Clause 388 defines ‘instrument’. It includes ‘revenue stamp’ so as to include e.g. customs stamps. The term ‘document’ is not defined and remains ambiguous, as in the UK Act

Clause 391 defines forgery as being committed by a person (‘A’) who makes a false instrument with the intention that he or another (‘B’) will use it to induce a further person (‘C’) to accept it as genuine and thus do something to the prejudice of C or someone else (‘D.’) This can involve 4 different persons, but is the best way to express the offence.

Clauses 392 to 394 create offences relating to ‘instruments’. The instruments include money orders, postage stamps, passports, ID cards, cheques, credit and debit cards and entries in the register of births, marriages and deaths.

The offences are –

- having a false version of an instrument with the intention as in the offence of forgery;
- having a false instrument knowing it to be false (with no specific intention);
- making or having equipment intended for making a false instrument with the intention as in the offence of forgery;
- making or having equipment of that kind, without a specific intention.

Clause 396 abolishes the offence of forgery at common law. Arguably that is not needed as the 1981 Act (which applies to the Falkland Islands) has achieved that result already, but the clause is included for the avoidance of doubt. The common law offence of cheating was abolished by the UK Theft Act 1978 except in relation to revenue offences; see clause 383 for a statutory offence. The common law offence of personation is now limited to jurors and is sufficiently covered by section 338 of the Criminal Procedure and Evidence Ordinance 2014.

Clauses 397 to 404 are the counterfeiting offences.

Clause 397 creates 2 offences of making a counterfeit of a currency note or protected coin. The first offence is if a person intends that he or another will pass or tender it as genuine. The other, and lesser, offence consists of the making without any specific intention.

Clause 398 also creates 2 offences – passing or tendering a counterfeit note or coin with the intention mentioned in clause 397; and delivering a counterfeit note or coin to someone, intending that he will pass or tender it as genuine.

Clause 399 creates 2 more offences – having custody or control of a counterfeit note or coin with the intention mentioned in clause 397; and having such custody or control without that intention.

Clause 400 creates 3 offences –

- making or having custody of a thing intended for making a counterfeit note or coin, with the intention of passing the note or coin as genuine;
- making or having such a thing without that intention;
- making or having custody of an implement capable of giving anything the appearance of a protected coin.

Making and having in possession are separate offences in each subsection. This puts the prosecution to its election as to which offence to charge but is more consistent than the UK text (section 17) which differs in each subsection.

Clause 401 defines ‘counterfeit’ for the purpose of these offences. It means a false note or coin that resembles a genuine note or coin so that it is reasonably capable of passing as a genuine note or coin; or a note or coin altered to resemble another note or coin (e.g. of a higher denomination.)

Clause 402 creates the offence of reproducing currency notes without authority. It is altered from the UK text to make it clear that the absence of consent is part of the offence, and that the offence applies to reproduction on any substance and whether or not on the right scale, as in an advertisement.

Clause 403 creates 2 offences relating to imitation coins used in a scheme to promote the sale of a product or the supply of services. One offence is of making a coin; the other is of selling or distributing or having them in one’s custody.

Clause 404 combines and adapts two sections of the UK Act and creates the offences of importing or exporting counterfeit notes and coins without the consent of the relevant authority. The offences are punishable by 2 years’ imprisonment, and the importation is prohibited. See section 143 of the Customs and Excise Ordinance enabling the Governor to make orders prohibiting the import of goods. See also the proclamations made under section 35 of the previous Customs Ordinance which were saved by s.163 (4) of the Customs and Excise Ordinance.

Clauses 405 to 407 create 3 offences in relation to identity documents. They are based on the UK Identity Documents Act 2010 which replaced the Identity Cards Act 2006 when the government abandoned the policy to introduce identity cards for UK citizens. The offences in relation to identity documents remained essentially unchanged, but referring to ‘personal information’ rather than ‘registrable details’.

Clause 408 contains definitions and other supplementary provisions in relation to identity documents offences.

PART 14 - COMPUTER MISUSE

Introduction

This Part contains provisions designed to combat computer related crime or 'cybercrime'. It criminalises various forms of computer abuse, unauthorised access to computer data and other attacks against information systems. Some of the provisions are based on the UK Computer Misuse Act 1990 as amended by the Police and Justice Act 2006. The Part therefore incorporates sections 1 to 10 and 17 of the Computer Misuse Act 1990 with appropriate modifications. Other sections of the Act are not relevant to the Falkland Islands.

Other provisions are not in UK statute but are based on the Gibraltar and St Helena versions of this Part and are designed to implement the 2001 Council of Europe Convention on Cybercrime (which applies to Gibraltar as an EU territory, but not to the Falkland Islands as the Convention has not yet been extended to British Overseas Territories.) The UK has not enacted legislation to fully implement the Convention, but provisions about interception evidence in the Regulation of Investigatory Powers Act 2000 (which is not in force in the Falkland Islands) pre-date the Convention. The RIPA provisions are exceptionally complex, bureaucratic and not really suitable in the Falklands context. The FCO legal advisers have seen the Gibraltar version of this Part and, for human rights reasons, requested amendments, which have been incorporated.

An offence under this Part requires a person to act intentionally or knowingly or recklessly as to whether the unauthorised actions taken causes harm to another person. The offences under clauses 410 to 415 can be committed anywhere, by any person, using any internet provider, subject to clause 416 about territorial scope. The offence under clause 410 involves direct interference with a computer based in the Falkland Islands, whereas the offences under clauses 411 to 415 can involve indirect interference with or use of a computer or system wherever based. Seizure of computerised information is also provided for in the Criminal Procedure and Evidence Bill, but this Part gives more explicit powers of search and seizure of computer data.

There is a commentary on the 1990 Act at Archbold 2013 Ed. paras.23-97 to 23-101. That work does not deal with the requirements of the EU Convention.

Notes on clauses

Clause 409 defines certain terms used in the Part. It does not define 'computer' or 'program' in order to avoid the need for amendments as technology advances. Some of the defining provisions (limiting the scope of some of the offences) are from the RIPA.

Clause 410 makes it an offence for a person knowingly to have unauthorized access to any program or data held in a computer.

Clause 411 makes it an offence for a person to access a computer program or data with intent to commit or facilitate the commission of another offence which carries a life sentence or a sentence of at least 5 years imprisonment.

Clause 412 makes it an offence for a person to do an act, whether temporary or permanent, which the person knows will cause an impairment of the operation of a computer or any program or data held in a computer or an impairment of the reliability or the authenticity of any such data.

Clause 413 makes it an offence for a person knowingly to intercept any non-public transmission from a computer without authority. For a general offence of interception communications see clause 384.

Clause 414 makes it an offence for any person to produce, sell or procure for use any device, program or data which is designed or adapted with the intention that it should be used to commit any other offence under the Part.

Clause 415 makes it an offence for any person, knowingly and without authority, to disclose any password or access code of a computer that is capable of being accessed, with the intention that it be used by any person for the purpose of committing an offence.

Clauses 416 to 420 provide for the territorial scope of offences under the Part and ancillary offences related to such offences. It is irrelevant whether the offender has Falkland Islands status, provided the person or the computer was in the Falkland Islands at the material time. The word 'criminal' used in clause 419(3) is not in the UK Act but makes it clear that civil penalties do not make the conduct an offence.

Clause 419(4) contemplates criminal procedure rules being made as to service of notices.

Clause 421 empowers a justice of the peace to issue a search warrant to a police officer, who, upon executing it, may seize any computer or computer program or data if the officer believes it is evidence that an offence has been committed or is about to be committed.

Clause 422 empowers a justice of the peace to issue a warrant to a police officer to have access to any computer, or any program or data held in any computer, and to require any person concerned to assist the officer in the investigations. It is not limited to offences under this Part.

Clause 423 requires the police officer to make and deliver to the person in charge of a computer a record of the seized articles. This duty is not in the UK Act or the EU Convention but is regarded as desirable.

Clauses 424 enables the Chief Police Officer to issue a written order requiring the preservation of data if data stored in a computer is required for the purposes of a criminal investigation; and if there is a risk that the data may be destroyed or rendered inaccessible or modified.

Clause 425 empowers a justice of the peace, on the application of the Attorney General, to issue an order requiring a person in charge or in control of data, or an internet service provider, to collect and record traffic data or permit and assist any named person with appropriate technical knowledge and expertise to collect and record the data.

Clauses 426 to 428 empower a justice of the peace, on the application of the Attorney General, to order production of data required for the purpose of a criminal investigation or criminal proceedings; to authorise a police officer to collect or record traffic data associated with a specified communication during a specified period if there are reasonable grounds to suspect that traffic data is required for the purposes of a criminal investigation; and to order internet

service providers to intercept electronic communications and data traffic where necessary for criminal investigations.

Clause 429 makes it an offence for an internet provider to disclose the fact that the powers under clauses 426 to 28 have been used, or any information given by the provider in response to a notice or order under those powers. An internet provider is not liable for the disclosure of any information given in response to such a notice or order.

Clause 430 makes it clear that other powers of inspection, search and seizure are not displaced by this Part and that a withholding of consent device in a computer program does not operate to bar access to an enforcement officer.

Clause 431 makes it an offence for a corporate body to benefit from the commission of an offence under clauses 410 to 415, whether or not the person who committed the offence was acting as an agent of the body. This is wider than the normal rule stated in clause 17 (i.e. if an offence is committed by a corporate body with the consent or connivance of a director, the director as well as the corporate body commits the offence.) The clause also prescribes a penalty of twice the normal fine in such a case.

Clause 432 empowers a court to order the forfeiture of a computer and other articles used in connection with an offence.

Clause 433 enables a court to make an order for payment of compensation by the offender to any person for damage caused to that person's computer or any program or data held in the computer. This power is in addition to the general compensation provisions in the Criminal Procedure and Evidence Ordinance 2014.

Clause 444 creates an offence of unauthorized disclosure of information obtained during the course of an investigation or of information received from the competent authorities of another country or territory" for the purposes of or to assist in the investigation of offences.

Clause 445 enables the Governor to issue one or more codes of practice relating to the exercise and performance of the powers and duties under this Part. This is included to meet objections to the powers of interception that were raised by FCO legal advisors on human rights grounds in relation to the Gibraltar version of this Part. There is a similar power in s.71 of the Regulation of Investigatory Powers Act 2000.

Policy issues

Whether to include the clauses which are not in the UK CM Act but which would fully implement the EU Convention (Council of Europe Convention on Cybercrime) in the Falkland Islands. There are equivalent provisions in a number of different UK statutes. The clauses are: 413, 415, 422, 424 to 429, 431 and 434.

PART 15 - COMMERCIAL TRANSACTIONS

Introduction

This Part re-enacts in local statute the provisions of some old ‘imperial enactments’ (UK laws) that apply to the Falkland Islands and are still law in the UK. The offences relate to illegal practices at or in relation to auctions, and unsolicited goods and services.

The auction offences are based on the Auctions (Bidding Agreements) Acts 1927 and 1969 and the Mock Auctions Act 1961. The other offences are based on the Unsolicited Goods and Services Act 1971.

Section 5 of the 1971 Act (unsolicited goods etc.) is included in Part 25 as it relates to publications containing sexual images. Section 8 is not included as it imposes unnecessarily complex rules about the format of invoices etc.

These offences are not dealt with in Archbold as they are only summary offences in the UK.

Notes on clauses

Clause 436 creates offences of ‘fixing’ prices at auction sales.

Clause 437 enables a court to make an order prohibiting a person convicted of an offence of fixing prices from attending auctions.

Clause 438 asserts the rights of seller in good faith of goods by auction

Clause 439 says what notices are to be displayed in an auction room.

Clause 440 makes it an offence to conduct a mock auction, i.e. where the bidding is not genuine.

Clause 441 contains interpretative provisions about mock auctions.

Clause 442 makes it an offence to demand payment for goods that have not been ordered.

Clause 443 makes it an offence to demand payment for entries in a trade directory that have not been asked for.

CHAPTER 3 - CRIMES AGAINST THE GENERAL PUBLIC

PART 16 - TREASON

Introduction

This Part codifies the English statute law and common law on treason as applied to the Falkland Islands. The offences include treason itself, treasonable offences (formerly called treason felonies) and assaults on the Queen. They are all governed by ancient statutes dating back to the Treason Act of 1351. Note the inclusion of Crown dependencies in the list of entities protected by the legislation. They are also included in the definition of ‘national security’ in the Criminal Procedure and Evidence Ordinance 2014.

The extension of the offence of treason to include protection for the immediate family of the Queen and high officers of state is based on the Treason Act 1351 which is still on the UK statute book.

The Crime and Disorder Act 1998 abolished the death penalty for all Treason Acts offences but did not mention the 1351 Act which is slightly odd. It is reasonable to assume that Parliament's intention was to provide for a mandatory life sentence for treason itself and that is reflected in clause 444.

Notes on clauses

Clauses 444 and 445 create offences for which the penalty is life imprisonment. In the case of a section 444 offence the life sentence is mandatory but subject to the rules about imprisonment of youths in section 730 of the Criminal Procedure and Evidence Ordinance 2014 and the minimum tariff provisions in section 577 of that Ordinance. These offences are indictment-only.

Clause 444 includes the immediate family of the Queen, as provided by the Treason Act 1351. It also includes the killing (i.e. murder) of high officers of state as provided in that Act. The equivalent of 'Treasurer' could be the First Lord of the Treasury, or the Chancellor of the Exchequer. It seems appropriate to protect the former, as being also the Prime Minister.

Clause 446 imposes a time limit of 3 years for prosecutions for treason except for treason involving killing or endangering life.

Clause 447 creates an offence of assault on the Queen for which the maximum penalty is 7 years imprisonment and which can be tried summarily.

PART 17 – SECURITY

Introduction

This Part combines various provisions about the armed forces and the police and other public services as they are few in number and relate to similar issues. Several of the offences are in the Crimes Ordinance, which will be repealed. Some are from the Police Ordinance and those sections will also be repealed. The offence of assault on the police is at clause 72 in Part 4 where it comes next to assaults to resist arrest.

Note that under section 9 of the Police Ordinance reserve police officers are part of the police force so the provisions of this Part (as of other Parts of the Bill and the Criminal Procedure and Evidence Bill) will apply to them.

Notes on clauses

Clauses 448 to 452 relate to the armed forces of the Crown and are based on various UK statutes.

Clause 448 makes it an offence to incite disaffection among members of the armed forces.

Clause 449 makes it an offence to assist the desertion of a member of the armed forces.

Clause 450 prohibits the wearing of uniforms of the armed forces without the permission of the Governor. See also Part 21 for prohibition of wearing of uniforms for political objects, etc.

Clause 451 prohibits wearing a uniform in such a manner as to bring contempt on the uniform.

Clause 452 re-enacts an old offence that is still law in the UK and applies to the Falkland Islands. It prohibits unlawful drilling i.e. training or being trained in the use of arms, doing military exercises, etc., without the authority of the Governor.

Clauses 453 to 456 relate to the police force and reproduce provisions in the Crimes Ordinance which were based on the UK Police Act 1996. They were duplicated in the Police Ordinance.

Clause 453 makes it an offence to incite disaffection among police officers.

Clause 454 imposes a duty on all persons to aid police officers when called on, and makes it an offence to fail to do so. This is an exception to the long-standing common law principle that there is no duty to act to prevent the commission of a crime and although it is a common law offence in the UK it is rarely, if ever, used. It is quite contentious, particularly in regard to possible civil liability of the RFIP towards a person injured as a result of having been called upon to assist under this provision. Any positive act of obstruction, as opposed to a failure to assist, is an offence under section 455. Therefore it might be better to repeal s.32 of the Crimes Ordinance and to do away with this offence.

Clause 455 makes it an offence to obstruct a police officer in the performance of his or her duty, or to obstruct anyone assisting the police.

Clause 456 creates offences relating to impersonating a police, customs or immigration officer. The section heading is 'Impersonation' (as in the UK law) but the offence is of pretending to be any such officer. Sub-clause (1) requires a general intent to deceive, while (2) requires a specific intent to obtain a benefit. The term 'likely' to deceive is used rather than 'calculated' as that begs the question of who is calculating. The reverse onus of proof is acceptable in this context.

Clauses 457 to 460 re-enact provisions in the Crimes Ordinance about escapes from Custody derived from the common law and the Prison Act 1952.

Clause 457 creates the offence of escaping. Under the Crimes Ordinance the penalty for a prisoner escaping without using violence is 12 months whereas the penalty for a person assisting the prisoner to escape is 5 years. This seems anomalous and the penalty is therefore amended to 5 years for both.

Sub-clause (2) deals with a custodian of a prisoner negligently permitting a prisoner to escape. The original wording from common law and the Crimes Ordinance is 'voluntarily or negligently allows' a person to escape. However to voluntarily allow requires a positive act and would come under the more serious provision of OS10 with the higher penalty. The word 'voluntarily' is therefore omitted, so only negligent acts and omissions are included in this clause.

Clause 458 creates the offence of encouraging, aiding and abetting or assisting escape. The penalties are higher than they would be for an ancillary offence under Part 3, but persons cannot be prosecuted both under this section and Part 3.

Clause 459 defines the term 'legal custody' and says that if an offence is committed using violence, the penalty is double i.e. 10 years imprisonment.

Clause 460 is the offence of harbouring, which is the most serious offence related to escapes, carrying 10 years imprisonment. It comes from the UK Criminal Justice Act 1961.

Clause 461 combines 3 offences of raising a false fire alarm, wasting police time, and calling out an ambulance, etc. that are in the Crimes Ordinance.

Policy issues

- Whether to include the duty to assist the police in clause 454
- Whether the rationalisation of the penalties for escaping is acceptable
- Whether the penalty for negligently permitting escape in clause 457 is sufficient

PART 18 - JUDICIAL PROCEEDINGS

Introduction

This Part deals with offences relating to the courts, including intimidation etc of witnesses, jurors and others and contempt of court. The topic overlaps to some extent with provisions in the Criminal Procedure and Evidence Bill about reporting of court cases, vulnerable witnesses etc. but does not conflict with provisions of that Bill.

The contempt of court provisions are based on the common law and on the UK Contempt of Court Act 1981. That Act was expressly adopted by the Falkland Islands legislature by the Contempt of Court Ordinance of 1996. It was stated to be “To amend the law relating to contempt of court and related matters and in particular so as to bring the law of contempt into line with articles 6 and 10 of the Convention on the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4th November 1950, and for that purpose to apply the provisions of the Contempt of Court Act 1981 to the Falkland Islands.” This Part has the same effect, and the Ordinance will be repealed on commencement.

Other provisions are based on a variety of UK statutes. There is a provision about intimidation of jurors and witnesses in the Crimes Ordinance, section 50. This will be repealed.

The contempt of court provisions extend to the Court of Appeal, Supreme Court, Magistrate’s Court and Summary Court, but not to the Coroner’s Court which will be provided for in separate legislation.

The Part puts onto a statutory footing the common law offences of perverting the course of justice as well as concealment of evidence and intimidation of jurors.

For perjury and other offences in connection with judicial proceedings, see Part 19.

The term ‘judicial proceeding’ is defined in clause 2.

Archbold’s commentary on these offences is at Part 28. There are also offences of wasting police time etc. which can be included if desired.

Notes on clauses

Clause 462 imposes restrictions on the reporting of divorce and similar proceedings. The UK provision on which this is based is section 1 of the Criminal Justice Act 1925 which was repealed in the UK in 1948 but in the local circumstances could still be appropriate in a modified form.

Clause 463 prohibits the publication of information relating to proceedings before a court sitting in private if the proceedings relate to the welfare of children, the property of mental patients, national security (defined in clause 2 to include the Falkland Islands, UK, other British Overseas Territories and the Crown dependencies) or a secret process, discovery or invention.

Clause 464 is a saving for provisions of the Criminal Procedure and Evidence Ordinance 2014 relating to the reporting of sending proceedings, judicial proceedings which involve vulnerable witnesses and judicial proceedings which involve young offenders. It provides that an offence under any of those provisions committed in the face of the court may, instead of being prosecuted under those provisions, be treated as a contempt of court under this Part. The clause also saves the contempt of court provision in section 691 of that Ordinance which relates to reporting of retrials.

Clause 465 about taking of photographs etc. in court is still the law in the UK and is still appropriate in the Falkland Islands. The prohibition is only on photos etc. of people, not of the courtroom or precincts as such.

Clause 466 sets out in statutory form the common law offence of perverting the course of justice. This is still a widely used offence in the UK (a recent, notable prosecution was of the former MP Chris Huhne and his ex-wife Vicky Pryce for swapping road traffic penalty points.) The offence is the doing of some act which has a tendency to and is intended to pervert the administration of public justice. The commonly used expression ‘attempting to pervert’ is a misnomer and is misleading as this is not an inchoate offence.

Clause 467 on intimidation is based on section 51 of the UK Criminal Justice and Public Order Act 1994. It is about jurors as well as witnesses. This offence is in the Crimes Ordinance at s.50. The Crimes Ordinance specifies also a fine at level 10, but it is not necessary as the court has power to fine under section 589 of the Criminal Procedure and Evidence Ordinance 2014.

Clauses 468 to 475] set out in statutory form the law on contempt of court, including (but not limited to) the provisions of the UK Contempt of Court Act 1981 mentioned above.

Clause 468 makes the common law offence of contempt of the superior courts a statutory offence. It does not seek to define the offence, however, as there are many ways in which it can be committed and the UK case law will need to be relied on. The UK Act does not make contempt an offence, but this clause does so.

Clause 469 provides that the strict liability rule (that conduct may be treated as tending to interfere with the course of justice in particular legal proceedings regardless of intent to do so) only applies to publications.

Clause 470 declares it a contempt of court to obtain, disclose or solicit any particulars of statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations in any legal proceedings.

Clause 471 declares it a contempt of court to use in court, or bring into court for use, any tape recorder or other instrument for recording sound, except with the leave of the court.

Clause 472 gives the lower courts jurisdiction to deal with some types of contempt, i.e. insulting the court, witnesses, officers or legal practitioners, interrupting the proceedings of the court or otherwise misbehaving in court. The lower courts can also deal with persons who are in breach of clauses 470 and 471 or who publish reports of proceedings contrary to the provisions in the Criminal Procedure and Evidence Ordinance 2014 listed in clause 464.

Clause 473 sets the maximum penalty for contempt of court as 2 years imprisonment or a fine in the Supreme Court or Court of Appeal or one month's imprisonment or a fine at level 4 in the Magistrates' Court. It also contains procedural rules.

Clause 474 describes the times during which proceedings are active for the purposes of contempt of court.

Clause 475 contains supplementary provisions about sources of information, etc.

Policy issues

Whether to retain clause 462 on reporting of domestic proceedings which has been repealed in the UK.

PART 19 – PERJURY, ETC.

Introduction

This Part is based on the UK Perjury Act 1911 but includes provisions from the Criminal Justice Act 1967. The Perjury Act has not been amended much since it was enacted but the context of its provisions has changed and so have some of the penalties, as reflected in this Part. The Part does not include the provisions of section 7 of the Perjury Act on aiders and abettors as they are dealt with in Part 3 (Ancillary Offences). However, the offence of subornation of perjury is included as clause 479. The Part does not include section 8 of the Perjury Act on venue, which is not needed in the Falkland Islands.

The offences of perjury (clause 477), making a false statement on oath (clause 483) and false statements as to births and deaths (clause 485) are triable summarily, unlike the UK where they are triable on indictment only. The penalties are the same as in the UK, however.

The time limit for a prosecution in s.4 of the Perjury Act is not included as the offences are imprisonable so there is no time limit under s.182 of the Criminal Procedure and Evidence Ordinance 2014.

Notes on clauses

Clause 476 defines various terms, but not terms defined in the IGCO such as ‘oath’. The term ‘judicial proceedings’ is defined in clause 2.

Clause 477 creates the offence of perjury. It omits any mention of a ‘British tribunal’ but retains the reference to a British officer and the Admiralty court. The reference to ‘Her Majesty’s dominions’ will include all countries of which Her Majesty is Head of State. (See clause 445 in Part 16 (Treason Offences) for a similar usage.)

Clause 478 is about perjury before the European Court. It is based on the UK European Communities Act 1972. It is needed because the European Treaties apply to the Falkland Islands, although it will probably rarely be needed.

Clause 479 creates the offence of subornation of perjury in respect of the offences equivalent to sections 1 to 6 of the Perjury Act. The maximum penalty is set at 14 years imprisonment, making the offence a summary one, rather than being the same as for the substantive offence (as in the UK). Otherwise some subornation offences would be indictment-only and others would be summary.

Clause 480 about giving false unsworn evidence derives from section 57 of the Youth Justice and Criminal Evidence Act 1999. It is appropriate in this Part as it deals with false statements rather than the protection of witnesses. Section 56 of the 1999 Act about unsworn testimony of a child witness is in clause 352 of the Criminal Procedure and Evidence Ordinance 2014.

Clause 481 is about false written statements tendered in evidence.

Clause 482 creates an offence relating to unsworn statements made under the Evidence (Proceedings in Other Jurisdictions) Act 1975 (which applies to the Falkland Islands). It derives from section 1A of the Perjury Act which was added by the 1975 Act.

Clause 483 creates an offence about false statements on oath but not in judicial proceedings. The Bills of Sale Act 1978 is still law for the Falkland Islands.

Clause 484 creates an offence about false statements with reference to marriage.

Clause 485 creates an offence about false statements relating to births and deaths. There is no time-limit for prosecuting this offence, as in the UK.

Clause 486 is concerned with false statutory declarations and certain other statements, including statements made for the purposes of or in connection with civil proceedings. The term ‘statutory declaration’ is defined in the IGCO.

Clause 487 expands the offence about false written statements to include statements made for the purpose of or in connection with (but not in) civil proceedings.

Clause 488 about passports is not in the Perjury Act but is in the UK Criminal Justice Act 1925.

Clause 489 about nationality declarations is not in the Perjury Act, but is in the British Nationality Act 1981.

Clause 490 imposes a requirement for corroboration in respect of all offences under this Part. This is an extension of the rule in s.13 of the Perjury Act.

Clause 491 provides that on a prosecution for perjury in relation to the trial of an indictment, the fact of the former trial may be proved by the production of a certificate containing the substance and effect of the indictment.

Clause 492 relates to the form of an information or charge for perjury and is still in the Perjury Act. (There will not be indictments for these offences as they are triable summarily.)

Clause 493 is a saving for corrupt practice offences. It is still in the Perjury Act and is currently the law in the Falkland Islands. The reference in the Perjury Act to forfeiture or disqualification is not included as it is outdated.

PART 20 - BRIBERY AND PUBLIC OFFICE OFFENCES

Introduction

This Part is based on the UK Bribery Act 2010 and on common law. It replaces the common law offence of bribery and creates a number of new offences of bribery. It replaces laws about corrupt practices, which are now limited to elections and are controlled by electoral law.

The Part replaces the offences under the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906 and the Prevention of Corruption Act 1916 with two general offences covering the offer, promise and giving of an advantage or the request, agreeing to receive or acceptance of an advantage. The formulation of these two offences abandons the agent/principal relationship in favour of a model based on an intention to induce improper conduct.

The Part also creates a discrete offence of bribery of a foreign public official and a new offence of negligent failure of commercial organisations to prevent bribery.

In the Part, the person offering a bribe is referred to as 'P' and the person receiving a bribe is referred to as 'R'.

The maximum penalties are high – 10 years imprisonment for an individual and an unlimited fine for a corporation.

The Part abolishes embracery but puts on a statutory footing the common law offence of misconduct in public office.

The offence of bribery is dealt with in Archbold at Part 31. Misconduct in public office is at para.25-403.

Notes on clauses

Clause 494 creates the offence of bribing another person. The Bribery Act states the maximum penalty as 10 years imprisonment or a fine or both, but the fine does not need stating in Falkland Islands as section 589 of the Criminal Procedure and Evidence Ordinance 2014 gives power to fine in addition.

Clause 495 creates the offence of being bribed.

Clause 496 sets out the function or activity to which a bribe might relate.

Clause 497 sets out the improper performance to which a bribe might relate.

Clause 498 introduces an expectation test.

Clause 499 creates the offence of bribery of foreign public officials as required by the EU Convention on Corruption. Same comment as above in relation to an individual.

Clause 500 creates the offence of failure of a commercial organisation to prevent bribery.

Clause 501 defines “associated person”.

Clause 502 empowers the Governor, after consulting the Criminal Justice Council, to issue guidance about commercial organisations and the prevention of bribery.

Clause 503 puts on a statutory footing the common law offence of misconduct in public office. It would include e.g. sale of an office and failure to perform an office. The definition of ‘public officer’ in the IGCO is “any person holding an office or emolument under the Crown in right of the Government of the Falkland Islands, whether such office be permanent or temporary.” So the offence would extend to judicial officers.

As this was a common law offence the maximum penalty was not fixed, but in this clause a maximum penalty of 14 years is specified. The offending behaviour can vary widely in complexity and seriousness and this penalty will give the court a full range of sentencing powers. The leading case on this offence in the UK is Attorney General’s Reference No. 30 of 2010 [2010] EWCA Crim 2261. The Court of Appeal ruled that the original sentence of 3 years imprisonment was unduly lenient and increased it to 6 years. The Court held that misconduct in public office can be committed in very varied circumstances. The gravity of the offence will vary enormously but offences involving serving public officials misusing access to confidential records; provision of long term intelligence to criminals; the receiving of any incentive; and impact on police operations will all be seriously aggravating features. The suggested maximum penalty will give the court wide discretion in dealing with such cases.

Clause 504 requires the Attorney General’s consent for a prosecution under the Part.

Clause 505 establishes limited extraterritorial scope for offences of bribery.

Clause 506 creates a defence of legitimate purpose relating to the security services and the armed forces.

Clauses 507 and 508 create special rules about offences committed by corporations and partnerships.

Clause 509 applies the Part to servants of the Crown. This clause is strictly speaking not needed as the Ordinance will be stated to bind the Crown, but it makes it clear that public servants are liable for bribery offences.

Clause 510 abolishes the common law offences of bribery and embracery.

Policy issue

Whether the maximum sentence for misconduct in public office in clause 503 is acceptable.

PART 21 - PUBLIC ORDER

Introduction

There is no separate Falkland Islands law on the subject of public order (except one section of the Crimes Ordinance), but there are various UK laws which apply to the Falkland Islands and which are intended to maintain public order and to prevent breaches of the peace. This Part brings those laws together.

The Falkland Islands Constitution provides for freedom of assembly (section 14), but the freedom can be made subject to restrictions in the interests of defence, internal security, public safety, public order, public morality or public health, to protect the rights and freedoms of other persons. This balance is achieved in the UK by the Public Order Act 1986, as amended, most of which applies to the Falkland Islands.

This Part incorporates provisions of the Public Order Act 1986, as amended, dealing with riot and violent disorder, affray, threatening and abusive behaviour and disorderly conduct. It does not include the provisions dealing with unlawful processions which have been expressly disappplied to the Falkland Islands. It includes provisions about ‘raves’ based on the Criminal Justice and Public Order Act 1994, but not those about trespassory assemblies which have been disappplied. It also includes provisions on disguises, bomb hoaxes and military uniforms, and ends with a miscellaneous group of offences concerned with breaches of the peace, some of which are quite old but are still in English law.

Section 45 of the Crimes Ordinance on disorderly behaviour is incorporated at clause 534.

Sections 4A and 5 of the Public Order Act, which refer to behaviour that can cause harassment, alarm or distress, are included in this Part rather than in Part 6 as they amount to disorderly conduct with harassment being one of three possible outcomes, rather than harassing behaviour itself.

Provisions relating to offensive weapons, explosive substances and criminal trespass are also dealt with separately in the Bill – see Parts 7, 8 and 24 respectively.

Racially or religiously aggravated public order offences as in sections 18 to 29 of the Public Order Act and the Crime and Disorder Act 1998 are dealt with in Part 22.

The Part does not include protection of animal research organisations (Archbold para. 29-72), as there is no such organisation in the Falkland Islands.

The Part does not include the common law offences of defamatory libel or blasphemous libel, as they are virtually extinct and are not appropriate in the Falkland Islands.

The Part does not include a power of arrest without warrant for public order offences. This power, reflecting the provisions of the UK Police and Criminal Evidence Act 1984, is contained in the Criminal Procedure and Evidence Ordinance 2014.

Provisions of the UK Acts which require the Secretary of State to approve e.g. a direction by the Chief Police Officer are replaced by a similar power for the Governor.

The Part contemplates that regulations will be made by the Governor under section 786 of the Criminal Procedure and Evidence Ordinance 2014 about disposal of seized vehicles etc. See also s.90 of the Interpretation and General Clauses Ordinance on this point.

The Part does not affect the power of the Governor to make Emergency Regulations under the UK Emergency Powers Acts.

There is a commentary on the Public Order Act at Archbold 2013 Ed. paras. 29-1 to 29-71.

The summary offences are not covered by that work but are considered in Archbold: Magistrates' Courts Criminal Practice.

Notes on clauses

Clauses 512 to 517 re-enact the offences of riot, affray, etc. contained in sections 1 to 6 of the Public Order Act. Clause 518 abolishes common law riot, etc. as a consequence.

Clauses 516 and 517 involve intentionally abusive behaviour and disorderly conduct and are based on sections 4A and 5 of the UK POA 1986 as amended in 2013. The term 'insulting' was removed from section 5 of the POA 1986 by the UK Crime and Courts Act 2013.

Clause 516 makes it an offence for a person, with intent to cause harassment, alarm or distress, to use threatening abusive or insulting words or behaviour or disorderly behaviour, or to display any writing or sign which is threatening abusive or insulting, if the conduct causes another person harassment, alarm or distress.

Clause 517 creates a similar but less serious offence where no intent as to the effect upon the victim is required but still proscribes behaviour which is threatening or abusive even if its effect was unintentional. The word 'insulting' was removed from the UK version of this clause by the Crime and Courts Act 2013 because of the lack of intent as to consequence required for the commission of the offence.

The defence of reasonableness applies to both the intentional and the basic offence.

Clause 518 specifies the mental element involved in each of the offences.

Clauses 521 to 525 enact in local law the offences relating to the phenomenon known as a 'rave' contained in the UK Criminal Justice and Public Order Act 1994.

Clause 521 uses the phrase "is likely to disturb the peace and quiet of persons living in the locality." The UK Act uses "cause serious distress to inhabitants of the locality."

The term 'exempt person' used in clause 522 is defined in clause 511.

Clauses 526 and 527 regulate the wearing of disguises and the wearing of uniforms, as in the 1994 Act.

Clause 528 enacts in Falkland Islands law the offence of contamination of or interference with goods which is in the 1986 Act.

Clause 529 enacts the offence of causing public alarm or anxiety by bomb hoaxes which is in the Criminal Law Act 1977. The UK Chief Justice Act 1991 amendment was disapplied so the penalties are as in the 1977 Act.

Clauses 530 and 531 relate to military uniforms and are based on the Public Order Act 1936 which is still law in England and Wales.

Clause 532 prohibits offensive conduct conducive to a breach of the peace, and saves the common law offence.

Clause 533 is derived from section 29 of the UK Town Police Clauses Act 1847 which was disapplied to the Falkland Islands. The offence of disorderly conduct in a police station (or "place of lawful custody" as defined in clause 2) is a useful offence and, despite its age, is still used widely in the UK to deal with minor but disruptive behaviour committed by persons under arrest (or their supporters) whilst detained, but falling short of a full public order offence.

Clause 534 prohibits disorderly or indecent behaviour while intoxicated and is based on section 91 of the Criminal Justice Act 1967. Other offences relating to drunkenness are in the Licensing Ordinance; see also clause 81 about being drunk in charge of a child.

Policy issues

- Whether to include the prohibition on raves.
- Whether the change of wording in clause 521 is acceptable as it is a lower test.
- Whether to include clause 533 on disorderly conduct in a place of lawful custody.

PART 22 – HATE CRIMES

Introductory

This Part creates a number of offences relating to the expression of hatred or hostility based upon a person's perceived race, religion or sexual orientation. In the UK they are collectively referred to as Hate Crimes. They are similar to public order offences as the purpose of the legislation is to prevent public displays of discriminatory abuse which might lead to public disturbances. The legislation also marks public disapproval of such behaviour by an increase in the penalties for the commission of various types of offences motivated by such hatred.

There are already some offences in Falkland Islands law based on the pre-2004 UK law relating to racial hatred. Clauses 536 to 547 restate and update those provisions and add offences based on religious hatred and hatred of sexual orientation which have been introduced in the UK since 2004. Clauses 555 to 559 then deal with various offences – assaults, damage, public order and harassment – that are aggravated by hatred and that carry a higher maximum penalty than the basic offence.

The provisions of the Part are based mainly on sections 18 to 29 of the Public Order Act 1986 as amended by the Racial and Religious Hatred Act 2006 and the Criminal Justice and Immigration Act 2008; and on sections 28 to 32 of the Crime and Disorder Act 1998 as amended by the Anti-terrorism, Crime and Security Act 2001.

One difference from the UK law is in clause 553, based on section 29J of the UK Racial and Religious Hatred Act 2006. It is modified by adding a reference to what is reasonably justifiable in a democratic society (as in sections 8 to 16 of the Falkland Islands Constitution.)

Notes on clauses

Hate crimes

Clauses 536 to 554 derive from:

- a) the provisions on race hatred in the UK Public Order Act 1986 that were amended by the Racial and Religious Hatred Act 2006 to include religious hatred and then amended again to include hatred based upon sexual orientation in the Criminal Justice and Immigration Act 2008;
- b) provisions of the UK Theatres Act 1968 in relation to stage performances that were incorporated by reference in the Public Order Act 1986;
- c) the saving for freedom of religious expression in section 29J of the 2006 Act (clause 553).

It is notable that the two types of offences i.e. clauses 536 to 541 and 542 to 547, differ in subtle but important ways. An offence of racial hatred – clauses 536 to 541 - can be committed by using either threatening, abusive or insulting words or behaviour either with specific intent to stir up racial hatred or with the result that racial hatred is stirred up.

An offence of religious hatred or hatred on the grounds of sexual orientation – clauses 542 to 547 - can only be committed if threatening words or behaviour are used with the specific intent of stirring up hatred.

The differences derive from the controversy caused by the proposed amendment to include religious hatred when it was first introduced in the UK after the 11 September 2001 bombing of the World Trade Center. The UK Government brought forward the Anti-Terrorism, Crime and Security Bill, clause 38 of which proposed an amendment to extend existing racial hatred provisions to cover religious hatred. When the Bill reached the House of Lords, an amendment to remove the clause was passed by 240 votes to 141. The Commons reinstated the clause, but the Lords again removed it. Finally, the Government had to accede to the Lords' insistence that the clause be left out of the Bill, in order for it to pass.

The Government brought the proposal back before Parliament in the Serious Organised Crime and Police Bill in the spring of 2005. During the Lords debate on the relevant section of the Bill, on 5 April 2005 (the day on which the general election was called), the provision was removed. When the Bill returned to the Commons on 7 April, the Government announced that it was dropping the measure so as to secure the passage of the Bill as a whole before the dissolution of Parliament.

The amendment was then included in the Racial and Religious Hatred Bill later in 2005 after the General Election. Critics of the Bill in its unamended form asserted that as drafted, (mirroring the existing racial hatred provisions) it would make major religious works such as the Bible and the Qur'an illegal in their current form. Comedians and satirists also feared prosecution for their work and aired their objections vociferously in the media. Leaders of major religions and race groups, as well as non-religious groups, also expressed objections to the Bill. There was particular concern that the Bill would not be Human Rights Act compliant by limiting the rights of freedom of religion and expression.

The House of Lords passed amendments to the Bill which removed the abusive and insulting concepts, and required the intention — and not just the possibility — of stirring up religious hatred. The Government attempted to overturn these changes, but lost the House of Commons vote on 31 January 2006 and the Bill passed with the amendments as drafted here. A subsequent amendment to include hatred on the grounds of sexual orientation on the same basis as religious hatred was added in 2008.

At present only the racial hatred offences – clauses 536 to 541 - are in force in the Falkland Islands, as the amendments came after the cut-off date for automatic updating. It is for consideration whether to follow the UK legislative provisions as in clauses 542 to 547 or to include religious and sexual orientation hatred offences on the less restrictive basis that currently applies to racial hatred offences.

Aggravated offences

Clauses 555 to 560 are about racially and religiously aggravated offences and are derived from provisions of the UK Crime and Disorder Act 1998 as extended to religious aggravation by the Anti-Terrorism Crime and Security Act 2001.

These provisions appear at first sight to place defendants in double jeopardy for the same offence. However, as the penalties for the aggravated offence are higher than those for the basic offence in each case, the legislative scheme is that a person can either be prosecuted for the 'basic' offence i.e. criminal damage, assault, public disorder or harassment, or for the aggravated offence. If the court does not find the aggravated offence proved, it can still convict of the 'basic' offence under clause 560.

Clause 560 on alternative verdicts is adapted from the UK provisions to apply to all the offences in this group and to the Magistrates' Court as well as the Supreme Court. There is a more general provision relating to alternative verdicts in Part 2 of this Bill.

There is a general power of arrest without warrant in relation to all these offences in the Criminal Procedure and Evidence Ordinance, based on the UK Police and Criminal Evidence Act 1984. There are entry and search provisions in clause 548 which are in addition to the PACE provisions in the Criminal Procedure and Evidence Ordinance.

Policy issues

Whether to follow the UK legislative provisions as in clauses 542 to 547 or to treat religious and sexual orientation hatred offences on the less restrictive basis that currently applies in Falkland Islands to racial hatred offences.

PART 23 – PUBLIC NUISANCES

Introduction

This Part contains a few clauses relating to nuisance offences which do not fit into other Parts. It is called 'Public Nuisances' to distinguish the offences from the civil wrong of nuisance.

Some of the provisions of this Part might seem rather archaic, but the English laws on which they are based are still law in England and Wales and therefore apply in the Falkland Islands by virtue of Chapter X of the IGCO. They include the Vagrancy Act 1824 (c.83), the Metropolitan Police Act 1839 (c.47), the Town Police Clauses Act 1847 (c.89). Provisions that have been repealed in the UK are not included if there are equivalent provisions elsewhere in the Bill. Offences under the UK Licensing Act 1872 (c. 94) and the Licensing Act 1902 (c.28) are contained in the Licensing Ordinance which is not replaced in this Bill.

The offence of noise nuisance is based on provisions in the Gibraltar Crimes Act and the St Helena Crimes Bill, which followed earlier precedents on the topics

Notes on clauses

Clauses 561 and 562 deal with noise nuisance and are based on simplified versions of the UK legislation.

Clause 561 is based on the Gibraltar version of noise nuisance, designed for small communities. It makes it an offence to make noise, whether from musical instruments or singing or otherwise, if it causes offence or is likely to cause annoyance or distress to a reasonable person having regard to the time of day, or causes a breach of the peace. The hours between 11 p.m. and 6 a.m. are deemed to be quiet hours and a lower level of noise is to be considered tolerable by a

reasonable person. A police officer may, instead of taking proceedings, request the person concerned to reduce the level of noise or to stop making it or take any steps required to reduce the level of noise or to stop the making of it.

Clause 562 empowers the Governor (i.e. in Council) to issue a permit for a public performance, a fair or other event, to named persons, to make noise that is in breach of section 561, subject to conditions.

Clauses 563 and 564 relate to danger in public places and obstruction in the streets. They are based on provisions in the 1839 Act and in the Town Police Clauses Act 1847. The language and scope has been updated to apply to present-day Falkland Islands. The power to dispose of goods is to be exercised at the direction of the Governor.

Clause 565 is about bill-posting. If the owner of the premises consents, posters can be placed anywhere, subject to other laws about indecency, etc. Sub-clauses (1) and (2) place the burden of proving absence of consent on the prosecution, in line with modern evidentiary principles.

Clause 566 creates a single offence of begging based on proposed Irish law set out in a report of the Irish Law Commission. It replaces the old UK law against begging under section 4 of the Vagrancy Act 1824 which, in its amended form, is still in use today. The UK offence carries a maximum penalty of 3 months imprisonment and reads –

“Every person wandering abroad and lodging in any barn or outhouse, or in any deserted or unoccupied building, or in the open air, or under a tent, or in any cart or wagon, and not giving a good account of himself or herself; every person wilfully openly, lewdly, and obscenely exposing his person with intent to insult any female;
every person wandering abroad, and endeavouring by the exposure of wounds or deformities to obtain or gather alms;
every person going about as a gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind, under any false or fraudulent pretence;
every person being found in or upon any dwelling house, warehouse, coach-house, stable, or outhouse, or in any enclosed yard, garden, or area, for any unlawful purpose with intent to commit an imprisonable offence;
and every person apprehended as an idle and disorderly person, and violently resisting any constable, or other peace officer so apprehending him or her, and being subsequently convicted of the offence for which he or she shall have been so apprehended [subject to section 70 of the Criminal Justice Act 1982] it shall be lawful for any justice of the peace to commit such offender (being thereof convicted before him by the confession of such offender, or by the evidence on oath of one or more credible witness or witnesses,) to the house of correction, . . . for any time not exceeding three calendar months.”

There is no equivalent offence as set out in sub-clause (2) relating to children.

Policy issues

- Whether to include the noise nuisance provisions as in the Gibraltar law.

- Whether to include the begging offence as in the Irish proposals or revert to the 1824 Act offence, duly updated.

PART 24 – CRIMINAL TRESPASS

Introduction

Trespass on land is not itself an offence, but trespass may be criminal in certain circumstances and this Part sets out those circumstances.

Currently under Falkland Islands legislation there are only two offences of criminal trespass. Under the Trout and Salmon Fishing Regulations it is an offence to enter private land to fish or capture trout and salmon without permission of the landowner; and under the Stanley Airport Regulations it is an offence to trespass on lawns and planted areas at the airport.

For the offence of entering a minefield, see clause 187(1)(a). Trespassory assembly is an offence in the UK but is not included in Part 21. The offence of trespass with intent to commit a sexual offence is in Part 10 – see clause 282. Entry as a trespasser is an element in burglary under clause 355.

There are more general criminal trespass laws in the UK that apply to the Falkland Islands and this Part re-enacts them with appropriate modifications. They are a distinct group, although they overlap to some extent with public order offences and offences of damage to property. They are derived from the UK Criminal Law Act 1977 and the UK Criminal Justice and Public Order Act 1994.

The 1977 Act set out the common law rules about criminal trespass. The 1994 Act introduced new offences of aggravated trespass and unauthorised camping. They were prompted by the need to prevent confrontations between owners of premises and squatters, including ‘travellers’ (gypsies). There might not be the same problems in the Falkland Islands but the 1994 Act applies by virtue of Part X of the IGCO and it is appropriate that its trespass provisions be included in this Bill for consideration.

The offences in this Part are based on those laws, but expanded in some cases in line with provisions in the Gibraltar Crimes Act and the St Helena Crimes Bill.

Criminal trespass is a summary offence in the UK so is not dealt with in Archbold’s Criminal Pleading, Evidence and Practice (which deals with indictable offences.) However, reference can be made to Part 16 of Archbold’s Magistrates’ Courts Criminal Practice.

Notes on clauses

Clause 567 defines various terms used in the Part that are not defined elsewhere, such as ‘site’, or that have different meanings in this Part from other Parts of the Bill, such as ‘premises’. (In this Part, ‘land’ includes ‘premises’.)

Criminal trespass

Clause 568 is based on sections 61 and 62 of the UK Criminal Justice and Public Order Act 1994 which give police officers power to direct trespassers to leave land. The UK Act deals only with

trespass by 2 or more persons with a common purpose where there are elements of violence or damage or vehicles are left on the land. The clause is expanded to include trespass by a single person where there is violence or damage. The power of direction is given to a police officer of the rank of inspector or above.

Clause 569 is based on offences contained in the Gibraltar Criminal Offences Act and repeated in the new Crimes Act. It makes it an offence to forcibly enter any land, or to forcibly hold any land against a person with a lawful title. Forcible entry is entering onto land in a violent manner in order to take possession of it, even by the owner, except as against a servant or agent. Forcible holding is holding onto land when not entitled to it, in a manner likely to cause a breach of the peace.

Clause 570 is based on section 6 of the UK Criminal Law Act 1977. It relates only to premises, and does not require actual entry. It is particularly useful in the context of domestic violence cases.

Clause 571 is based on offences contained in the Gibraltar Criminal Offences Act and repeated in the new Crimes Act. It creates an offence of remaining on public premises after being required to leave by a police officer acting on a request by the lawful occupier. The clause is an extension of the concept of trespass and complements clause 572 as it does not require an intention to reside in the premises.

Clauses 572 to 574 are new provisions based on sections 12 and 12A of the UK Criminal Law Act 1977 as amended by the Criminal Justice and Public Order Act 1994. They are aimed at the problem of squatters in supposedly unoccupied houses and are intended to protect displaced residential occupiers and intending residential occupiers. The concept in the UK law of a 'protected intending occupier', involving notarised documents etc., has been simplified to one of intention and written request. However, an offence is only committed if a trespasser refuses to leave within 48 hours after a notice is served either in person or by being affixed to the premises.

Clause 575 is a recent addition to the UK statute book (LASPO Act 2012 s.144) and prohibits squatting in residential buildings. It supplements the criminal trespass provisions by not requiring a demand for repossession by an intending residential occupier.

Aggravated trespass

Clauses 576 and 577 are based on sections 68 and 69 of the UK Criminal Justice and Public Order Act 1994. They create the offence of aggravated trespass, when a person trespasses on land in a manner which intimidates the occupiers or obstructs or disrupts a lawful activity on the land.

Clause 577 gives a senior police officer the power to direct persons who are committing aggravated trespass the power to direct them to leave. If they fail, an additional offence is committed.

Clause 578 creates the offence of trespassing with a weapon of offence, as in section 8 of the UK Criminal Law Act 1977. The maximum penalty of 6 months is twice that in the UK, as 3 months

is rather low for this offence in the modern context. The clause includes the offence of trespassing with a firearm, as this is in section 20 of the UK Firearms Act 1968 but is not in the Firearms Ordinance.

Unauthorised camping

Clauses 579 to 581 introduce new provisions about removal of unlawful campers and their vehicles, including caravans. They are based on sections 77 to 79 of the UK Criminal Justice and Public Order Act 1994 which were originally enacted to deal with the problem of trespass by 'travellers' or 'gypsies'.

Under clause 579 the Chief Police Officer can direct persons living in a vehicle on a highway, on unoccupied land or on occupied land without the consent of the owner, to leave the land and remove the vehicle. Failure to leave as soon as practicable, unless because of illness or mechanical breakdown, is an offence.

Under clause 580 the Chief of Police can apply to the Magistrate's Court or the Summary Court for an order if a person disobeys a direction under clause 579. The court can order removal of a vehicle left on land contrary to an order under clause 579, and any people in it. Obstructing the police when carrying out an order will be an offence.

Clause 581 has supplementary provisions about orders in relation to camping. It says how notice of directions and orders is to be given to various persons.

Clause 582 creates an offence of camping on Government land. It has been included in the Gibraltar Crimes Act and the St Helena Crimes Bill and seems appropriate also in the Falkland Islands.

Designated sites

Clause 583 derives from section 128 of the UK Serious Organised Crime and Police Act 2005. It enables the Governor to designate sites which must not be trespassed upon, and is concerned more with protection of the environment. The designation can only be of Crown land, or in the public interest. It is an offence to enter on designated land as a trespasser.

Policy issues

- Whether the UK criminal trespass laws as modified in this Part should be included in the Bill
- Whether to include the camping offences

PART 25 – HARMFUL AND OBSCENE PUBLICATIONS

Introduction

This Part contains two main groups of offences, one dealing with harmful publications, and the other with obscene publications. It also includes related offences about unsolicited sexual material and indecent displays based on UK laws that apply to the Falkland Islands. It is in addition to the provisions of Part 10 on pornography involving youths.

The Part incorporates provisions of the UK Children and Young Persons (Harmful Publications) Act 1955 and the UK Obscene Publications Act 1959 as amended by the Courts Act 1971, the Criminal Law Act 1977 and the Criminal Justice and Public Order Act 1994. It includes at clauses 591 and 595 provisions from the St Helena Obscene Publications Ordinance which would be useful in the Falkland Islands.

The Part includes amendments as to powers of arrest and penalties made by the UK Video Recordings Acts 1984 and 2010 (the VRA) and the Customs Consolidation Act 1876 as amended in 1979. The system of classification of video recordings was abolished in the UK, and film classification is dealt with under other legislation, but the power of arrest under the VRA is retained in clause 593(1).

The term ‘harmful’ is defined by reference to the effect of a publication on children and young persons. The term ‘obscene’ is defined in clause 588. The term ‘publication’ as meaning a thing is defined in section 4 of the IGCO and includes electronic publications and copies.

The term ‘publication’ as meaning an activity is defined in the UK laws, but it is confusing, and the term ‘distribution’ is used in this Part in preference. It is defined in clause 589. The term ‘publication or article’ in this Part refers only to a thing, (a newspaper etc.) while ‘distribution’ is an activity.

The term ‘indecent’ is not defined in English law but is defined in Part 10 (Sexual Offences – see section 203).

The UK laws include forfeiture powers on a conviction, but they are no longer necessary in general as section 617 of the Criminal Procedure and Evidence Ordinance confers power to order deprivation of relevant items in all cases where there is a conviction of an offence. However, specific forfeiture powers are included at clause 593 in relation to things found on premises that do not lead to a conviction. The more likely scenario, however, is that if no charge is brought in respect of seized material, either the items are not obscene and can be returned, or they are and the owner signs a disclaimer and they are destroyed.

Notes on clauses

Clause 584 contains definitions for the Part other than those in the IGCO or in clause 2. The term ‘article’ includes moving images, so that video games will be covered by the term and their importation can be prohibited.

Sub-clause (2) gives the Governor in Council, after consulting the Criminal Justice Council, power to declare harmful publications, rather than leaving the courts to decide what they are. They are in effect ‘graphic’ books and magazines likely to fall into the hands of youths (i.e. anyone under the age of 18) which portray the commission of crimes, acts of violence or cruelty, or incidents of a repulsive or horrible nature.

Sub-clause (6) makes it clear that this Part does not affect the provisions of Part 10 (Sexual Offences) relating to indecent photographs of youths, prohibited images of youths, or extreme pornographic images.

Harmful publications

Clauses 585 to 587 deal with harmful publications. The harmful publications are primarily the ones covered by the UK Children and Young Persons (Harmful Publications) Act 1955.

Clause 585 creates an offence of importation of harmful publications. This is more direct than the UK approach which only declares them to be prohibited for purposes of the Customs laws. The declaration of a publication as prohibited also triggers sanctions under the customs legislation. The 1955 Act does not make it an offence to import harmful publications, presumably because if an import is prohibited it can be dealt with under the UK customs legislation. (See a similar point in clause 404 on counterfeiting.) To avoid that circuitous route, clause 585(2) gives the Governor power to declare items to be harmful publications. (The power should only be used to prohibit harmful publications as defined and not politically objectionable publications.)

Clause 586 creates the offence of printing etc. harmful publications.

Clause 587 makes it clear that the PACE powers of search and seizure in Part 3 of the Criminal Procedure and Evidence Ordinance 2014 apply to harmful publications, and the deprivation powers in section 617 of that Ordinance also apply.

The UK Children and Young Persons (Harmful Publications) Act 1955 was introduced in response to the publication of horror comics which had become popular in the 1950s. The issue was drawn to the attention of Parliament by the National Union of Teachers and by the Archbishop of Canterbury who were concerned as to the content of some of these comics. The Act originally included a sunset clause under which the Act was to expire on 31 December 1965, unless Parliament decided otherwise. The Expiring Laws Act 1969 made the Act permanent but it has rarely been used. There were no prosecutions under the Act until 1970, when there were two. The Attorney General refused to prosecute in 46 other cases between 1955 and 1982. Crown Prosecution Service records indicate that between April 2004 and 10th June 2014 there have been no prosecutions for an offence under this Act in England and Wales.

There are potential difficulties in interpretation of the phrase ‘incidents of a repulsive or horrible nature’ which is not defined, and there is no available case law on the issue. It is for consideration whether this legislation is obsolete in a digital and electronic age and should not be included in the Falkland Islands criminal code.

Obscene publications

Clauses 588 to 595 relate to obscene publications. They are based on the UK Obscene Publications Act 1959 as amended by the Courts Act 1971, the Criminal Law Act 1977 and the Criminal Justice and Public Order Act 1994. In the UK the search and seizure provisions have been amended by the PACE Act 1984, but the 1959 powers have not been repealed. The penalties have also been altered by the Criminal Justice Act 2003.

In the UK, the 1959 Act has been extended to broadcasts by the Broadcasting Act 1990. The Postal Services Act 2000 also has provisions about obscene articles and the Theatres Act 1968

has provisions about obscenity on the stage. These provisions are either covered by the definition of ‘article’ and ‘publication’ or are not required in the Falkland Islands.

The provisions in the UK Protection of Children Act 1978 about taking indecent photographs of children are included in Part 10 (Sexual Offences).

Clause 588 provides the basic definition of obscenity, by reference to the circumstances in which a publication or article is likely to be seen. The UK case law has added the words ‘as a result of the publication’ to the words ‘read, see or hear’, but they not included as they are self-evident. The term ‘programme service’ is defined in clause 2.

Clause 589 defines the term ‘distribution’ in a similar way to the definition of ‘publication’ as an activity in the UK law.

Clause 590 prohibits the distribution or possession for gain of obscene publications or articles.

Clause 591 prohibits the manufacture, import or export of obscene publications or articles.

Clause 592 abolishes the common law offence, but not the offence of conspiracy to corrupt public morals, as the agreement is the essence of that offence.

Clause 593 confers a power of forfeiture of publications or articles on suspicion of them being obscene. This power is different from that in s. 617 of the Criminal Procedure and Evidence Ordinance as it is available on suspicion without a conviction following. It provides for the owner of a publication or article to apply for its return.

Clause 594 provides a defence in relation to the publication of obscene matter based on the public good in the promotion of the arts etc. This is the ‘Lady Chatterley’ defence and makes prosecutions under this Part quite problematical, but it is needed to meet human right requirements and was included in the UK law by the Criminal Law Act 1977. The UK makes separate provision for films but as they are within the definition of article’ this clause treats them in the same way.

Clause 595 creates an offence of assisting the commission of an offence overseas. It is based on a provision in the St Helena law but is also necessary in the Falkland Islands as it implements an international agreement entered into by the UK in 1923 in respect of all its territories.

Other provisions

Clause 596 makes it an offence to send unsolicited publications with a sexual content through the post. It is based on a provision in the UK Unsolicited Goods and Services Act 1971. Other provisions of that Act are in Part 15.

Clause 597 prohibits the public display of indecent material, based on the UK Indecent Displays (Control) Act 1981. The Act permits ‘sex shops’ to operate if they display signs indicating the nature of the display and prevent people under 18 from passing beyond the signs but that provision is not required in the Falkland Islands so there is no exception to the prohibitions. A

deprivation order under section 617 of the Criminal Procedure and Evidence Ordinance 2014 can be made in respect of material the subject of a conviction under this section.

Policy issue

Whether to keep the harmful publications provisions in 585 to 587 – see comments under those clauses above.

CHAPTER 4 – SUPPLEMENTARY PROVISIONS

PART 26 – MISCELLANEOUS AND TRANSITIONAL

Introduction

This Part contains miscellaneous provisions, including the repeal of the Crimes Ordinance and other criminal laws of the Falkland Islands, the disapplication of UK laws on the subject, and transitional and consequential provisions.

Notes on clauses

Clause 598 provides for the service of documents by various means, in addition to service by post which is governed by section 9 of the Interpretation & General Clauses Ordinance (IGCO). It includes service by electronic means, if the recipient has facilities to receive such communications. Sub-clause (2) governs service on corporations.

Clause 599 enables the Chief Justice to make criminal procedure rules, after consulting the Criminal Justice Council as constituted by Part 35 of the CPE Ordinance and to issue practice directions after so consulting. Such directions usually supplement the rules but could be displaced by them if necessary. There are similar powers in section 785 of the CPE Ordinance, but it is appropriate to have them in both Ordinances as the rules and directions may cover issues specific to one Ordinance or the other.

Clause 600 enables the Governor, after consulting the Criminal Justice Council, to amend any of the Schedules. An order would need to be laid on the table of the Legislative Assembly and would be subject to section 36 of the IGCO.

Clause 601 repeals the Ordinances listed in Part A of Schedule 5 and the individual sections listed in Part B. It also disapplies the UK enactments listed in Part C of that Schedule. The term ‘disapply’ is given a meaning for this purpose, by reference to the powers in Chapter X of the IGCO which enables the Governor to declare UK enactments never to have been adopted.

One of the repealed Ordinances is the Crimes Ordinance, which has in Schedule 1 a list of UK enactments on criminal law that apply to the Falkland Islands. The effect of clause 600 is that Schedule 1 and all the UK Acts listed in it cease to have effect.

The clause also declares there to be no more common law offences in the Falkland Islands. This reverses the effect of section xx of the Crimes Ordinance and is consistent with a codification of laws exercise.

Clause 602 saves subsidiary legislation made under the repealed and disapplied laws that could be made under this Ordinance. It also saves directions, exemptions, notices and other non-

legislative instruments made or issued by the Governor or any person or body under any of the repealed Ordinances.

Clause 603 makes transitional provisions in respect of criminal cases and appeals that are in progress when the Ordinance comes into force. They are the rules that normally apply when replacing criminal offence provisions. The term ‘proceedings’ is not defined in the Bill or in the CP and E Bill (nor in UK law) but criminal proceedings before the Magistrate’s Court or the Summary Court are at present instituted by the laying of an information before a justice of the peace or by bringing before the court a person arrested without a warrant. Charging a person is not a step in proceedings, therefore, and a person may be charged under the repealed Ordinances but brought to court under the new Ordinance, if it comes into force overnight.

Clause 604 makes consequential amendments to other enactments arising from the enactment of this Bill. It does this in broad terms by way of reference, and does not spell out the textual changes. These will be included in the ongoing revision of the Laws of the Falkland Islands.

Sub-clause (3) enables the Governor in Council by order to declare any other consequential amendments that might be required.

Clause 605 provides that the Ordinance is binding on Crown. This is needed to displace the opposite rule in section 66 of the IGCO. All Government officers will therefore be liable to prosecution for offences under the Ordinance.

Schedule 5 lists the Falkland Islands Ordinances and individual provisions that are repealed and the UK enactments that are disapplied as a result of their provisions being incorporated in this Bill. It does not list the UK Acts in Schedule 1 to the Crimes Ordinance, as these are repealed ‘en bloc’ by the repeal of the Ordinance. UK statutes since the ‘cut-off’ date of 31 July 2004 are not included in the Schedule because they do not apply to the Falkland Islands. See the General Introduction to these Explanatory Notes for a list.

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CRIMES BILL 2014

(No. of 2014)

(assented to: 2014)

(commencement on:)

(published: 2014)

A BILL

for

AN ORDINANCE

To consolidate and partially codify the law relating to criminal offences; and for connected purposes.

BE IT ENACTED by the Legislature of the Falkland Islands —

CHAPTER 1 - PRELIMINARY

PART 1 – PRELIMINARY AND INTERPRETATION

1. Title and commencement

(1) This Ordinance may be cited as the Crimes Ordinance 2014.

(2) This Ordinance comes into operation on a day or days appointed by the Governor by notice in the *Gazette*.

(3) Different dates may be appointed under subsection (2) for different provisions and for different purposes.

2. Interpretation

(1) In this Ordinance, unless otherwise stated or the context otherwise requires —

“armed forces” means any of the naval, military or air forces of the Crown raised under the law of the United Kingdom;

“Chief Justice”, in relation to a function under this Ordinance, means —

(a) the person appointed as Chief Justice under section 88 of the Constitution; or

(b) if an acting judge has been appointed under section 89 of the Constitution - the person appointed to perform the relevant function for the time being;

“child” means a person under the age of 14 years;

“civil partner” means either one of 2 people who have gone through a form of civil partnership, not being marriage, pursuant to the law of a place outside the Falkland Islands;

“Court of Appeal” means the Court of Appeal for the Falkland Islands established by section 87(1) of the Constitution;

“Criminal Justice Council” means the body of that name established by section 773 of the Criminal Procedure and Evidence Ordinance 2014;

“criminal procedure rules” means rules made by the Chief Justice under section 599 or, in the absence of such rules, the Criminal Procedure Rules 2013 of England and Wales as they apply to the topic;

“defendant”, in relation to criminal proceedings, means a person charged with an offence in those proceedings, whether or not the person has been convicted;

“document” means anything in or on which information of any description is recorded, and includes —

(a) any publication and any matter written, expressed or described upon any substance by means of letters, characters, figures or marks, or by more than one of these means; and

(b) data recorded by electronic means;

“DVPN” means a domestic violence protection notice issued under section 102;

“DVPO” means a domestic violence protection order issued under section 105;

“dwelling” means any structure or part of a structure occupied as a person’s home or other living accommodation (whether the occupation is separate or shared with others) but does not include any part not so occupied, and for this purpose “structure” includes a tent, caravan, vehicle, vessel or other temporary or movable structure;

“dwelling house” does not include a building although within the same curtilage with any dwelling house and occupied with it unless there is a communication between the building and dwelling house either immediately or by means of a covered and enclosed passage leading from one to another;

“electronic means” includes telephone, e-mail or visual or oral link by computer or any other electronic device;

“Falkland Islands status” has the meaning given that term by section 22(5) of the Constitution;

“family proceedings” means any proceedings —

(a) under the Children Ordinance 2014; or

(b) under any enactment relating to divorce and separation, family homes, domestic violence or adoption;

“firearm” has the same meaning as in section 2 of the Firearms and Ammunition Ordinance;

“Group A offence” and “Group B offence” have the meanings assigned to them by section 7;

“imprisonable offence” means an offence for which a custodial sentence can be imposed on conviction, but —

(a) does not include an offence for which a custodial sentence can be imposed only for non-payment of a fine;

(b) is to be construed without regard to any prohibition or restriction imposed by or under this Ordinance or any other enactment on the imprisonment or detention of young offenders;

“indictment-only offence” means an offence listed in section 181 of the Criminal Procedure and Evidence Ordinance 2014;

“installation” includes an installation in transit;

“judge” means the Chief Justice or any person presiding over a trial if not the Chief Justice;

“judicial proceedings” includes proceedings before any court, tribunal, or person having by law power to hear, receive and examine evidence on oath;

“money” includes bank notes, bank drafts, cheques and any other orders, warrants or requests for the payment of money;

“national security” means the security of the Falkland Islands, or of any other British Overseas Territory, or of the United Kingdom or of the Crown Dependencies;

“offence” means —

(a) any statutory offence for which a person may be tried by the Supreme Court, the Magistrate’s Court or the Summary Court and punished if convicted; and

(b) in relation to any place outside the Falkland Islands, includes an act or omission punishable under the law of that place, however it is described;

“parental responsibility” has the meaning given to that term by section 6 of the Children Ordinance 2014;

“partner” in a domestic context means one of a married couple, one of an unmarried couple, or one of a civil partnership;

“person” and “owner” and other like terms when used with reference to property include corporations of all kinds and any other association of persons capable of owning property, and also when so used include Her Majesty;

“picture” includes a likeness however produced;

“place” includes any building or part of a building, any vehicle, vessel, aircraft or hovercraft and any other place whatsoever;

“place of lawful custody” means any police station, and any other place designated in writing by a police officer of the rank of inspector or above in relation to a particular investigation;

“play”, when used as a noun, means —

(a) any dramatic piece, whether involving improvisation or not, which is given wholly or in part by one or more persons actually present and performing and in which the whole or a major proportion of what is done by the person or persons performing, whether by way of speech, singing or action, involves the playing of a role; and

(b) any ballet or other form of dance given wholly or in part by one or more persons actually present and performing, whether or not it falls within paragraph (a) of this definition;

[UK Theatres Act 1968 s.18]

“police force” means the Royal Falkland Islands Police continued by the Police Ordinance 2000;”

“police officer” means a member of the police force, including a police cadet and a reserve police officer performing police duties under any enactment;

“police station” means Stanley Police Station or the Guard Room of the Military Police situated at the Mount Pleasant Complex and any other place designated as a police station by the Governor by order;

“postal operator” means a person who provides the service of conveying postal packets from one place to another by post or any of the incidental services of receiving, collecting, sorting and delivering such packets;

“premises” includes —

(a) land and buildings;

(b) any vehicle, vessel, aircraft or hovercraft;

(c) any airport;

(d) any offshore installation;

(e) any renewable energy installation;

(f) any stall, tent or moveable structure; and

(g) any other place whatever, whether or not occupied as land;

[UK PACE Act 1984 s.23 am. by Criminal Justice & Police Act 2001 s.66(1); Energy Act 2004 s.103(2)]

“prison” means any place or building or portion of a building set aside for the purpose of a prison under any Ordinance relating to prisons and includes, in the case of a person under 21, a place of detention directed by the Governor under section 730 of the Criminal Procedure and Evidence Ordinance 2014;

“programme”, in relation to a programme service, includes any item included in that service; and “television programme” includes a teletext transmission;

[UK Broadcasting Act 1990 s.202]

“programme service” means any service which consists in the sending, by means of a telecommunication system, of sounds or visual images or both either —

(a) for reception at 2 or more places in the Falkland Islands (whether they are so sent for simultaneous reception or at different times in response to requests made by different users of the service); or

(b) for reception at a place in the Falkland Islands for the purpose of being presented there to members of the public or to any group of persons,

and includes a television, sound or digital broadcasting service;

[UK Broadcasting Act 1990 s.201]

“publish” in relation to an item means to include it in a publication;

“recording”, in relation to information, whether used as a verb or a noun, means putting it in a durable or retrievable form, such as writing or tape or disc and includes digital data which is retrievable;

“sentence”, in relation to an offence, includes any order made by a court when dealing with the offender in respect of the offence; and “sentencing” is to be construed accordingly;

“serious offence” means an offence for which the maximum penalty is imprisonment for 5 years or more;

“spouse” includes a civil partner;

“standard scale” means the scale of fines set out in Schedule 8 to the Criminal Procedure and Evidence Ordinance 2014;

“statutory maximum fine” means a fine at the highest level on the standard scale;

“summary offence” means an offence that is not an indictment-only offence;

“triable summarily” means triable in the Summary Court or the Magistrate’s Court;

“under a disability”, in relation to a defendant, means suffering from mental disorder and consequently incapable of making a defence;

“vehicle” includes any motor vehicle, vessel, aircraft or hovercraft;

“witness”, in relation to any criminal proceedings, means any person called, or proposed to be called, to give evidence in the proceedings;

“written material” includes any sign or other visible representation, and includes visual representation of electronic data;

“young offender” means an adult under the age of 21 who is convicted of an offence;

“youth” means a person aged below 18 years, whether a child or a young person;

“Youth Court” means the Magistrate’s Court or the Summary Court when sitting as the Youth Court under the provisions of Part 33 (Young Offenders and Youth Protection) of the Criminal Procedure and Evidence Ordinance 2014.

(2) Terms used in this Ordinance that are not defined in this Ordinance but are defined in the Criminal Procedure and Evidence Ordinance 2014 have the same meaning in this Ordinance as in that Ordinance unless otherwise stated.

(3) A reference in this Ordinance to the Magistrate’s Court or the Summary Court includes either of those courts when sitting as a Youth Court, but subject to any limitation on the jurisdiction and powers of a Youth Court.

(4) Subject to section 756 of the Criminal Procedure and Evidence Ordinance 2014 as regards the ascertainment of the age of a person who appears to the court to be a youth, the age of a person is to be taken as that which it appears to the court to be after considering any available evidence.

(5) For the purposes of this Ordinance, a reference to a person being convicted of an offence under the law of a place outside the Falkland Islands includes —

- (a) a finding by a court exercising jurisdiction under the law of that place in respect of such an offence equivalent to a finding that the person is not guilty by reason of mental disorder;
- and

- (b) a finding by such a court in respect of such an offence equivalent to a finding that the person is under a disability and did the act charged against the person in respect of the offence.

[UK Crime & Security Act 2010]

- (6) Subject to section 756 of the Criminal Procedure and Evidence Ordinance 2014 as regards the ascertainment of the age of a person who appears to the court to be a youth, the age of a person is to be taken as that which it appears to the court to be after considering any available evidence.

[UK Youth Justice and Criminal Evidence Act 1999 s.53]

PART 2 – GENERAL PRINCIPLES

Criminal liability

3. Age of criminal responsibility

- (1) There is a conclusive presumption that no child under the age of 10 years can be guilty of any offence.

- (2) The rebuttable presumption of criminal law that a child aged 10 or over is incapable of committing an offence is abolished.

[Crimes Ord. s.37; UK Children & Young Persons Act 1933 s.50 am. by Children & Young Persons Act 1963 s.16; UK Crime and Disorder Act 1998 s.34]

4. Inferences as to intent

A court or jury, in determining whether a person has committed an offence —

- (a) is not bound in law to infer that the person intended or foresaw a result of the person's actions by reason only of its being a natural and probable consequence of those actions; but

- (b) must decide whether the person did intend or foresee that result by reference to all the evidence, drawing such inferences from the evidence as appear proper in the circumstances.

[UK Criminal Justice Act 1967 s.8]

5. Automatism

- (1) This section applies in the case of a person who is not mentally disordered within the meaning of section 2 of the Mental Health Ordinance.

- (2) A person must not be found guilty of an offence if —

- (a) the person acts in a state of automatism;

- (b) the act —

- (i) is a reflex, spasm or convulsion; or

(ii) occurs while the person is in a condition (whether of sleep, unconsciousness, impaired consciousness or otherwise) depriving the person of effective control of the act; and

(c) the act or condition is not the result of anything done or omitted with the mental element required for the offence nor the result of voluntary intoxication.

(3) A person must not be found guilty of an offence by virtue of an omission to act if —

(a) the person is physically incapable of acting in the way required; and

(b) his or her being so incapable is not the result of anything done or omitted with the mental element required for the offence nor the result of voluntary intoxication.

[Crimes Ord. s.26; UK case law]

Offences committed outside the Falkland Islands

6. Offences committed partly outside the Falkland Islands

(1) An offence begun outside the Falkland Islands and completed in the Falkland Islands may be treated as having been committed in the Falkland Islands.

(2) If —

(a) a person dies in the Falkland Islands in consequence of any act or omission outside the Falkland Islands; and

(b) the person committing that act or making that omission would, if the act or omission had been in the Falkland Islands, be guilty of the murder or manslaughter of the person who dies,

the offence may be treated as having been committed in the Falkland Islands.

(3) If a person —

(a) dies outside the Falkland Islands in consequence of any act or omission in the Falkland Islands; and

(b) the person committing the act or making the omission would, if the death had occurred in the Falkland Islands, be guilty of the murder or manslaughter of the person who dies,

the offence may be treated as having been committed in the Falkland Islands.

[Common law]

7. Offences to which sections 8 to 13 apply

(1) Sections 8 to 13 apply to Group A offences and Group B offences.

(2) The Group A offences are —

- (a) an offence under any of the following provisions of Part 12 —
- 348 - Offence of theft
 - 360 - Handling stolen goods
 - 368 - Blackmail
 - 369 - Offence of fraud
 - 370 - Fraud by false representation
 - 371 - Fraud by failing to disclose information
 - 372 - Fraud by abuse of position
 - 375 - Participating in fraudulent business carried on by sole trader, etc.
 - 376 - Obtaining services dishonestly
 - 379 - False accounting
 - 380 - False statements by company directors, etc.
 - 381 - Suppression, etc. of documents
 - 382 - Dishonestly retaining a wrongful credit
 - 383 - Cheating the public revenue.

- (b) an offence under any of the following provisions of Part 13 —
- 391 - Forgery
 - 392 - Copying a false instrument
 - 393 - Using a false instrument
 - 394 - Using a copy of a false instrument
 - 395 - Offences relating to money orders, share certificates, passports, etc.
 - 402 - Reproducing currency notes
 - 403 - Making, etc. imitation protected coins

(3) The Group B offences are —

- (a) conspiracy to commit an offence listed in subsection (2)(a) or (b);
- (b) attempting to commit an offence listed in subsection (2)(a) or (b);
- (c) encouraging, or aiding and abetting, the commission of an offence listed in subsection (2)(a) or (b).

(4) The Governor, after consulting the Criminal Justice Council, may by order amend subsection (2) or (3) by adding or removing any offence.

[UK Criminal Justice Act 1993 s.1]

8. Jurisdiction in respect of Group A offences

(1) A person may be convicted of a Group A offence if any of the events which are relevant events in relation to the offence occurred in the Falkland Islands.

(2) For the purposes of subsection (1), “relevant event” means any act or omission or other event (including any result of one or more acts or omissions) proof of which is required for conviction of the offence.

(3) In relation to an offence under section 369, “relevant event” includes —

- (a) if the fraud involved an intention to make a gain and the gain occurred - that occurrence;
- (b) if the fraud involved an intention to cause a loss or expose another to a risk of loss and the loss occurred - that occurrence.

(4) For the purpose of determining whether or not a particular event is a relevant event in relation to a Group A offence, any question as to where it occurred is to be disregarded.

[UK Criminal Justice Act 1993 s.2]

9. Questions immaterial to jurisdiction in the case of certain offences

(1) A person may be convicted of a Group A or Group B offence whether or not the person had Falkland Islands status at any material time.

(2) On a charge of conspiracy to commit a Group A offence, or on a charge of conspiracy to defraud in the Falkland Islands, a person may be convicted of the offence whether or not —

- (a) the person became a party to the conspiracy in the Falkland Islands;
- (b) any act or omission or other event in relation to the conspiracy occurred in the Falkland Islands.

(3) On a charge of attempting to commit a Group A offence, a person may be convicted of the offence whether or not —

- (a) the attempt was made in the Falkland Islands;
- (b) it had an effect in the Falkland Islands.

(4) Subsection (1) does not apply in relation to an offence if a different rule about national status of the defendant is included in the provision which creates the offence.

(5) Subsection (2) does not apply in relation to a charge of conspiracy brought by virtue of section 24.

(6) Subsection (3) does not apply in relation to a charge of attempt brought by virtue of section 36.

[UK Criminal Justice Act 1993 s.3]

10. Rules relating to the location of events

In relation to a Group A or Group B offence —

- (a) there is an obtaining of property in the Falkland Islands if the property is either despatched from or received at the Falkland Islands;

(b) there is a communication in the Falkland Islands of any information, instruction, request, demand or other matter if it is sent by any means —

(i) from the Falkland Islands to a place elsewhere; or

(ii) from a place elsewhere to the Falkland Islands.

[UK Criminal Justice Act 1993 s.4]

11. Conspiracy and encouraging

(1) A person may be convicted of conspiracy to defraud if —

(a) a party to the agreement constituting the conspiracy, or a party's agent, did anything in the Falkland Islands in relation to the agreement before its formation; or

(b) a party to it became a party in the Falkland Islands (by joining it either in person or through an agent); or

(c) a party to it, or a party's agent, did or omitted anything in the Falkland Islands in pursuance of it,

and the conspiracy would be triable in the Falkland Islands but for the fraud which the parties to it had in view not being intended to take place in the Falkland Islands.

(2) A person may be convicted of encouraging the commission of a Group A offence if the encouragement —

(a) takes place in the Falkland Islands; and

(b) would be triable in the Falkland Islands but for what the defendant had in view not being an offence triable in the Falkland Islands.

(3) Subsections (1) and (2) are subject to section 12.

[UK Criminal Justice Act 1993 s.5(3) and (4)]

12. Extended jurisdiction in relation to certain attempts

(1) If this section applies to an act, what the person doing the act had in view is to be treated as an offence to which section 19 (Attempts generally) applies.

(2) This section applies to an act if —

(a) it is done in the Falkland Islands; and

(b) it would fall within section 19(1) as more than merely preparatory to the commission of a Group A offence but for the fact that that offence, if completed, would not be an offence triable in the Falkland Islands.

(3) Subsection (1) is subject to section 13.

(4) If a person does any act to which this section applies, the offence which the person commits is to be treated for all purposes as the offence of attempting to commit the relevant Group A offence.

[UK Criminal Justice Act 1993 s.5(2)]

13. Relevance of external law

(1) A person commits an offence triable by virtue of section 11(1) only if pursuing the agreed course of conduct would at some stage involve —

(a) an act or omission by one or more of the parties; or

(b) the happening of some other event,

constituting an offence under the law in force where the act, omission or other event was intended to take place.

(2) A person commits an offence triable by virtue of section 11(2) only if what the person had in view would involve the commission of an offence under the law in force where the whole or any part of it was intended to take place.

(3) Conduct punishable under the law in force in any place is an offence under that law for the purposes of this section, however it is described in that law.

(4) Subject to subsection (6), a condition specified in subsection (1) or (2) is to be taken as satisfied unless, not later than 28 days after the defendant is charged with the offence, the defence serve on the prosecution a notice —

(a) stating that, on the facts as alleged with respect to the relevant conduct, the condition is not in their opinion satisfied;

(b) showing their grounds for that opinion; and

(c) requiring the prosecution to show that it is satisfied.

(5) In subsection (4) “the relevant conduct” means —

(a) if the condition in subsection (1) is in question - the agreed course of conduct; and

(b) if the condition in subsection (2) is in question - what the defendant had in view.

(6) The court may, if it thinks fit, permit the defence to require the prosecution to show that the condition is satisfied without the prior service of a notice under subsection (4).

(7) In the Supreme Court, the question whether the condition is satisfied is to be decided by the judge alone.

[UK Criminal Justice Act 1993 s.6]

Alternative verdicts

14. Conviction of offence other than that charged

(1) A person who is charged with an offence may plead not guilty of the offence charged but guilty of another offence of which the person might be found guilty on that charge.

(2) If, pursuant to subsection (1), a defendant pleads not guilty of an offence charged but guilty of some other offence of which the person might be found guilty on that charge, and the person is convicted on that plea of guilty without trial for the offence of which the person has pleaded not guilty, then (whether or not the 2 offences are separately charged in distinct counts) the person's conviction of the one offence is an acquittal of the other.

(3) If, on a person's trial for any offence except treason or murder, the court, or the jury if there is one, finds the person not guilty of the offence specifically charged, but the allegations amount to or include (expressly or by implication) an allegation of another offence falling within the jurisdiction of the court, the court or jury, as the case may be, may find the person guilty of that other offence or of an offence of which the person could be found guilty on a charge for that other offence.

(4) For the purposes of subsection (3) —

(a) an allegation of an offence is to be taken as including an allegation of attempting to commit that offence;

(b) if a person is charged with attempting to commit an offence or with any assault or other act preliminary to an offence, but not with the completed offence, then (subject to the discretion of the court to permit the bringing of a charge or the preferment of an indictment for the completed offence) the person may be convicted of the offence charged notwithstanding that the person is shown to be guilty of the completed offence.

(5) Subsections (1) and (3) apply to charge containing more than one offence as if each offence were a separate charge.

(6) On an indictment for murder a person found not guilty of murder may be found guilty —

(a) of manslaughter, or of causing grievous bodily harm with intent to do so; or

(b) of any offence of which the person may be found guilty under an enactment specifically so providing, or under section 15; or

(c) of an attempt to commit murder, or of an attempt to commit any other offence of which the person might be found guilty;

but may not be found guilty of any offence not included in this subsection.

(7) Nothing in this section excludes the application of any law which —

(a) restricts the power of a court to imprison;

(b) authorises an offender to be dealt with in a way not authorised by the enactment specially relating to the offence; or

(c) authorises a person to be found guilty of an offence other than that with which the person is charged.

[Crimes Ord. s.8; UK Criminal Law Act 1967 s.6]

15. Person tried for offence may be convicted of ancillary offence

If on a trial for an imprisonable offence the court, or the jury if there is one —

(a) is satisfied that the offence charged (or some other offence of which the defendant might on that charge be convicted) was committed; but

(b) finds the defendant not guilty of that offence,

the court or jury, as the case may be, may convict the defendant of an offence under any of sections 31 (Offence of encouragement), 42 (Aiding and abetting) or 43 (Assisting offenders) if it is satisfied that the defendant committed such an offence in relation to the offence charged (or that other offence).

[UK Criminal Law Act 1967 s.4(2)]

Miscellaneous

16. Proceedings by and against spouses

(1) This Ordinance applies in relation to the parties to a marriage, and to property belonging to either of them, whether or not by reason of an interest derived from the marriage, as it would apply if they were not married and any such interest subsisted independently of the marriage.

(2) A person has the same right to bring proceedings against that person's spouse for any offence (whether under this Ordinance or otherwise) as if they were not married, and a person bringing any such proceedings is competent to give evidence for the prosecution at every stage of the proceedings.

(3) Subject to subsection (5), proceedings may not be commenced against a person for any offence of stealing or doing unlawful damage to property which at the time of the offence belongs to that person's spouse, or for any attempt or conspiracy to commit such an offence, or encouraging, or aiding and abetting, the commission of such an offence, except by, or with the consent of, the Attorney General.

(4) In subsection (3), the term "proceedings" includes —

(a) an arrest without warrant made by the spouse; and

(b) a warrant of arrest issued on an information laid by the spouse.

(5) Subsection (3) —

(a) does not apply to proceedings against another person charged with committing the offence jointly with the person;

(b) does not apply if by virtue of any judicial decree or order (wherever made) the person and the spouse are at the time of the offence under no obligation to cohabit;

(c) does not prevent the arrest, or the issue of a warrant for the arrest, of a person for an offence, or the remand in custody or on bail of a person charged with an offence, if the arrest (if without a warrant) is made, or the warrant of arrest issues on an information laid, by someone other than the spouse of the person.

(6) In this section, a reference to a spouse includes a reference to a civil partner as defined in section 2 and a reference to a marriage includes a reference to a civil partnership as so defined.

[UK Theft Act 1968 s.30 adapted; common law]

17. Application of Ordinance to corporations

(1) This Ordinance applies in relation to a corporation as if —

(a) the corporation were an individual aged 18 or over;

(b) the words “he or she” or grammatical variations of those words were “it”; and

(c) the words “in custody or on bail” were omitted wherever they appear.

(2) If an offence under this or any other Ordinance is committed by a corporate body and it is proved —

(a) to have been committed with the consent or connivance of an officer; or

(b) to be attributable to any neglect on the part of an officer,

the officer as well as the corporate body commits the offence and is liable to be proceeded against and punished accordingly.

(3) In subsection (2) “officer”, in relation to a corporate body, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

(4) If the affairs of a corporate body are managed by its members, subsection (2) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director of the body.

(5) A reference in this Ordinance to a defendant or other person by a gender-specific term does not preclude the application of that provision to a corporation.

[Crimes Ord. s.51; UK Public Order Act 1986 s.28; UK Knives Act 1997 s.10 etc.]

18. No requirement for corroboration

(1) There is no requirement at a trial for the court to give itself, or the jury if there is one, a warning about convicting the defendant on the uncorroborated evidence of a person merely because that person is —

(a) an alleged accomplice of the defendant; or

(b) if the offence charged is a sexual offence – the person in respect of whom it is alleged to have been committed.

(2) There is no requirement at a trial for the court to give itself, or the jury if there is one, a warning about convicting the defendant on the uncorroborated evidence of a child.

(3) Unsworn evidence admitted by virtue of section 352 or 353 of the Criminal Procedure and Evidence Ordinance 2014 may corroborate evidence (sworn or unsworn) given by any other person.

(4) This section does not affect —

(a) any requirement for a warning to the tribunal of fact about convicting a defendant on uncorroborated evidence imposed by this Ordinance or any other written law;

(b) any rule of law that requires the tribunal of fact to be warned to exercise caution or to look for supporting material before acting on the unsupported evidence of a certain type of witness;

(c) any rule of law relating to —

(i) confessions by mentally disabled persons;

(ii) identification evidence;

(iii) evidence relating to sudden unexplained infant deaths; or

(iv) unconvincing hearsay evidence.

[Crimes Ord. s.49; UK Criminal Justice Act 1988 s.34; UK Criminal Justice & Public Order Act 1994 s.32]

PART 3 – ANCILLARY OFFENCES

Attempts

19. Attempts generally

(1) A provision in any written law of the Falkland Islands which creates or results in the creation of an offence (other than an offence created by this Part), whether indictment-only or summary, is deemed to include a provision that an attempt to commit such an offence itself constitutes an offence which may, subject to section 21(1) in respect of the penalty for attempted murder, be dealt with and punished in the same way as if the offence had been committed.

(2) A person charged with an offence may be convicted of having attempted to commit that offence although the person was not charged with the attempt.

(3) In this Part, an attempt means any act done with intent to commit an offence which is more than merely preparatory to the commission of the offence.

(4) A person may be convicted of attempting to commit an offence to which this section applies even though the facts are such that the commission of the offence is impossible.

(5) In any case where —

(a) apart from this subsection a person's intention would not be regarded as having amounted to an intent to commit an offence; but

(b) if the facts of the case had been as the person believed them to be, the person's intention would be so regarded,

then, for the purposes of subsection (1), the person is to be regarded as having had an intention to commit that offence.

[Crimes Ord. s.10; UK Criminal Attempts Act 1981 s.1 (part)]

20. Application of procedural and other provisions to offences of attempt

(1) A provision to which this section applies has effect with respect to an offence under section 19 as it has effect with respect to the offence attempted.

(2) This section applies to provisions of any enactment, whenever coming into operation —

(a) whereby proceedings may not be commenced or carried on otherwise than by, or on behalf or with the consent of, any person;

(b) conferring power to commence proceedings;

(c) as to the venue of proceedings;

(d) whereby proceedings may not be commenced after the expiration of a time limit;

(e) conferring a power of arrest or search;

(f) conferring a power of seizure and detention of property;

(g) whereby a person may not be convicted or committed for trial on the uncorroborated evidence of one witness (including any provision requiring the evidence of not less than 2 credible witnesses);

(h) conferring a power of forfeiture or deprivation, including any power to deal with anything liable to be forfeited;

(i) whereby, if an offence committed by a corporate body is proved to have been committed with the consent or connivance of another person, that person also commits the offence.

[UK Criminal Attempts Act 1981 s.2 adapted]

21. Procedural rules

(1) The maximum penalty on conviction for an offence of attempted murder is life imprisonment.

(2) In any case in which a court may proceed to trial of an indictment or charge charging a person with an offence and an indictment or charge charging the person with an offence under section 19 of attempting to commit that offence, the court may, without the person's consent, try the indictments or charges together.

(3) If, in proceedings against a person for an offence under section 19, there is evidence sufficient in law to support a finding that the person did an act falling within subsection (1) of that section, the question whether or not the act fell within that subsection is a question of fact.

[UK Criminal Attempts Act 1981 s.4]

22. Effect of sections 19 to 21 on common law

(1) The offence of attempt at common law and any offence at common law of procuring materials for crime are abolished for all purposes not relating to acts done before the commencement of this Part.

(2) Except as regards offences committed before the commencement of this Part, references in any enactment coming into operation before the commencement of this Part which fall to be construed as references to the offence of attempt at common law are to be construed as references to the offence under section 19.

[UK Criminal Attempts Act 1981 s.6]

Conspiracy

23. Conspiracy

(1) Subject to the following provisions of this Part, a person who agrees with any other person or persons that a course of conduct is to be pursued which, if the agreement is carried out in accordance with their intentions, either —

(a) will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement; or

(b) would do so but for the existence of facts which render the commission of the offence or any of the offences impossible,

commits the offence of conspiracy to commit the offence or offences in question.

Penalty: As provided in section 26.

(2) Even if liability for any offence may be incurred without knowledge on the part of the person committing it of any particular fact or circumstance necessary for the commission of the offence, a person does not commit conspiracy to commit that offence by virtue of subsection (1) unless that person and at least one other party to the agreement intend or know that that fact or circumstance will exist at the time when the conduct constituting the offence is to take place.

(3) In this Part “offence” —

(a) means an offence triable in the Falkland Islands; and

(b) includes murder even if the murder in question would not be triable in the Falkland Islands, if it was committed in accordance with the intentions of the parties to the agreement.

[UK Criminal Law Act 1977 s.1 as am. by Criminal Attempts Act 1981]

24. Conspiracy to commit offences outside the Falkland Islands

(1) If each of the following conditions is satisfied in the case of an agreement, this Part has effect in relation to the agreement as it has effect in relation to an agreement falling within section 23(1).

(2) The first condition is that the pursuit of the agreed course of conduct would at some stage involve —

(a) an act by one or more of the parties; or

(b) the happening of some other event,

intended to take place outside the Falkland Islands.

(3) The second condition is that that act or other event constitutes an offence under the law in force in that place.

(4) The third condition is that the agreement would fall within section 23(1) as an agreement relating to the commission of an offence but for the fact that the offence would not be an offence triable in the Falkland Islands if committed in accordance with the parties’ intentions.

(5) The fourth condition is that —

(a) a party to the agreement, or a party's agent, did anything in the Falkland Islands in relation to the agreement before its formation; or

(b) a party to the agreement became a party in the Falkland Islands (by joining it either in person or through an agent); or

(c) a party to the agreement, or a party's agent, did or omitted anything in the Falkland Islands in pursuance of the agreement.

(6) In the application of this Part to an agreement in the case of which each of the above conditions is satisfied, a reference to an offence is to be read as a reference to what would be the offence in question but for the fact that it is not an offence triable in the Falkland Islands.

(7) Conduct punishable under the law in force in any place is an offence under that law for the purposes of this section, however it is described in that law.

(8) Subject to subsection (9), the second condition is to be taken to be satisfied unless, not later than 28 days after the defendant is charged with the offence, the defence serve on the prosecution a notice —

(a) stating that, on the facts as alleged with respect to the agreed course of conduct, the condition is not in their opinion satisfied;

(b) showing their grounds for that opinion; and

(c) requiring the prosecution to show that it is satisfied.

(9) The court may permit the defence to require the prosecution to show that the second condition is satisfied without the prior service of a notice under subsection (8).

(10) In the Supreme Court, the question whether the second condition is satisfied is to be decided by the judge alone, and treated as a question of law.

(11) Any act done by means of a message (however communicated) is to be treated for the purposes of the fourth condition as done in the Falkland Islands if the message is sent or received in the Falkland Islands.

(12) In any proceedings in respect of an offence triable by virtue of this section, it is immaterial whether or not the defendant had Falkland Islands status at the time of any act or other event proof of which is required for conviction of the offence.

(13) References in any enactment, instrument or document (except those in this Part) to an offence of conspiracy to commit an offence include an offence triable in the Falkland Islands as such a conspiracy by virtue of this section (without affecting subsection (6)).

[UK Criminal Law Act 1977 s.1A inserted by Criminal Justice (Terrorism & Conspiracy) Act 1998]

25. Exemptions from liability

(1) A person does not by virtue of section 23 commit conspiracy to commit any offence if the person is an intended victim of that offence.

(2) A person does not by virtue of section 23 commit conspiracy to commit any offence or offences if the only other person or persons with whom the person agrees are (both initially and at all times during the currency of the agreement) —

(a) the person's spouse or civil partner;

(b) a person under the age of criminal responsibility; or

(c) an intended victim of that offence or of each of those offences.

[UK Criminal Law Act 1977 s.2]

26. Penalties

(1) The maximum penalty on conviction for conspiracy by virtue of section 23 is —

(a) in a case falling within subsection (3) or (4) of this section - imprisonment for a term related in accordance with the respective subsection to the gravity of the offence or offences in question (referred to in this section as the relevant offence or offences);

(b) in any other case - a fine.

(2) Subsection (1)(a) does not affect the application of section 565 of the Criminal Procedure and Evidence Ordinance 2014 (Suspended sentences of imprisonment) in a case falling within subsection (3) or (4).

(3) If the relevant offence or any of the relevant offences is —

(a) an offence of murder, or any other offence the sentence for which is fixed by law;

(b) an offence for which a sentence extending to imprisonment for life is provided; or

(c) an indictment-only offence punishable with imprisonment for which no maximum term of imprisonment is provided,

the maximum penalty on conviction for conspiracy is imprisonment for life.

(4) If, in a case other than one to which subsection (3) applies, the relevant offence or any of the relevant offences is punishable with imprisonment, the maximum penalty on conviction for conspiracy is imprisonment for a term not exceeding the maximum term provided for that offence or (if more than one such offence is in question) for any one of those offences (taking the longer or the longest term as the limit for the purposes of this section where the terms provided differ).

[UK Criminal Law Act 1977 s.3]

27. Restrictions on the commencement of proceedings

(1) Proceedings under section 23 for conspiracy to commit any offence or offences may not be commenced against any person except by, or with the consent of, the Attorney General.

(2) If —

(a) an offence has been committed in pursuance of any agreement; and

(b) proceedings may not be commenced for that offence because any time limit applicable to the commencement of any such proceedings has expired,

proceedings under section 23 for conspiracy to commit that offence may not be commenced against any person on the basis of that agreement.

[UK Criminal Law Act 1977 s.4]

28. Conspiracy under other enactments

Sections 23 and 25 apply for determining whether a person commits an offence of conspiracy under any enactment other than section 23 but conduct which is an offence under any such other enactment is not also an offence under section 23.

[UK Criminal Law Act 1977 s.5(6)]

29. Effect of acquittal of other defendant

(1) The fact that the person or persons who, so far as appears from the indictment or charge on which any person has been convicted of conspiracy, were the only other parties to the agreement on which the conviction was based have been acquitted of conspiracy by reference to that agreement (whether after being tried with the person convicted or separately) is not a ground for quashing the conviction unless under all the circumstances of the case the conviction is inconsistent with the acquittal of the other person or persons in question.

(2) Any rule of law or practice inconsistent with subsection (1) is abolished.

[UK Criminal Law Act 1977 s.5(8)]

30. Abolitions, savings, transitional provisions

(1) Subject to the following provisions, the offence of conspiracy at common law is abolished.

(2) Subsection (1) does not affect the offence of conspiracy at common law if and in so far as it may be committed by entering into an agreement to engage in conduct which —

(a) tends to corrupt public morals or outrages public decency; but

(b) would not amount to or involve the commission of an offence if carried out by a single person otherwise than in pursuance of an agreement.

(3) Subsection (1) does not affect —

(a) any proceedings commenced before the time when this Part comes into force;

(b) any proceedings commenced after that time against a person charged with the same conspiracy as that charged in any proceedings commenced before that time; or

(c) subject to subsection (5), any proceedings commenced after that time in respect of a trespass committed before that time.

(4) A person convicted of conspiracy to trespass in any proceedings brought by virtue of subsection (3)(c) is not in respect of that conviction liable to imprisonment for a term exceeding 6 months.

(5) Incitement to commit the offence of conspiracy (whether the conspiracy incited would be an offence at common law or under this Part or any other enactment) ceases to be an offence.

[UK Criminal Law Act 1977 s.5(1), (3), (5) and (7)]

Encouragement of offences

31. Offence of encouragement

(1) A person who —

(a) does an act capable of encouraging the commission of an offence; and

(b) intends to encourage its commission,

commits an offence.

Penalty: As provided in section 40.

(2) A person is not to be taken to have intended to encourage the commission of an offence under subsection (1) merely because such encouragement was a foreseeable consequence of the person's act.

(3) A person who —

(a) does an act capable of encouraging the commission of an offence; and

(b) believes that —

(i) the offence will be committed; and

(ii) the act will encourage its commission,

commits an offence.

Penalty: As provided in section 40.

(4) A person who —

(a) does an act capable of encouraging the commission of one or more of a number of offences; and

(b) believes that —

(i) one or more of those offences will be committed; and

(ii) the act will encourage the commission of one or more of them,

commits an offence.

Penalty: As provided in section 40.

(5) It is immaterial for the purposes of subsection (4)(b) whether the person has any belief as to which offence will be encouraged.

(6) If a person is charged with an offence under subsection (4) the charge —

(a) must specify the offences alleged to be the “number of offences” mentioned in subsection (4)(a); but

(b) need not specify all the offences potentially comprised in that number.

(7) In relation to an offence under subsection (4), any reference in this Part to the offences specified in the charge is to the offences specified by virtue of subsection (6)(a).

[UK Serious Crime Act 2007 ss.44, 45 and 46]

32. Proving an offence under section 31

(1) Section 31 is to be read in accordance with this section.

(2) If it is alleged under section 31(1) that a person (‘A’) intended to encourage the commission of an offence, it is sufficient to prove that A intended to encourage the doing of an act which would amount to the commission of that offence.

(3) If it is alleged under section 31(3) that A believed that an offence would be committed and that A’s act would encourage its commission, it is sufficient to prove that A believed that —

(a) an act would be done which would amount to the commission of that offence; and

(b) A’s act would encourage the doing of that act.

(4) If it is alleged under section 31(4) that A believed that one or more of a number of offences would be committed and that A’s act would encourage the commission of one or more of them, it is sufficient to prove that A believed that —

(a) one or more of a number of acts would be done which would amount to the commission of one or more of those offences; and

(b) A's act would encourage the doing of one or more of those acts.

(5) In proving for the purposes of this section whether an act done by A is one which, if done, would amount to the commission of an offence —

(a) if the offence is one requiring proof of fault, it must be proved that —

- (i) A believed that, if the act were done, it would be done with that fault;
- (ii) A was reckless as to whether or not it would be done with that fault; or
- (iii) A's state of mind was such that, if A were to do it, it would be done with that fault;

(b) if the offence is one requiring proof of particular circumstances or consequences (or both), it must be proved that A —

- (i) believed that, if the act were done, it would be done in those circumstances or with those consequences; or
- (ii) was reckless as to whether or not it would be done in those circumstances or with those consequences.

(6) For the purposes of subsection (5)(a)(iii), A is to be assumed to be able to do the act in question.

(7) In the case of an offence under section 31(1) —

(a) subsection (5)(b)(i) is to be read as if the reference to "A believed" were a reference to "A intended or believed"; but

(b) A is not to be taken to have intended that an act would be done in particular circumstances or with particular consequences merely because its being done in those circumstances or with those consequences was a foreseeable consequence of A's act of encouragement or assistance.

(8) A reference in this section to the doing of an act includes a reference to —

- (a) a failure to act;
- (b) the continuation of an act that has already begun;
- (c) an attempt to do an act (except an act amounting to the commission of the offence of attempting to commit another offence).

(9) In this Part (unless otherwise provided) a reference to the anticipated offence is —

(a) in relation to an offence under section 31(1) - a reference to the offence mentioned in subsection (2); and

(b) in relation to an offence under section 31(3) - a reference to the offence mentioned in subsection (3).

(10) In relation to an offence under section 31(4) —

(a) it is sufficient to prove the matters mentioned in subsection (5) by reference to one offence only; but

(b) the offence or offences by reference to which those matters are proved must be one of the offences specified in the indictment or charge.

(11) Subsection (10) does not affect any enactment or rule of law under which a person charged with one offence may be convicted of another and is subject to section 39 (Alternative verdicts and guilty pleas).

[UK Serious Crime Act 2007 ss.47 and 48]

33. Supplemental provisions

(1) A person may be convicted of an offence under section 31 whether or not any offence capable of being encouraged by the person's act is committed.

(2) If a person's act is capable of encouraging the commission of a number of offences —

(a) section 31(1) applies separately in relation to each offence that the person intends to encourage to be committed; and

(b) section 31(2) applies separately in relation to each offence that the person believes will be encouraged to be committed.

(3) A person may, in relation to the same act, commit an offence under more than one provision of section 31.

(4) In reckoning whether —

(a) for the purposes of section 31(2), an act is capable of encouraging the commission of an offence; or

(b) for the purposes of section 31(3), an act is capable of encouraging the commission of one or more of a number of offences,

an offence under section 31 and any other offence of encouraging, assisting, inciting, soliciting, inducing or conspiring with another person to commit an offence (whether any of those words is used in the description of that other offence or not) is to be disregarded.

(5) For the purposes of section 31(3)(b)(i) and 31(4)(b)(i) it is sufficient for the person concerned to believe that the offence (or one or more of the offences) will be committed if certain conditions are met.

[UK Serious Crime Act 2007 s.49 and Schedule 3]

34. Defences

(1) A person ('A') is not guilty of an offence under section 31 if A proves that —

- (a) A knew certain circumstances existed; and
- (b) it was reasonable for A to act as A did in those circumstances.

(2) A person ('A') is not guilty of an offence under section 31 if A proves that —

- (a) A believed certain circumstances to exist;
- (b) A's belief was reasonable; and
- (c) it was reasonable for A to act as A did in the circumstances as A believed them to be.

(3) Factors to be considered in determining whether it was reasonable for the purposes of subsections (1) and (2) for a person to act as the person did include —

- (a) the seriousness of the anticipated offence (or, in the case of an offence under section 31(4) the offences specified in the charge);
- (b) any purpose for which the person claims to have been acting;
- (c) any authority by which the person claims to have been acting.

(4) A person is not guilty of an offence under section 31 by reference to a protective offence if the person —

- (a) falls within the protected category; and
- (b) is the person in respect of whom the protective offence was committed or would have been if it had been committed.

(5) In subsection (4) "protective offence" means an offence that exists (wholly or in part) for the protection of a particular category of persons ("the protected category").

[UK Serious Crime Act 2007 ss.50 and 51]

35. Jurisdiction

(1) If a person knew or believed that what he or she anticipated might take place wholly or partly in the Falkland Islands, the person can be convicted of an offence under section 31 no matter where the person was at any relevant time.

(2) If it is not proved that the person knew or believed that what he or she anticipated might take place wholly or partly in the Falkland Islands, the person cannot be convicted of an offence under section 31 unless subsection (1), (3) or (8) of section 36 applies.

(3) A reference in this section (and in any of those paragraphs) to what a person anticipated —

(a) in relation to an offence under section 31(1) or (3) - is to the act which would amount to the commission of the anticipated offence;

(b) in relation to an offence under section 31(4) - is to an act which would amount to the commission of any of the offences specified in the indictment or charge.

(4) Nothing in this section or section 40 restricts the operation of any enactment by virtue of which an act constituting an offence under section 31 is triable under the law of the Falkland Islands.

[UK Serious Crime Act 2007 s.52]

36. Extended jurisdiction in certain cases

(1) This subsection applies if —

(a) any relevant behaviour of a person takes place wholly or partly in the Falkland Islands;

(b) the person knows or believes that what he or she anticipates might take place wholly or partly in a place outside the Falkland Islands; and

(c) either —

(i) the anticipated offence is one that would be triable under the law of the Falkland Islands if it were committed there; or

(ii) if there are relevant conditions, it would be so triable if it were committed there by a person who satisfies the conditions.

(2) In this subsection (1) “relevant condition” means a condition that —

(a) determines (wholly or in part) whether an offence committed outside the Falkland Islands is nonetheless triable under the law of the Falkland Islands; and

(b) relates to the citizenship, nationality or residence of the person who commits it.

(3) This subsection applies if —

(a) subsection (1) does not apply;

(b) any relevant behaviour of a person takes place wholly or partly in the Falkland Islands;

(c) the person knows or believes that what he or she anticipates might take place wholly or partly in a place outside the Falkland Islands; and

(d) what the person anticipates would amount to an offence under the law in force in force in that place.

(4) The condition in subsection (3)(d) is to be taken to be satisfied unless, not later than 28 days after the defendant is charged with the offence, the defence serve on the prosecution a notice —

(a) stating that on the facts as alleged the condition is not in their opinion satisfied;

(b) showing their grounds for that opinion; and

(c) requiring the prosecution to show that it is satisfied.

(5) The court, if it thinks fit, may permit the defence to require the prosecution to show that the condition is satisfied without prior service of a notice under subsection (4).

(6) In the Supreme Court, the question whether the condition is satisfied is to be decided by the judge alone.

(7) An act punishable under the law in force in any place outside the Falkland Islands constitutes an offence under that law for the purposes of subsection (3), however it is described in that law.

(8) This subsection applies if —

(a) any relevant behaviour of a person takes place wholly outside the Falkland Islands;

(b) the person knows or believes that what he or she anticipates might take place wholly or partly in a place outside the Falkland Islands; and

(c) the person could be tried under the law of the Falkland Islands if he or she committed the anticipated offence in that place.

(9) For the purposes of subsection (8)(c), the person is to be assumed to be able to commit the anticipated offence.

(10) In relation to an offence under section 31(4), a reference in this section to the anticipated offence is a reference to any of the offences specified in the indictment or charge.

[UK Serious Crime Act 2007 Schedule 4]

37. Commencement of proceedings, etc. for an offence

(1) Any provision to which this section applies has the same effect with respect to an offence under section 31 as it has with respect to the anticipated offence.

(2) This section applies to any provision in or under an enactment (whenever coming into operation) that —

- (a) provides that proceedings may not be commenced or carried on except by, or with the consent of, the Attorney General;
- (b) confers power to commence proceedings;
- (c) confers power to seize and detain property;
- (d) confers a power of forfeiture or deprivation, including a power to deal with anything liable to be forfeited.

(3) In relation to an offence under section 31(4) —

- (a) the reference in subsection (1) to the anticipated offence is a reference to any offence specified in the indictment or charge; and
- (b) each of the offences specified in the indictment or charge must be an offence in respect of which the prosecutor has power to commence proceedings.

(4) Any consent to proceedings required as a result of this section is in addition to any consent required by subsection (6).

(5) Proceedings for an offence triable by reason only of a provision of section 36 may not be commenced except by, or with the consent of, the Attorney General.

[UK Serious Crime Act 2007 ss.53, 54 (part) and 55, with s.34 definitions]

38. Persons who may be convicted

(1) In proceedings for an offence under section 31, a person can be convicted if —

- (a) it is proved that the person must have committed that offence or the anticipated offence; but
- (b) it is not proved which of those offences the person committed.

(2) For the purposes of this section, a person is not to be treated as having committed the anticipated offence merely because the person aided, abetted, counselled or procured its commission.

(3) In relation to an offence under section 31(4), a reference in this section to the anticipated offence is a reference to an offence specified in the indictment or charge.

[UK Serious Crime Act 2007 s.56]

39. Alternative verdicts and guilty pleas

(1) If in proceedings for an offence under section 31(1) or (3) a person is not found guilty of that offence by reference to the specified offence, the person may be found guilty of that offence by reference to an alternative offence.

(2) If in proceedings for an offence under section 31(4) a person is found not guilty of that offence by reference to any specified offence, the person may be found guilty of that offence by reference to one or more alternative offences.

(3) If in proceedings for an offence under section 31(4) a person is found guilty of the offence by reference to one or more specified offences, the person may also be found guilty of it by reference to one or more other alternative offences.

(4) For the purposes of this section, an offence is an alternative offence if —

(a) it is an offence of which, on a trial for the specified offence, a defendant may be found guilty; and

(b) condition in subsection (5) is satisfied.

(5) The condition referred to in subsection (4)(b) is that the indictment or charge under section 31 includes allegations which amount to or include (expressly or by implication) an allegation of that offence by reference to it.

(6) Subsection (4) does not apply if the specified offence, or any of the specified offences, is murder or treason.

(7) In the application of subsection (5) to proceedings for an offence under section 31(1), the allegations in the indictment or charge are to be taken to include an allegation of that offence by reference to the offence of attempting to commit the specified offence.

(8) Section 33(4) applies to an offence which is an alternative offence in relation to a specified offence as it applies to that specified offence.

(9) In this section —

(a) in relation to a person charged with an offence under section 31(1) or (3), “the specified offence” means the offence specified in the indictment or charge as the one alleged to be the anticipated offence;

(b) in relation to a person charged with an offence under section 31(4), “specified offence” means an offence specified in the indictment or charge (within the meaning of subsection (4) of that section), and related expressions are to be read accordingly.

(10) A person being tried for an offence under section 31 may plead guilty to an offence of which the person could be found guilty under this section on the same indictment or charge.

(11) This section applies to an indictment or charge containing more than one offence as if each offence were the subject of a separate count or allegation.

(12) This section does not affect section 14 (Conviction of offence other than that charged).

[UK Serious Crime Act 2007 s.57]

40. Penalties

(1) Subsections (2) and (3) apply if a person is convicted —

(a) of an offence under section 31(1) or (3); or

(b) of an offence under section 31(4) by reference to only one offence (“the reference offence”).

(2) The maximum penalty on conviction of a person for encouragement is —

(a) if the anticipated or reference offence is murder - imprisonment for life;

(b) in any other case - any penalty for which the person would be liable on conviction of the anticipated or reference offence.

(3) Subsections (4) to (6) apply if a person is convicted of an offence under section 31(4) by reference to more than one offence (“the reference offences”).

(4) The maximum penalty on conviction of a person for encouragement, if none of the reference offences is murder, but one or more of them is punishable with imprisonment, is imprisonment for the maximum term prescribed for any one of those offences (taking the longer or the longest term as the limit for the purposes of this paragraph if the terms prescribed differ).

(5) The maximum penalty on conviction of a person for encouragement in any other case is a fine.

(6) Subsections (2)(b), (5) and (6) are subject to any contrary provision made by or under any other enactment.

[UK Serious Crime Act 2007 s.58]

41. Abolition of common law offence of incitement

(1) The common law offence of inciting the commission of another offence is abolished.

(2) A reference in any enactment to the offence of incitement is to be read as a reference to the offence of encouragement under section 31(1), (3) or (4), according to the circumstances of the case, and the offender may be prosecuted and punished in accordance with sections 31 to 40.

[UK Serious Crime Act 2007 s.59 adapted]

Accessories

42. Aiding and abetting

(1) A person who aids, abets, counsels, procures, suborns or commands the commission of an offence is guilty of the offence of aiding and abetting the principal offence and is liable to be dealt with, tried and punished as a principal offender.

(2) A person may be charged with and tried for an offence of aiding and abetting another person even if that other person is not charged as a principal.

[UK Accessories & Abettors Act 1861 am. by Criminal Law Act 1977; Magistrates' Courts Act 1980 s.44]

43. Assisting offenders

(1) If a person ('A') has committed an imprisonable offence, any other person who, knowing or believing A to be guilty of the offence or of some other imprisonable offence, does without lawful authority or reasonable excuse any act with intent to impede A's arrest or prosecution, commits an offence.

Penalty: (i) if the offence is one for which the person must or may be sentenced to imprisonment for life – imprisonment for 12 years;

(ii) if the offence is one for which a person (not previously convicted) may be sentenced to imprisonment for 18 years – imprisonment for 9 years;

(iii) if the offence is one for which a person (not previously convicted) may be sentenced to imprisonment for 14 years – imprisonment for 7 years;

(iv) if the offence is not one included above but for which a person (not previously convicted) may be sentenced to imprisonment for 10 years – imprisonment for 5 years;

(iv) in any other case – imprisonment for 3 years.

(2) No proceedings for an offence under subsection (1) may be commenced except by, or with the consent of, the Attorney General.

(3) Subsection (2) does not prevent the arrest, or the issue of a warrant for the arrest, of a person for an offence under subsection (1), or the remand in custody or on bail of a person charged with such an offence.

[UK Criminal Law Act 1967 s.4(1) and (3) modified]

44. Concealing offences and false information

(1) If a person ('A') has committed an imprisonable offence, any other person ('B') who, knowing or believing that —

(a) the offence or some other imprisonable offence has been committed; and

(b) B has information which might be of material assistance in securing the prosecution or conviction of an offender for it,

accepts or agrees to accept for not disclosing that information any consideration other than the making good of loss or injury caused by the offence, or the making of reasonable compensation for that loss or injury, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) A person who causes any wasteful employment of the police by knowingly making to any person a false report tending to —

- (a) show that an offence has been committed;
- (b) give rise to fear for the safety of any persons or property; or
- (c) show that the person has information material to any police inquiry,

commits an offence.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(3) No proceedings for an offence under this section may be commenced except by, or with the consent of, the Attorney General.

(4) The compounding of an offence other than treason is not an offence otherwise than under this section.

[UK Criminal Law Act 1967 s.5]

Miscellaneous

45. Consequences of conviction for ancillary offence

(1) If —

- (a) any written law of the Falkland Islands confers a power or imposes a duty which must or may be exercised or performed consequent upon a conviction of an offence or in relation to a person who is detained in custody for an offence; or
- (b) a reference is otherwise made in any written law of the Falkland Islands to an offence,

that power or duty or that reference is deemed to be also exercisable or performable consequent upon a conviction of, or include a reference to, as the case may be —

- (i) an attempt to commit that offence;
- (ii) a conspiracy to commit that offence;
- (iii) encouraging that offence;
- (iv) aiding and abetting that offence.

(2) The powers and duties to which subsection (1) applies include, but are not limited to powers—

(a) to authorise search and seizure and detention of property;

(b) to order forfeiture or deprivation of property;

(c) to award costs;

(d) to cancel, suspend or refuse to issue any licence, permit or other authorisation.

[Crimes Ord. s.11 modified]

CHAPTER 2 – CRIMES AGAINST THE INDIVIDUAL

PART 4 – OFFENCES AGAINST THE PERSON

Causing and threatening death

46. Murder

(1) A person who with intent to kill or to cause grievous bodily harm to any person causes the death of another person by an unlawful act or omission commits the offence of murder.

Penalty: As provided in subsection (2).

(2) A person convicted of murder must be sentenced to life imprisonment, but —

(a) sections 577 and 582 of the Criminal Procedure and Evidence Ordinance 2014 apply in relation to the recommendation of a minimum term; and

(b) section 728 of the Criminal Procedure and Evidence Ordinance 2014 applies if the person convicted is a youth.

(3) In relation to murder and other fatal offences there is no requirement that the death should occur within a year and a day after the infliction of injury, but no prosecution for murder or any other fatal offence may be commenced except by, or with the consent of, the Attorney General if—

(a) the injury alleged to have caused the death was sustained more than 3 years before the death occurred; or

(b) the accused person has previously been convicted of an offence alleged to be connected with the death.

(4) In subsection (3) “fatal offence” means —

(a) murder, manslaughter, infanticide or any other offence of which one of the elements is causing a person’s death; or

(b) the offence of encouraging, or aiding and abetting, a person's suicide.

(5) The offence of murder is triable on indictment only.

[Common law; Crimes Ord. ss.22 and 23B; UK Murder (Abolition of Death Penalty) Act 1965 s.1 adapted;

47. Abolition of constructive malice

(1) If a person kills another in the course or furtherance of some other offence, the killing does not amount to murder unless done with the same intention as is required for a killing to amount to murder when not done in the course or furtherance of another offence.

(2) For the purposes of subsection (1), a killing done in the course or for the purpose of resisting an officer of justice, or of resisting or avoiding or preventing a lawful arrest, or of effecting or assisting an escape or rescue from legal custody, is to be treated as a killing in the course or furtherance of an offence.

[Crimes Ord. s.23 modified; UK Homicide Act 1957 s.1]

48. Diminished responsibility

(1) A person ('A') who kills or is a party to the killing of another is not to be convicted of murder if A was suffering from an abnormality of mental functioning which —

(a) arose from a recognised medical condition;

(b) substantially impaired A's ability to do one or more of the things mentioned in subsection (2); and

(c) provides an explanation for A's acts and omissions in doing or being a party to the killing.

(2) The things referred to in subsection (1)(b) are to —

(a) understand the nature of A's conduct;

(b) form a rational judgment;

(c) exercise self-control.

(3) For the purposes of subsection (1)(c), an abnormality of mental functioning provides an explanation for A's conduct if it causes, or is a significant contributory factor in causing, A to carry out that conduct.

(4) On a charge of murder, it is for the defence to prove that the defendant is by virtue of this section not liable to be convicted of murder.

(5) A person who but for this section would be liable, whether as principal or as accessory, to be convicted of murder is liable instead to be convicted of manslaughter.

(6) The fact that one party to a killing is by virtue of this section not liable to be convicted of murder does not affect the question whether the killing amounted to murder in the case of any other party to it.

[Crimes Ord. s.24 modified; UK Homicide Act 1957 s.2 am. by Coroners & Justice Act 2009 s.52]

49. Loss of self-control

(1) If a person ('A') kills or is a party to the killing of another ('B'), A is not to be convicted of murder if —

(a) A's acts and omissions in doing or being a party to the killing resulted from A's loss of self-control;

(b) the loss of self-control had a qualifying trigger; and

(c) a person of A's sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of A, might have reacted in the same or in a similar way to A.

(2) For the purposes of subsection (1)(a), it is irrelevant whether or not the loss of self-control was sudden.

(3) In subsection (1)(c) the reference to "the circumstances of A" is a reference to all of A's circumstances other than those whose only relevance to A's conduct is that they bear on A's general capacity for tolerance or self-restraint.

(4) Subsection (1) does not apply if, in doing or being a party to the killing, A acted in a considered desire for revenge.

(5) On a charge of murder, if sufficient evidence is adduced to raise an issue with respect to the defence under subsection (1), the jury must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

(6) For the purposes of subsection (5), sufficient evidence is adduced to raise an issue with respect to the defence if evidence is adduced on which, in the opinion of the trial judge, a jury, properly directed, could reasonably conclude that the defence might apply.

(7) A person who, but for this section, would be liable to be convicted of murder is liable instead to be convicted of manslaughter.

(8) The fact that one party to a killing is by virtue of this section not liable to be convicted of murder does not affect the question whether the killing amounted to murder in the case of any other party to it.

(9) A loss of self-control had a qualifying trigger if —

(a) A's loss of self-control was attributable to A's fear of serious violence from B against A or another identified person;

(b) A's loss of self-control was attributable to a thing or things done or said (or both) which —

(i) constituted circumstances of an extremely grave character; and

(ii) caused A to have a justifiable sense of being seriously wronged; or

(c) A's loss of self-control was attributable to a combination of the matters mentioned in paragraphs (a) and (b).

(10) In determining whether a loss of self-control had a qualifying trigger —

(a) A's fear of serious violence is to be disregarded to the extent that it was caused by a thing which A incited to be done or said for the purpose of providing an excuse to use violence;

(b) a sense of being seriously wronged by a thing done or said is not justifiable if A incited the thing to be done or said for the purpose of providing an excuse to use violence;

(c) the fact that a thing done or said constituted sexual infidelity is to be disregarded.

(11) The common law defence of provocation is abolished.

[Crimes Ord. s.25 modified; Coroners and Justice Act 2009 ss.54 & 55]

50. Manslaughter

(1) A person who kills another by an unlawful act likely to cause bodily harm commits the offence of manslaughter.

(2) A person who kills another by gross negligence commits the offence of manslaughter.

(3) The maximum penalty on conviction for manslaughter, whether the conviction is under subsection (1) or (2) of this section, or under section 48(5), 49(7), 54(1) or 56, is imprisonment for life.

(4) If manslaughter is committed by the driver of a motor vehicle, the driver must upon conviction be disqualified from driving for a minimum period of 2 years.

(5) The offence of manslaughter is triable on indictment only.

[Common law; UK Offences against the Person Act 1861 s.5 adapted; Road Traffic Offences Act 1988]

51. Murder or manslaughter outside the Falkland Islands

(1) An offence of murder or manslaughter committed on land anywhere outside the Falkland Islands by a person who has Falkland Islands status may be dealt with, inquired of, tried, determined, and punished in the Falkland Islands.

(2) This section does not prevent any person from being tried in any place outside the Falkland Islands for any murder or manslaughter committed outside the Falkland Islands.

[UK Offences against the Person Act 1861 s.9]

52. Soliciting murder

(1) A person who solicits, encourages, persuades or endeavours to persuade or proposes to any person, to murder any other person in the Falkland Islands or elsewhere, commits an offence. Penalty: Imprisonment for life.

(2) An offence under subsection (1) is triable on indictment only.

(3) A person may be prosecuted for an offence under this section, or under Part 3 for the offence of aiding and abetting murder, but not for both offences arising out of the same facts.

[UK Offences against the Person Act 1861 s.4 am by Criminal Law Act 1977]

53. Threats to kill

A person ('A') who without lawful excuse makes to another person ('B') a threat, intending that B would fear it would be carried out, to kill B or a third person, commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

[UK Offences against the Person Act 1861 s.16 subst. by Criminal Law Act 1977]

54. Suicide pacts

(1) A person ('A') who, in pursuance of a suicide pact between A and another person ('B') —

(a) kills B; or

(b) is party to the killing of B by a third person,

commits the offence of manslaughter.

(2) If it is shown that a person ('A') charged with the murder of another person ('B') killed B or was a party to B's being killed, it is for the defence to prove that A was acting in pursuance of a suicide pact between A and B.

(3) For the purposes of this section —

(a) "suicide pact" means a common agreement between 2 or more persons having for its object the death of all of them, whether or not each is to take his or her own life; but

(b) nothing done by a person who enters into a suicide pact is to be treated as done by the person in pursuance of the pact unless it is done while the person has the settled intention of dying in pursuance of the pact.

[UK Homicide Act 1957 s.4 am. by Suicide Act 1961]

55. Complicity in suicide

(1) A person ('A') commits an offence if —

(a) A does an act capable of encouraging, or aiding and abetting, the suicide or attempted suicide of another person; and

(b) A's act was intended to encourage, or aid and abet, suicide or an attempt at suicide.

Penalty: Imprisonment for 14 years or a fine, or both.

(2) The person referred to in subsection (1)(a) need not be a specific person (or class of persons) known to, or identified by, A.

(3) A may commit an offence under this section whether or not a suicide, or an attempt at suicide, occurs.

(4) If on the trial of an indictment for murder or manslaughter of a person it is proved that the deceased person committed suicide, and the defendant committed an offence under subsection (1) in relation to that suicide, the jury may find the defendant guilty of the offence under subsection (1).

(5) If A arranges for a person ('B') to do an act that is capable of encouraging or assisting the suicide or attempted suicide of another person and B does that act, A is to be treated for the purposes of this Part as having done it.

(6) If the facts are such that an act is not capable of encouraging or assisting suicide or attempted suicide, for the purposes of this section it is to be treated as so capable if the act would have been so capable had the facts been as A believed them to be at the time of the act; or had subsequent events happened in the manner A believed they would happen, or both.

(7) A reference in this section to a person doing an act that is capable of encouraging the suicide or attempted suicide of another person includes a reference to the person's doing so by threatening another person or otherwise putting pressure on another person to commit or attempt suicide.

(8) A reference in this section to an act includes a reference to a course of conduct, and a reference to doing an act is to be read accordingly.

(9) No prosecution for an offence against this section may be commenced except by, or with the consent of, the Attorney General.

[UK Suicide Act 1961 s.2 am. by Coroners and Justice Act 2009 s.59]

56. Infanticide

(1) If a woman by any wilful act or omission causes the death of her child, being a child under the age of 12 months, but at the time of the act or omission the balance of her mind was disturbed by reason of —

(a) her not having fully recovered from the effect of giving birth to a child; or

(b) the effect of lactation consequent upon the birth of the child,

then, if the circumstances were such that but for this section the offence would have amounted to murder or manslaughter, she commits the offence of infanticide

(2) If on the trial of a woman for the murder of her child, being a child under the age of 12 months, the jury are of the opinion that she by any wilful act or omission caused the death of the child, but that at the time of the act or omission the balance of her mind was disturbed as described in paragraph (a) or (b) of subsection (1), the jury may, if the circumstances were such that but for the provisions of this section they might have returned a verdict of murder or manslaughter, return instead a verdict of infanticide.

(3) A woman convicted of infanticide may be dealt with and punished as if she had committed the offence of manslaughter of the child.

(4) This section does not affect the power of the jury upon an indictment for the murder of a child to return a verdict of manslaughter, or a verdict of not guilty by reason of mental disorder.

(5) An offence under subsection (1) is triable on indictment only.

[UK Infanticide Act 1938 s.1 am. by Coroners and Justice Act 2009 s.57]

57. Child destruction

(1) Subject to this section, a person who, with intent to destroy the life of a child capable of being born alive, by any wilful act causes a child to die before it has an existence independent of its mother, commits the offence of child destruction.

Penalty: Imprisonment for life.

(2) A person is not to be found guilty of an offence against this section unless it is proved that the act which caused the death of the child was not done in good faith for the purpose only of preserving the life of the mother.

(3) For the purposes of this section, evidence that a woman had at any material time been pregnant for a period of 28 weeks or more is *prima facie* proof that she was at that time pregnant of a child capable of being born alive.

(4) No offence under this section is committed by a registered medical practitioner who terminates a pregnancy in accordance with section 60.

(5) For the purposes of the law relating to abortion —

(a) anything done with intent to procure a woman's miscarriage (or, in the case of a woman carrying more than one foetus, her miscarriage of any foetus) is unlawfully done unless authorised by section 60; and

(b) in the case of a woman carrying more than one foetus, anything done with intent to procure her miscarriage of any foetus is authorised by that section if —

(i) the ground for termination of the pregnancy specified in subsection 60(1)(d) applies in relation to any foetus and the thing is done for the purpose of procuring the miscarriage of that foetus; or

(ii) any of the other grounds for termination of the pregnancy specified in section 60 applies.

(6) If on the trial of a person for the murder or manslaughter of a child, or for infanticide, or for an offence under section 58 (Administering drugs or using instruments to procure abortion), the jury are of opinion that the defendant is not guilty of murder, manslaughter or infanticide, or of an offence under section 58 as the case may be, but that the defendant is guilty of child destruction —

(a) the jury may find the person guilty of that offence; and

(b) the person is liable to be punished as if he or she had been convicted of an offence under this section.

(7) If on the trial of a person for child destruction the jury are of opinion that the defendant is not guilty of that offence, but that the person is guilty of an offence under section 58 —

(a) the jury may find the person guilty of that offence; and

(b) the person is liable to be punished as if he or she had been convicted of an offence under that section.

(8) An offence under subsection (1) is triable on indictment only.

[UK Infant Life Preservation Act 1929 ss.1 and 2; Abortion Act 1967 s.5]

Termination of pregnancy

58. Administering drugs or using instruments to procure abortion

(1) A pregnant woman who, with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing, or unlawfully uses any other means with that intent, commits an offence.

Penalty: Imprisonment for 14 years or a fine, or both.

(2) A person who, with intent to procure the miscarriage of a woman, whether she is or is not with child, unlawfully administers to her or causes to be taken by her any poison or other

noxious thing, or unlawfully uses any instrument or other means with that intent, commits an offence.

Penalty: Imprisonment for 14 years or a fine, or both.

[UK Offences against the Person Act 1861 s.58 am. by Criminal Justice Act 1948 s.1]

59. Supplying drugs, etc. to procure abortion

A person who unlawfully supplies or procures any poison or other noxious thing, or any instrument or thing, knowing that it is intended to be unlawfully used or employed with intent to procure the miscarriage of a woman, whether she is or is not with child, commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

[UK Offences against the Person Act 1861 s.59 am by Criminal Justice Act 1948 s.1]

60. Medical termination of pregnancy

(1) Subject to this section, a person does not commit an offence under section 58 or 59 when a pregnancy is terminated by a registered medical practitioner if 2 medical practitioners are of the opinion, formed in good faith that —

(a) the pregnancy has not exceeded its 24th week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman or any existing children of her family;

(b) the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman;

(c) the continuance of the pregnancy would involve risk to the life of the pregnant woman, greater than if the pregnancy were terminated; or

(d) there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.

(2) In determining whether the continuance of a pregnancy would involve such risk of injury to health as is mentioned in paragraph (a) or (b) of subsection (1), account may be taken of the pregnant woman's actual or reasonably foreseeable environment.

(3) Except as provided by subsection (4), any treatment for the termination of pregnancy must be carried out in the King Edward VII Hospital or in a place approved for the purposes of this section by the Governor.

(4) Subsection (3), and so much of subsection (1) as relates to the opinion of 2 registered medical practitioners, do not apply to the termination of a pregnancy by a registered medical practitioner in a case where he or she is of the opinion, formed in good faith, that the termination is immediately necessary to save the life or to prevent grave permanent injury to the physical or mental health of the pregnant woman.

(5) An opinion as referred to in subsection (1) must be certified by the practitioners concerned in the form and at the time prescribed.

(6) Certificates made for the purposes of this section must be preserved and disposed of in the prescribed manner.

(7) A registered medical practitioner who terminates a pregnancy must give notice of the termination and other prescribed information relating to the termination to the Attorney General within 14 days of the termination.

(8) The disclosure, except to prescribed persons or for prescribed purposes, of notices given or information furnished pursuant to this section, is prohibited.

(9) In this section “prescribed” means prescribed by regulations made by the Secretary of State under the UK Abortion Act 1967 or any replacement of that Act.

(10) A person who wilfully contravenes or wilfully fails to comply with the requirements of this section or of regulations made under it commits an offence.

Penalty: A fine at level 5 on the standard scale.

[UK Abortion Act 1967 ss.1 and 2 as amended and adapted]

61. Conscientious objection to participation in treatment

(1) Subject to subsections (2) and (3), no person is under any duty, whether by contract or by any statutory or other legal requirement, to participate in any treatment authorised by section 60 to which the person has a conscientious objection.

(2) In any legal proceedings the burden of proof of conscientious objection rests on the person claiming to rely on it.

(3) Subsection (1) does not affect any duty to participate in treatment which is necessary to save the life or to prevent grave permanent injury to the physical or mental health of a pregnant woman.

[UK Abortion Act 1967 s.4 am. by the Human Fertilisation & Embryology Act 1990]

Concealing the birth of a child

62. Concealing the birth of a child

If a woman gives birth to a child, any person who, by any secret disposition of the dead body of the child, whether the child died before, at, or after its birth, endeavours to conceal the birth of it, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

[UK Offences against the Person Act 1861 s.60]

Endangering life

63. Impeding rescue from shipwreck

A person (‘A’) who unlawfully and maliciously prevents or impedes any person (‘B’) who is on board of or has abandoned any ship or vessel that is in distress, wrecked, stranded or cast on shore, and who is endeavouring —

- (a) to save B's own life; or
- (b) to save the life of any other person in such peril,

commits an offence.

Penalty: Imprisonment for 14 years or a fine, or both.

[UK Offences against the Person Act 1861 s.17 modernised]

64. Wounding, etc. with intent to do grievous bodily harm

A person who unlawfully and maliciously by any means wounds or causes any grievous bodily harm to any person, with intent —

- (a) to do some grievous bodily harm to any person; or
- (b) to resist or prevent the lawful apprehension or detainer of any person,

commits an offence.

Penalty: Imprisonment for 14 years or a fine, or both.

[UK Offences against the Person Act 1861 s.18 am. by Criminal Law Act 1967]

65. Malicious wounding

A person who unlawfully and maliciously wounds or inflicts any grievous bodily harm upon any other person, either with or without any weapon or instrument, commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

[UK Offences against the Person Act 1861 s.20]

66. Attempting to choke, etc. with intent to facilitate a serious offence

A person ('A') who, by any means —

- (a) attempts to choke, suffocate or strangle another person ('B'); or
- (b) by any means calculated to choke, suffocate or strangle, attempts to render B insensible, unconscious or incapable of resistance,

with intent to enable A or any other person to commit, or to assist any other person in committing, a serious offence, commits an offence.

Penalty: Imprisonment for 14 years or a fine, or both.

[UK Offences against the Person Act 1861 s.21 am. by Criminal Justice Act 1948 and Criminal Law Act 1967]

67. Using drugs to facilitate a serious offence

A person ('A') who —

- (a) unlawfully applies or administers to another person ('B');
- (b) causes to be taken by, or attempts to apply or administer to another person ('B'); or

(c) attempts to cause to be administered to or taken by, another person ('B'),

any chloroform, laudanum, or other stupefying or overpowering drug, matter, or thing, with intent to enable A or any other person to commit, or to assist in committing, a serious offence, commits an offence.

Penalty: Imprisonment for 14 years or a fine, or both.

[UK Offences against the Person Act 1861 s.22 am. by Criminal Justice Act 1948]

68. Administering poison

(1) A person who unlawfully and maliciously administers to or causes to be administered to or taken by any other person any poison or other destructive or noxious thing so as to endanger the life of the other person or cause that person any grievous bodily harm commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) A person who unlawfully and maliciously administers to or causes to be administered to or taken by any other person any poison or other destructive or noxious thing with intent to injure, aggrieve or annoy that other person commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

(3) If, on the trial of a person for an offence under subsection (1) the court (or the jury, if there is one) is not satisfied that the person is guilty of that offence, but is satisfied that the person is guilty of the offence under subsection (2), the court or jury, as the case may be, may acquit the person of the offence under subsection (1) and convict him or her of an offence under subsection (2).

[UK Offences against the Person Act 1861 ss.23 to 25 am. by Criminal Justice Act 1948 and Criminal Law Act 1967]

69. Setting spring guns, etc.

(1) A person who sets or places, or causes to be set or placed, any spring gun, man trap or other device calculated to destroy human life or inflict grievous bodily harm, with the intent that it should or whereby it might destroy or inflict grievous bodily harm upon a trespasser or other person coming in contact with it, commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) A person ('A') who knowingly and wilfully permits any such spring gun, man trap or other device which has been set or placed by another person in a place that subsequently comes into A's possession or occupation to continue so set or placed, is deemed to have set and placed it with the intention mentioned in subsection (1).

(3) Nothing in this section makes it illegal —

(a) to set or place any gin or trap such as is usually set or placed to destroy vermin;

(b) to set or place or cause to be set or placed, or to be continued set or placed, from sunset to sunrise, any spring gun, man trap or other device in a dwelling house in order to protect it.

[UK Offences against the Person Act 1861 s.31 am. by Criminal Justice Act 1948]

Assaults

70. Common assault

(1) A person who unlawfully assaults or beats any other person commits an offence.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) In addition to or instead of imposing any penalty the court may order the offender to enter into a recognisance, with or without sureties, to keep the peace and to be of good behaviour for a period not exceeding 12 months.

(3) In this Part —

(a) an assault occurs when a person intentionally or recklessly causes another person to apprehend immediate unlawful violence, whether or not physical contact is made;

(b) a battery occurs when a person intentionally or recklessly applies unlawful force to another person.

[Common law; UK Offences against the Person Act 1861 s.42 replaced by Criminal Justice Act 1988 s.39]

71. Assault occasioning actual bodily harm

A person who commits an assault occasioning actual bodily harm commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

[UK Offences against the Person Act 1861 s.47]

72. Assaulting police officer

(1) A person who assaults —

(a) a police officer in the execution of the officer's duty; or

(b) a person assisting a police officer in the execution of the officer's duty,

commits an offence.

Penalty: As provided in subsections (4) to (5).

(2) A person who resists or wilfully obstructs —

(a) a police officer in the execution of the officer's duty; or

(b) a person assisting a police officer in the execution of the officer's duty,

commits an offence.

Penalty: As provided in subsection (4).

(3) Subject to subsection (5), the maximum penalty on conviction for an offence under this section is imprisonment for 2 years or a fine at level 5 on the standard scale, or both.

(4) If a person convicted of an offence under subsection (1) is shown to have had a firearm or an imitation firearm in his or her possession at the time of the offence, unless the person shows that he or she had it in possession for a lawful object, then, subject to subsection (5), the person is liable to imprisonment for 7 years or a fine, or both.

(5) A person is not liable to the increased penalty provided by subsection (4) unless, before the person enters a plea in respect of the alleged offence, the person is notified in writing that the prosecution intend to show that he or she was in possession of a firearm or imitation firearm at the time of the offence.

[Crimes Ord. s.33; Police Ord. s.55; UK Police Act 1996 s.89 amplified]

73. Assault to prevent arrest

A person ('A') who assaults another person ('B') with intent to resist or prevent the lawful arrest or detention of A or of any other person for any offence, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

[UK Offences against the Person Act 1861 s.38 am. by Criminal Law Act 1967]

74. Assaulting persons when preserving wrecks

A person who assaults and strikes or wounds any justice of the peace, police officer or other authorised person who is exercising a duty concerning the preservation of —

(a) a vessel in distress; or

(b) any vessel, goods, or effects wrecked, stranded, or cast on shore, or lying under water,

commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

[UK Offences against the Person Act 1861 s.37 am. by Criminal Justice Act 1948]

75. Obstructing or assaulting clergyman

(1) A person who by threats or force —

(a) obstructs or prevents; or

(b) endeavours to obstruct or prevent,

any clergyman or other Minister of religion in or from celebrating divine service or otherwise officiating in any church, chapel, meeting house or other place of divine worship, or in or from the performance of that person's duty in the lawful burial of the dead in any burial place, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) A person who —

(a) strikes or offers any violence to; or

(b) upon any civil process, or under the pretence of executing any civil process, arrests,

any clergyman or other Minister of religion who is engaged in any rites or duties, or who to the knowledge of the offender is about to engage in, is going to perform or is returning from the performance of, any rites or duties, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

[UK Offences against the Person Act 1861 s.36]

76. Certificate of dismissal

(1) If the Magistrate's Court or Summary Court, upon hearing on its merits any case of assault or battery in which the complaint was preferred by or on behalf of the party aggrieved, finds the offence not proved, or the assault or battery to have been justified, or so trifling as not to merit any punishment, and accordingly dismisses the complaint, the court must forthwith issue a certificate stating the fact of such dismissal to the party against whom the complaint was preferred.

(2) If a person, against whom a complaint for an offence of assault or battery has been preferred by or on behalf of the party aggrieved, has —

(a) obtained a certificate under subsection (1); or

(b) having been convicted and sentenced to imprisonment or a fine, or both, has served the term of imprisonment or paid the fine, or both,

no further or other proceedings, civil or criminal, may be brought against the person for the same cause.

[UK Offences against the Person Act 1861 ss.44 and 45 am. by Criminal Justice Act 1988 and Courts Act 2003]

Endangering the life of a child or vulnerable adult

77. Causing or allowing the death of or harm to a child or vulnerable adult

(1) A person ('A') commits an offence if —

(a) a child or vulnerable adult ('B') dies or suffers serious physical harm as a result of the unlawful act of a person who —

(i) was a member of the same household as B; and

(ii) had frequent contact with B;

(b) A was such a person at the time of the act;

(c) at that time there was a significant risk of serious physical harm being caused to B by the unlawful act of such a person; and

(d) either A was the person who caused the death or serious physical harm, or —

(i) A was, or ought to have been, aware of the risk mentioned in paragraph (c);

(ii) A failed to take such steps as A could reasonably have been expected to take to protect B from the risk; and

(iii) the act occurred in circumstances of the kind that A foresaw or ought to have foreseen.

Penalty: As provided in subsection (7).

(2) The prosecution does not have to prove whether it is paragraph (i) in subsection (1)(d) that applies, or paragraphs (ii) and (iii) that apply.

(3) If A was not the mother or father of B —

(a) A cannot be charged with an offence if A was under the age of 16 at the time of the act that caused the death or serious physical harm;

(b) for the purposes of subsection (1)(d)(ii), A could not have been expected to take any such step as is there referred to before attaining that age.

(4) For the purposes of this section —

(a) A is to be regarded as a member of a particular household, even if A does not live in it, if A visits it so often and for such periods of time that it is reasonable to regard A as a member of it;

(b) if B lived in different households at different times, “the same household as B” in subsection (1)(a)(i) means the household in which B was living at the time of the act that caused the death or serious physical harm.

(5) For the purposes of this section, an unlawful act is one that —

(a) constitutes an offence; or

(b) would constitute an offence but for being the act of a person other than A who is —

(i) under the age of 10; or

(ii) entitled to rely on a defence of insanity.

(6) In this section —

“act” includes a course of conduct and an omission;

“child” means a person under the age of 16;

“serious physical harm” means harm that amounts to grievous bodily harm for the purpose of section 64.

(7) The maximum penalty on conviction for an offence under this section is —

(a) for causing or allowing a person’s death - imprisonment for 14 years;

(b) for causing or allowing a person to suffer serious physical harm - imprisonment for 10 years.

(8) An offence under subsection (7) is triable on indictment only.

[UK Domestic Violence, Crime & Victims Act 2004 s.5 am. by DVCV (Am) Act 2012]

78. Inferences in murder and manslaughter cases

(1) Subsections (2) to (4) apply if a person (“the defendant”) is charged in the same proceedings with an offence of murder or manslaughter and with an offence under section 77 in respect of the same death (“the section 77 offence”).

(2) If by virtue of a provision in Part 19 of the Criminal Procedure and Evidence Ordinance 2014 a court, or a jury if there is one, is permitted, in relation to the section 77 offence, to draw such inferences as appear proper from the defendant’s failure to give evidence or refusal to answer a question, the court or jury, as the case may be, may also draw such inferences in determining whether the defendant is guilty —

(a) of murder or manslaughter; or

(b) of any other offence of which the defendant could lawfully be convicted on the charge of murder or manslaughter,

even if there would otherwise be no case for the defendant to answer in relation to that offence.

(3) The charge of murder or manslaughter is not to be dismissed on the ground that the evidence against the defendant would not be sufficient for a court or a jury, if there is one, properly to convict the defendant, unless the section 77 offence is also dismissed on that ground.

(4) At the defendant’s trial the question whether there is a case for the defendant to answer on the charge of murder or manslaughter is not to be considered before the close of all the evidence (or, if at some earlier time the defendant ceases to be charged with the section 77 offence, before that earlier time).

(5) An offence under section 77 is, for the purposes of section 722 of the Criminal Procedure and Evidence Ordinance 2014 an offence of homicide.

[UK Domestic Violence, Crime and Victims Act 2004 s.6 am. by DVCV (Am) Act 2012 and adapted]

79. Inferences in cases of serious physical harm

(1) Subsections (3) to (5) apply if a person (“the defendant”) is charged in the same proceedings with a relevant offence and with an offence under section 77 in respect of the same harm (“the section 77 offence”).

(2) In this section “relevant offence” means —

- (a) an offence under section 64 or 65 (grievous bodily harm etc);
- (b) an offence under section 19 of attempting to commit murder.

(3) If by virtue of a provision in Part 19 of the Criminal Procedure and Evidence Ordinance 2014 a court, or a jury if there is one, is permitted, in relation to the section 77 offence, to draw such inferences as appear proper from the defendant’s failure to give evidence or refusal to answer a question, the court or jury, as the case may be, may also draw such inferences in determining whether the defendant is guilty of a relevant offence, even if there would otherwise be no case for the defendant to answer in relation to that offence.

(4) The charge of murder or manslaughter is not to be dismissed on the ground that the evidence against the defendant would not be sufficient for a court or jury, if there is one, properly to convict the defendant, unless the section 77 offence is also dismissed on that ground.

(5) At the defendant’s trial the question whether there is a case for the defendant to answer on the charge of the relevant offence is not to be considered before the close of all the evidence (or, if at some earlier time the defendant ceases to be charged with the section 77 offence, before that earlier time).

[UK Domestic Violence, Crime and Victims Act 2004 s.6A ins. by DVCV (Am) Act 2012 and adapted]

80. Abandoning young child

A person who unlawfully abandons or exposes any child under the age of 5 years, with the result that —

- (a) the life of the child is endangered; or
- (b) the health of the child is or is likely to be permanently injured,

commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

[UK Offences against the Person Act 1861 s.27 am by Criminal Justice Act 1948]

81. Being drunk while in charge of a child

A person who is drunk in any highway or other public place, whether a building or not, or on any licensed premises, while having the charge of a child under the age of 7 years, commits an offence.

Penalty: Imprisonment for 1 month or a fine at level 2 on the standard scale, or both.

[UK Licensing Act 1902 s.2]

82. Cruelty to or neglect of person under 16

(1) A person ('A') of or over the age of 16 years who has responsibility for any person under that age ('B') and who intentionally or recklessly subjects B, or allows B to be subjected to maltreatment, whether by act or omission, such that B child suffers, or is likely to suffer, significant harm, commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) For the purposes of this section —

“harm” means the impairment of —

- (a) physical or mental health; or
- (b) physical, intellectual, emotional, social or behavioural development;

“recklessly” means that A foresaw a risk that an act or omission regarding B would be likely to result in significant harm to B, but nonetheless unreasonably took that risk;

“maltreatment” includes —

- (a) neglect (including abandonment);
- (b) physical abuse;
- (c) sexual abuse;
- (d) exploitation; and
- (e) emotional abuse.

(3) If the question of whether harm suffered by B is significant turns on B's health or development, B's health or development is to be compared with that which could reasonably be expected of a similar person of that age.

(4) For the purposes of this section, a parent or other person who is legally liable to maintain a person under the age of 16 years ('B'), or the legal guardian of B, is deemed to have neglected B in a manner likely to cause injury to B's health if —

(a) the parent or other person or legal guardian has failed to provide adequate food, clothing, medical aid or lodging for B; or

(b) having been unable otherwise to provide such food, clothing, medical aid or lodging, has failed to take steps to procure it from any relevant Government department.

(5) For the purposes of this section, if it is proved that —

(a) the death of a child under the age of 3 years was caused by suffocation while the child was in bed with some other person ('A') who has attained the age of 16 years;

(b) the death was not caused by suffocation caused by disease or the presence of any foreign body in the throat or air passages of the child; and

(c) A was, when he or she went to bed, under the influence of drink,

A is deemed to have neglected the child in a manner likely to cause injury to its health.

(6) A person may be convicted of an offence under this section —

(a) even if actual suffering or injury to health, or the likelihood of actual suffering or injury to health, was obviated by the action of another person; and

(b) even if the child or young person has died.

[UK Children & Young Persons Act 1933 s.1 as amended; Child Maltreatment Bill 2014]

83. Illegal tattooing of youths

(1) Subject to subsection (2), it is an offence for a person to tattoo a youth except when the tattoo is performed for medical reasons by a medical practitioner or by a person working under such a practitioner's direction.

Penalty: A fine at level 3 on the standard scale.

(2) It is a defence for a person charged with an offence under subsection (1) to show that at the time the tattoo was performed the defendant had reasonable cause to believe that the person tattooed was of or over the age of 18 and did in fact so believe.

(3) In this section, "tattoo" means the insertion into the skin of any colouring material designed to leave a permanent mark.

[UK Tattooing of Minors Act 1969]

Child abduction, etc.

84. Abduction of child by parent, etc.

(1) Subject to subsections (5) and (8), a person ('A') connected with a child under the age of 18 commits an offence if A takes or sends the child out of the Falkland Islands without the appropriate consent.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) A is connected with a child for the purposes of this section if —

- (a) A is a parent of the child;
- (b) in the case of a child whose parents were not married to each other at the time of the child's birth - there are reasonable grounds for believing that A is the father of the child;
- (c) A is a guardian of the child;
- (d) A is a person in whose favour a residence order is in force with respect to the child; or
- (e) A has custody of the child.

(3) In this section, “the appropriate consent” in relation to a child means —

- (a) the consent of each of the following —
 - (i) the child's mother;
 - (ii) the child's father, if the father has parental responsibility for the child;
 - (iii) any guardian of the child;
 - (iv) any person in whose favour a residence order is in force with respect to the child;
 - (v) any person who has custody of the child;
- (b) the leave of the court granted under or by virtue of any provision of the Children Ordinance 2014; or
- (c) if any person has custody of the child - the leave of the court which awarded custody to that person.

(4) A person ('A') does not commit an offence under this section by taking or sending a child out of the Falkland Islands without obtaining the appropriate consent if —

- (a) A is a person in whose favour there is a residence order in force with respect to the child; and
- (b) A takes or sends the child out of the Falkland Islands for a period of less than one month.

(5) Subsection (4) does not apply if the person taking or sending the child out of the Falkland Islands does so in breach of an order under the Children Ordinance 2014.

(6) A person ('A') does not commit an offence under this section by doing anything without the consent of another person (B) whose consent is required under the foregoing provisions if A —

(a) does it in the belief that B —

(i) has consented; or

(ii) would consent if B was aware of all the relevant circumstances; or

(b) has taken all reasonable steps to communicate with B but has been unable to communicate with B; or

(c) B has unreasonably refused to consent.

(7) Subsection (6)(c) does not apply if —

(a) the person who refused to consent is a person —

(i) in whose favour there is a residence order in force with respect to the child; or

(ii) who has custody of the child; or

(b) the person taking or sending the child out of the Falkland Islands is, by so acting, in breach of an order made by a court in the Falkland Islands.

(8) If, in proceedings for an offence under this section, there is sufficient evidence to raise an issue as to the application of subsection (6), it is for the prosecution to prove that that subsection does not apply.

[UK Child Abduction Act 1984 s.1 am. by Children Act 1989]

85. Abduction of child by other persons

(1) Subject to subsection (3), a person, other than one mentioned in subsection (2), commits an offence if, without lawful authority or reasonable excuse, the person takes or detains a child under the age of 16 so as to —

(a) remove the child from the lawful control of any person having lawful control of the child; or

(b) keep the child out of the lawful control of any person entitled to lawful control of the child.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) The persons referred to in subsection (1)(b) are —

(a) if the father and mother of the child in question were married to each other at the time of the child's birth - the child's father and mother;

(b) if the father and mother of the child in question were not married to each other at the time of the child's birth - the child's mother; and

(c) any other person mentioned in section 84(2)(c) to (e).

(3) In proceedings against A person ('A') for an offence under this section, it is a defence for A to prove —

(a) if the father and mother of the child in question were not married to each other at the time of the child's birth —

(i) that A is the child's father; or

(ii) that, at the time of the alleged offence, A believed, on reasonable grounds, that A was the child's father; or

(b) that, at the time of the alleged offence, A believed that the child had attained the age of 16.

[UK Child Abduction Act 1984 s.2 am. by Children Act 1989]

86. Child abduction: Supplementary

(1) In section 84 —

“guardian of a child ” means a person appointed as a guardian under the Children Ordinance 2014;

“residence order” means an order settling the arrangements to be made as to the person with whom a child is to live.

(2) For the purposes of section 84, a person is to be treated as having custody of a child if there is in force —

(a) an order of a Falkland Islands court; or

(b) an order of a court outside the Falkland Islands recognised by the Falkland Islands courts as having effect in the Falkland Islands,

and awarding the person (whether solely or jointly with another person) custody, legal custody or care and control of the child.

(3) In the case of a child who is in the care of the Crown pursuant to the Children Ordinance 2014, section 84 has effect as if —

(a) the reference in subsection (1) to the appropriate consent were a reference to the consent of the Crown; and

(b) subsection (3) were omitted.

(4) In the case of a child who is —

(a) detained in a place of safety under the Criminal Procedure and Evidence Ordinance 2014;
or

(b) remanded to secure accommodation under the provision of any Ordinance,

section 84 has effect as if —

(i) the reference in subsection (1) to the appropriate consent were a reference to the leave of the court that makes the order; and

(ii) subsection (3) were omitted.

(5) In the case of a child who is the subject of —

(a) a pending application for an adoption order; or

(b) an order under the UK Adoption Act 1976 as applied to the Falkland Islands relating to adoption abroad, or of a pending application for such an order,

section 84 has effect as if —

(i) the reference in subsection (1) to the appropriate consent were a reference —

(A) in a case within paragraph (5)(a) above - to the leave of the court to which the application was made; and

(B) in a case within paragraph (5)(b) above - to the leave of the court which made the order or, as the case may be, to which the application was made; and

(ii) subsection (3) were omitted.

(6) For the purposes of sections 84 and 85, a person ('A') —

(a) takes a child if A causes or induces the child to accompany A or any other person, or causes the child to be so taken;

(b) sends a child if A causes the child to be sent;

(c) detains a child if A causes the child to be detained or induces the child to remain with A or any other person;

(7) References in those sections to a child's parents and to a child whose parents were (or were not) married to each other at the time of the child's birth are to be construed in accordance with any law of the Falkland Islands that extends their meaning.

(8) No prosecution for an offence against either section 84 or 85 may be commenced except by, or with the consent of, the Attorney General.

[UK Child Abduction Act 1984 ss.3, 4 and 105 and Schedule am. by Children Act 1989]

87. Trafficking people for labour exploitation

(1) A person ('A') commits an offence if A intentionally arranges or facilitates —

(a) the arrival in, or entry into, the Falkland Islands or another country of another person ('B');

(b) the travel of B within the Falkland Islands or another country, or

(c) the departure of B from the Falkland Islands or another country,

with a view to the exploitation of B.

Penalty: Imprisonment for 14 years or a fine, or both.

(2) For the purposes of subsection (1)(a) and (c) A's arranging or facilitating is with a view to the exploitation of B if (and only if) —

(a) A intends to exploit B, after B's arrival, entry or (as the case may be) departure but in any part of the world; or

(b) A believes that another person is likely to exploit B, after B's arrival, entry or (as the case may be) departure but in any part of the world.

(3) For the purposes of subsection (1)(b) A's arranging or facilitating is with a view to the exploitation of B if (and only if) —

(a) A intends to exploit B, during or after the journey and in any part of the world; or

(b) A believes that another person is likely to exploit B, during or after the journey and in any part of the world.

(4) For the purposes of this section B is exploited if (and only if) B —

(a) is the victim of behaviour that contravenes Article 4 of the European Convention on Human Rights (Prohibition of slavery and forced labour);

(b) is encouraged, required or expected to do anything as a result of which B or another person would commit an offence;

(c) is subjected to force, threats or deception designed to induce B —

- (i) to provide services of any kind;
- (ii) to provide another person with benefits of any kind;
- (iii) to enable another person to acquire benefits of any kind; or

(d) is requested or induced to undertake any activity, having been chosen as the subject of the request or inducement on the grounds that —

- (i) B is mentally or physically ill or disabled, or is young or has a family relationship with a person; and
- (ii) a person without the illness, disability, youth or family relationship would be likely to refuse the request or resist the inducement.

(5) A person who has Falkland Islands status commits an offence under this section regardless of —

- (a) where the arranging or facilitating takes place; or
- (b) which country is the country of arrival, entry, travel or (as the case may be) departure.

(6) A person who does not have Falkland Islands status commits an offence under this section if —

- (a) any part of the arranging or facilitating takes place in the Falkland Islands; or
- (b) the Falkland Islands are the country of arrival, entry, travel or (as the case may be) departure.

(7) In this section, “country” includes any territory or other part of the world.

[UK Immigration & Asylum (Treatment of Claimants) Act 2004 am. by Protection of Freedoms Act 2012 s.110]

Female genital mutilation

88. Offence of female genital mutilation

(1) Subject to subsections (2) and (4), a person who excises, infibulates or otherwise mutilates the whole or any part of a girl’s labia majora, labia minora or clitoris commits an offence.

Penalty: Imprisonment for 14 years or a fine, or both

(2) No offence is committed by an approved person who performs —

- (a) a surgical operation on a girl which is necessary for her physical or mental health; or

(b) a surgical operation on a girl who is in any stage of labour, or has just given birth, for purposes connected with the labour or birth.

(3) The following are approved persons —

(a) in relation to an operation falling within subsection (2)(a) - a registered medical practitioner;

(b) in relation to an operation falling within subsection (2)(b) - a registered medical practitioner, a person registered as a midwife under the Medical Practitioners, Midwives and Dentists Ordinance, or a person undergoing a course of training with a view to becoming such a practitioner or midwife.

(4) No offence is committed by a person who —

(a) performs a surgical operation falling within subsection (2)(a) or (b) outside the Falkland Islands; and

(b) in relation to such an operation exercises functions corresponding to those of an approved person.

(5) For the purpose of determining whether an operation is necessary for the mental health of a girl it is immaterial whether she or any other person believes that the operation is required as a matter of custom or ritual.

(6) In this section, “girl” means a female person of any age.

[UK Female Genital Mutilation Act 2003 ss.1 and 5, replacing Prohibition of Female Circumcision Act 1985]

89. Female genital mutilation: Ancillary offences

(1) A person who encourages, or aids and abets, a girl to excise, infibulate or otherwise mutilate the whole or any part of her own labia majora, labia minora or clitoris commits an offence.

Penalty: Imprisonment for 14 years or a fine, or both.

(2) A person who encourages, or aids and abets, a person to do a relevant act of female genital mutilation outside the Falkland Islands commits an offence.

Penalty: Imprisonment for 14 years.

(3) An act is a relevant act of female genital mutilation for the purpose of subsection (2) if —

(a) it is done in relation to a United Kingdom national or person with Falkland Islands status, and

(b) it would, if done by such a person, constitute an offence under section 88.

(4) Sections 88 and this section extend to any act done outside the Falkland Islands by a person with Falkland Islands status.

[UK Female Genital Mutilation Act 2003 ss.2, 3 and 4]

Forced marriages: Offence

90. Offence of forced marriage

(1) It is an offence for a person ('A') to use violence, threats or any other form of coercion for the purpose of causing another person ('B') to enter into a marriage, if A believes, or ought reasonably to believe, that the conduct may cause B to enter into the marriage without free and full consent.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) In relation to a victim B who lacks capacity to consent to marriage, the offence under subsection (1) is capable of being committed by any conduct carried out for the purpose of causing B to enter into a marriage (whether or not the conduct amounts to violence, threats or any other form coercion).

(3) It is an offence for a person ('A') to practise any form of deception with the intention of causing another person ('B') to leave the Falkland Islands, if A intends B to be subjected to conduct outside the Falkland Islands that is an offence under subsection (1) or would be an offence under that subsection if B were in the Falkland Islands.

Penalty: Imprisonment for 7 years.

(4) In this section —

“marriage” means any religious or civil ceremony of marriage, whether legally binding or not;

“lacks capacity” means lacks capacity within the meaning of section 91.

(5) For purposes of this section it is irrelevant whether the conduct mentioned in subsection (1) is directed at B or another person.

(6) A person commits an offence under subsection (1) or (3) only if, at the time of the conduct or deception —

(a) A and B are both in the Falkland Islands;

(b) neither A nor B is in the Falkland islands but at least one of them is habitually resident in the Falkland Islands; or

(c) neither A nor B is in the Falkland Islands but at least one of them has Falkland Islands status.

[UK Anti-social Behaviour, Crime & Policing Act 2014 s.121]

91. Lack of capacity

(1) For the purposes of section 90, a person lacks capacity in relation to a matter if at the material time the person is unable to make a decision for himself or herself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain, whether permanent or temporary.

(2) A lack of capacity is to be established on the balance of probabilities and cannot be established merely by reference to —

(a) a person's age or appearance; or

(b) a condition or an aspect of behaviour that might lead others to make unjustified assumptions about the person's capacity.

(3) A person is not to be regarded as unable to understand the information relevant to a decision if he or she is able to understand an explanation of it given in a way that is appropriate to the circumstances (using simple language, visual aids or any other means).

(4) The fact that a person is able to retain the information relevant to a decision for a short period only does not prevent the person from being regarded as able to make the decision.

[UK Mental Capacity Act 2005 ss.1 and 2 adapted]

Forced marriages: Protection orders

92. Forced marriage protection orders

(1) The court may make an order for the purposes of protecting —

(a) a person from being forced into a marriage or from any attempt to be forced into a marriage; or

(b) a person who has been forced into a marriage.

(2) In deciding whether to exercise its powers under this section and, if so, in what manner, the court must have regard to all the circumstances including the need to secure the health, safety and well-being of the person to be protected.

(3) In ascertaining that person's well-being, the court must, in particular, have such regard to the person's wishes and feelings (so far as they are reasonably ascertainable) as the court considers appropriate in the light of the person's age and understanding.

(4) For the purposes of this Part a person ("A") is forced into a marriage if another person ("B") forces A to enter into a marriage (whether with B or another person) without A's free and full consent.

(5) For the purposes of subsection (4) it does not matter whether the conduct of B which forces A to enter into a marriage is directed against A, B or another person.

(6) In this Part —

“force”, as a verb, includes to coerce by threats or other psychological means (and related expressions are to be read accordingly); and

“forced marriage protection order” means an order under this section.

(7) In this section and sections 93 to 101, “the court” means the Magistrate’s Court, unless the Supreme Court or the Summary Court is able, by virtue of section 94(6), to make an order without an application being made, in which case it means the Supreme Court or the Summary Court, as the case may be.

[UK Family Law Act 1996 s.63A ins. by Forced Marriage (Civil Protection) Act 2007]

93. Contents of orders

(1) A forced marriage protection order may contain —

- (a) such prohibitions, restrictions or requirements; and
- (b) such other terms,

as the court considers appropriate for the purposes of the order.

(2) The terms of such orders may, in particular, relate to —

- (a) conduct outside the Falkland Islands as well as (or instead of) conduct within the Falkland Islands;
- (b) respondents who are, or may become, involved in other respects as well as (or instead of) respondents who force or attempt to force, or may force or attempt to force, a person to enter into a marriage;
- (c) other persons who are, or may become, involved as accessories in any respect as well as respondents of any kind.

[UK Family Law Act 1996 s.63B ins. by Forced Marriage (Civil Protection) Act 2007]

94. Applications and other occasions for making orders

(1) The court may make a forced marriage protection order —

- (a) on an application being made to it; or
- (b) without an application being made to it but in the circumstances mentioned in subsection (6).

(2) An application may be made by —

- (a) the person who is to be protected by the order; or

- (b) the Attorney General.
- (3) An application may be made by any other person with the leave of the court.
- (4) In deciding whether to grant leave, the court must have regard to all the circumstances including —
 - (a) the applicant’s connection with the person to be protected;
 - (b) the applicant’s knowledge of the circumstances of the person to be protected; and
 - (c) the wishes and feelings of the person to be protected so far as they are reasonably ascertainable and so far as the court considers it appropriate, in the light of the person’s age and understanding, to have regard to them.
- (5) An application under this section may be made in other family proceedings or without any other family proceedings being instituted.
- (6) The circumstances in which the court may make an order without an application being made are where —
 - (a) any other family proceedings are before the court (“the current proceedings”);
 - (b) the court considers that a forced marriage protection order should be made to protect a person (whether or not a party to the current proceedings); and
 - (c) a person who would be a respondent to any such proceedings for a forced marriage protection order is a party to the current proceedings.

[UK Family Law Act 1996 s.63C ins. by Forced Marriage (Civil Protection) Act 2007]

95. Orders without notice

- (1) The court may, in any case where it considers that it is just and convenient to do so, make a forced marriage protection order even though the respondent has not been given such notice of the proceedings as would otherwise be required by criminal procedure rules.
- (2) In deciding whether to exercise its powers under subsection (1), the court must have regard to all the circumstances including —
 - (a) any risk of significant harm to the person to be protected or another person if the order is not made immediately;
 - (b) whether it is likely that an applicant will be deterred or prevented from pursuing an application if an order is not made immediately; and
 - (c) whether there is reason to believe that —

- (i) the respondent is aware of the proceedings but is deliberately evading service; and
 - (ii) the delay involved in effecting substituted service will cause serious prejudice to the person to be protected or (if a different person) an applicant.
- (3) The court must give the respondent an opportunity to make representations about any order made by virtue of subsection (1).
- (4) The opportunity must be —
- (a) as soon as just and convenient; and

- (b) at a hearing of which notice has been given to all the parties in accordance with criminal procedure rules.

[UK Family Law Act 1996 s.63D ins. by Forced Marriage (Civil Protection) Act 2007]

96. Undertakings instead of orders

- (1) The court may, subject to subsection (3), accept an undertaking from the respondent to proceedings for a forced marriage protection order if it has power to make such an order.
- (2) No power of arrest may be attached to an undertaking given under subsection (1).
- (3) The court may not accept an undertaking under subsection (1) instead of making an order if a power of arrest would otherwise have been attached to the order.
- (4) An undertaking given to the court under subsection (1) is enforceable as if the court had made the order in terms corresponding to those of the undertaking.
- (5) This section does not affect the powers of the court apart from this section.

[UK Family Law Act 1996 s.6E ins. by Forced Marriage (Civil Protection) Act 2007]

97. Duration and variation or discharge of orders

- (1) A forced marriage protection order may be made for a specified period or until varied or discharged.
- (2) The court may vary or discharge a forced marriage protection order on an application by —
- (a) any party to the proceedings for the order;
 - (b) the person being protected by the order (if not a party to the proceedings for the order); or
 - (c) any person affected by the order.

(3) The court may also vary or discharge a forced marriage protection order made by virtue of section 92(1)(b) even though no application under subsection (1) above has been made to the court.

(4) Section 93 applies to a variation of a forced marriage protection order as it applies to the making of such an order.

(5) Section 94 applies to proceedings for a variation of a forced marriage protection order as it applies to proceedings for the making of such an order.

(6) Accordingly, references in sections 93 and 94 to making a forced marriage protection order are to be read for the purposes of subsections (2) and (3) above as references to varying such an order.

(7) Subsection (8) applies if a power of arrest has been attached to provisions of a forced marriage protection order by virtue of section 98.

(8) The court may vary or discharge the order under this section so far as it confers a power of arrest (whether or not there is a variation or discharge of any other provision of the order).

[UK Family Law Act 1996 ss.6F and 6G ins. by Forced Marriage (Civil Protection) Act 2007]

98. Attachment of power of arrest to orders

(1) Subsection (2) applies if the court —

(a) intends to make a forced marriage protection order otherwise than by virtue of section 95; and

(b) considers that the respondent has used or threatened violence against the person being protected or otherwise in connection with the matters being dealt with by the order.

(2) The court must attach a power of arrest to one or more provisions of the order unless it considers that, in all the circumstances of the case, there will be adequate protection without such a power.

(3) Subsection (4) applies if the court —

(a) intends to make a forced marriage protection order by virtue of section 95; and

(b) considers that the respondent has used or threatened violence against the person being protected or otherwise in connection with the matters being dealt with by the order.

(4) The court may attach a power of arrest to one or more provisions of the order if it considers that there is a risk of significant harm to a person, attributable to conduct of the respondent, if the power of arrest is not attached to the provisions immediately.

(5) The court may provide for a power of arrest attached to any provisions of an order under subsection (4) to have effect for a shorter period than the other provisions of the order.

(6) Any period specified for the purposes of subsection (5) may be extended by the court (on one or more occasions) on an application to vary or discharge the order.

(7) In this section “respondent” includes any person who is not a respondent but to whom an order is directed.

[UK Family Law Act 1996 s.63H ins. by Forced Marriage (Civil Protection) Act 2007]

99. Exercise of power of arrest

(1) Subsection (2) applies if a power of arrest is attached to provisions of a forced marriage protection order under section 98.

(2) A police officer may arrest without warrant a person whom the officer has reasonable cause for suspecting to be in breach of any such provision or otherwise in contempt of court in relation to the order.

(3) A person arrested under subsection (2) must be brought before the relevant court within 24 hours after the person’s arrest (ignoring Christmas Day, Good Friday and any Sunday.)

(4) Subsection (4) applies if the court has made a forced marriage protection order but —

(a) no power of arrest is attached to any provision of the order under section 98;

(b) such a power is attached only to certain provisions of the order; or

(c) such a power was attached for a shorter period than other provisions of the order and that period has expired.

(5) An interested party may apply to the relevant court for the issue of a warrant for the arrest of a person if the interested party considers that the person has failed to comply with the order or is otherwise in contempt of court in relation to the order.

(6) The relevant court must not issue a warrant on an application under subsection (5) unless —

(a) the application is substantiated on oath; and

(b) the court has reasonable grounds for believing that the person to be arrested has failed to comply with the order or is otherwise in contempt of court in relation to the order.

(7) In this section “interested party”, in relation to a forced marriage protection order, means —

(a) the person being protected by the order;

(b) (if a different person) the person who applied for the order; or

(c) any other person,

but no application may be made under subsection (5) by a person falling within paragraph (c) without the leave of the relevant court.

(8) In this section, “relevant court” means the court which made the forced marriage protection order.

[UK Family Law Act 1996 ss.63I and 63J ins. by Forced Marriage (Civil Protection) Act 2007]

100. Remand

(1) The court before which an arrested person is brought to court under or by virtue of section 99 may, if the matter is not then disposed of immediately, remand the person concerned in custody or on bail as provided by subsections (4) and (5).

(2) The decision whether to remand in custody or on bail must be taken in accordance with Part 9 (Bail in Criminal Proceedings) of the Criminal Procedure and Evidence Ordinance 2014.

(3) If a person remanded under this section is granted bail, the person may be required by the court to comply, before release on bail or later, with any requirements that appear to the court to be necessary to secure that the person does not interfere with witnesses or otherwise obstruct the course of justice.

(4) The power to remand a person under subsection (1) may only be exercised for the purpose of enabling a medical examination and report to be made and only if the court has reason to consider that a medical report will be required.

(5) A remand under subsection (1) must not be for more than 4 weeks at a time unless the court remands the accused in custody, in which case the adjournment must not be for more than 3 weeks at a time.

(6) If there is reason to suspect that a person who has been arrested under or pursuant to section 99 is suffering from mental disorder, the court has the same power to make an order under section 48 of the Mental Health Ordinance (Remand to hospital for report) as the court has under that section in the case of an accused person (within the meaning of that section.)

[UK Family Law Act 1996 ss.63K and 63L ins. by Forced Marriage (Civil Protection) Act 2007]

101. Forced marriage protection orders: Supplementary

(1) A forced marriage protection order may be the subject of an appeal —

(a) to the Supreme Court if made by the Magistrate’s Court or the Summary Court; or

(b) to the Court of Appeal if made by the Supreme Court.

(2) The Chief Justice may by criminal procedure rules provide for —

(a) the application of the Court of Appeal Ordinance, or of Part 31 of the Criminal Procedure Ordinance 2014 as the case may be, to appeals under this section;

(b) any other matter necessary or appropriate to regulate the making and enforcement of forced marriage protection orders.

(3) The powers in relation to contempt of court arising out of a person's failure to comply with a forced marriage protection order or otherwise in connection with such an order may be exercised by the court which made the order.

(4) The Governor, after consulting the Criminal Justice Council, may issue guidance to such persons or classes of persons as the Governor considers appropriate about —

(a) the making and effect of a forced marriage protection order; or

(b) other matters relating to forced marriages,

but this section does not permit the Governor to give guidance to any court or tribunal.

(5) If the Governor issues guidance under subsection (4), a person exercising public functions to whom guidance is given must have regard to it in the exercise of those functions.

(6) The provisions of this Part relating to forced marriage protection orders do not affect any other protection or assistance available to a person who —

(a) is being, or may be, forced into a marriage or subjected to an attempt to be forced into a marriage; or

(b) has been forced into a marriage.

In particular, but without limiting that statement, the provisions do not affect —

(i) the inherent jurisdiction of the Supreme Court;

(ii) any criminal liability;

(iii) any civil remedies relating to protection from harassment;

(iv) any protection or assistance under the Children Ordinance 2014;

(v) any claim in tort; or

(vi) the law of marriage.

[UK Family Law Act 1996 ss.63O, P, Q and R ins. by Forced Marriage (Civil Protection) Act 2007]

Domestic violence protection

102. Power to issue a domestic violence protection notice

(1) A police officer of the rank of inspector or above (“the authorising officer”) may issue a domestic violence protection notice (a ‘DVPN’) under this section.

(2) A DVPN may be issued to a person (‘P’) aged 18 years or over if the authorising officer has reasonable grounds for believing that —

- (a) P has been violent towards, or has threatened violence towards, an associated person; and
- (b) the issue of the DVPN is necessary to protect that person from violence or a threat of violence by P.

(3) Before issuing a DVPN, the authorising officer must, in particular, consider —

- (a) the welfare of any person under the age of 18 whose interests the officer considers relevant to the issuing of the DVPN (whether or not that person is an associated person);
- (b) the opinion of the person for whose protection the DVPN would be issued as to the issuing of the DVPN;
- (c) any representations made by P as to the issuing of the DVPN; and
- (d) in the case of provision included by virtue of subsection (8) - the opinion of any other associated person who lives in the premises to which the provision would relate.

(4) The authorising officer —

- (a) must take reasonable steps to discover the opinions mentioned in subsection (3); but
- (b) may issue a DVPN in circumstances where the person for whose protection it is issued does not consent to the issuing of the DVPN.

(5) A DVPN must contain provision to prohibit P from molesting the person for whose protection it is issued.

(6) Provision required to be included by virtue of subsection (5) may be expressed so as to refer to molestation in general, to particular acts of molestation, or to both.

(7) If P lives in premises which are also lived in by a person for whose protection the DVPN is issued, the DVPN may also contain provision —

- (a) to prohibit P from evicting or excluding from the premises the person for whose protection the DVPN is issued;

- (b) to prohibit P from entering the premises;
- (c) to require P to leave the premises; or
- (d) to prohibit P from coming within such distance of the premises as may be specified in the DVPN.

(8) In this section, “associated person” means either of 2 persons who —

- (a) are or have been married to each other;
- (b) are or have been civil partners of each other;
- (c) are cohabitants or former cohabitants;
- (d) live or have lived in the same household, otherwise than merely by reason of one of them being the other’s employee, tenant, lodger or boarder;
- (e) are relatives;
- (f) have agreed to marry one another (whether or not that agreement has been terminated);
- (g) have or have had an intimate personal relationship with each other which is or was of significant duration;
- (h) in relation to any child, are both parents of the child (including by adoption), or have or have had parental responsibility for the child; or
- (i) are parties to the same family proceedings (other than proceedings under this Part).

[UK Crime & Security Act 2010 s.24; Family Law Act 1996 s.62]

103. Contents and service of a DVPN

(1) A DVPN must state —

- (a) the grounds on which it has been issued;
- (b) that a police officer may arrest P without warrant if the officer has reasonable grounds for believing that P is in breach of the DVPN;
- (c) that an application for a DVPO will be heard within 48 hours of the time of service of the DVPN and a notice of the hearing will be given to P;
- (d) that the DVPN continues in effect until that application has been determined; and
- (e) the provisions that a court may include in a DVPO.

(2) A DVPN must be in writing and must be served on P personally by a police officer.

(3) On serving P with a DVPN, the police officer must ask P for an address for the purposes of being given the notice of the hearing of the application for the domestic violence protection order.

[UK Crime & Security Act 2010 s.25]

104. Breach of a DVPN

(1) A police officer may arrest P without a warrant if the officer has reasonable grounds for believing that P is in breach of the DVPN.

(2) A person arrested under subsection (1) for a breach of a DVPN must be held in custody and brought before the Summary Court, or, if that court is not sitting, the Magistrate's Court —

(a) within 24 hours of the time of the arrest (excluding Christmas Day, Boxing Day and any Sunday); or

(b) if earlier, at the hearing of that application.

(3) If the person is brought before the court by virtue of subsection (2)(a), the court may remand the person in custody or on bail (applying to that decision the principles set out in Part 9 of the Criminal Procedure and Evidence Ordinance 2014.)

[UK Crime & Security Act 2010 s.26]

105. Application for a domestic violence protection order

(1) If a DVPN has been issued, the Attorney General may apply for a domestic violence protection order ('a DVPO').

(2) The application must be made by complaint to the Summary Court or, if that court is not sitting, to the Magistrate's Court.

(3) The court must hear the application within 48 hours after the DVPN was served pursuant to section 103(2) (ignoring Christmas Day, Boxing Day and any Sunday).

(4) A notice of the hearing of the application must be given to P, but is deemed to be given if it has been left at the address given by P under section 103(3).

(5) But if the notice has not been given because no address was given by P under section 103(3), the court may hear the application for the DVPO if satisfied that the Attorney General has made reasonable efforts to give P the notice.

(6) The court may adjourn the hearing of the application, in which case —

(a) section 104(3) applies;

(b) the DVPN continues in effect until the application has been determined.

(7) On the hearing of an application for a DVPO, section 279 of the Criminal Procedure and Evidence Ordinance 2014 (relating to the summoning of witnesses) does not apply in relation to a person for whose protection the DVPO would be made, unless that person has given oral or written evidence at the hearing.

[UK Crime & Security Act 2010 s.27]

106. Conditions for and contents of a DVPO

(1) The court may make a DVPO if —

- (a) the court is satisfied on the balance of probabilities that P has been violent towards, or has threatened violence towards, an associated person; and
- (b) the court thinks that making the DVPO is necessary to protect that person from violence or a threat of violence by P.

(2) Before making a DVPO, the court must, in particular, consider —

- (a) the welfare of any person under the age of 18 whose interests the court considers relevant to the making of the DVPO (whether or not that person is an associated person); and
- (b) any opinion of which the court is made aware —
 - (i) of the person for whose protection the DVPO would be made; and
 - (ii) in the case of provision included by virtue of subsection (5), of any other associated person who lives in the premises to which the provision would relate.

(3) The court may however make a DVPO even if the person for whose protection it is made does not consent to the making of the DVPO.

(4) A DVPO must contain provision to prohibit P from molesting the person for whose protection it is made, expressed so as to refer to molestation in general, to particular acts of molestation, or to both.

(5) If P lives in premises which are also lived in by a person for whose protection the DVPO is made, the DVPO may also contain provision —

- (a) prohibiting P from evicting or excluding from the premises the person for whose protection the DVPO is made;
- (b) prohibiting P from entering the premises;
- (c) requiring P to leave the premises; or
- (d) prohibiting P from coming within a distance of the premises specified in the DVPO.

(6) A DVPO must state that a police officer may arrest P without warrant if the officer has reasonable grounds for believing that P is in breach of the DVPO.

(7) A DVPO must state the period for which it is to be in force, which must be —

(a) not less than 14 days beginning with the day on which it is made; and

(b) not more than 28 days beginning with that day.

[UK Crime & Security Act 2010 s.28]

107. Breach of a DVPO

(1) A person in respect of whom a DVPO has been made and who contravenes the order in any respect commits an offence.

Penalty: Imprisonment for 3 months or a fine at level 5 on the standard scale, or both.

(2) A person arrested for an offence under subsection (1) must be held in custody and brought before the court that made the order within 24 hours, (ignoring Christmas Day, Boxing Day and any Sunday).

(3) The court may adjourn the hearing of the application, in which case —

(a) section 104(3) applies;

(b) the DVPO continues in effect until the application has been determined.

(4) If the court has reason to suspect that a medical report will be required, the power to remand a person may be exercised for the purpose of enabling a medical examination to take place and a report to be made.

(5) If the person is remanded in custody for that purpose, the adjournment may not be for more than 3 weeks at a time.

(6) If the person is remanded on bail for that purpose, the adjournment may not be for more than 4 weeks at a time.

(7) If the court has reason to suspect that the person is suffering from a mental disorder, the court has the same power to make an order under section 48 of the Mental Health Ordinance (Remand to hospital for report) as it has under that section in the case of an accused person (within the meaning of that section).

(8) The court may, when remanding the person on bail, require the person to comply, before release on bail or later, with such requirements as appear to the court to be necessary to secure that the person does not interfere with witnesses or otherwise obstruct the course of justice.

[UK Crime & Security Act 2010 ss.29 and 30]

108. Guidance

(1) The Governor, after consulting the Criminal Justice Council, may from time to time issue guidance relating to the exercise by police officers of functions under sections 102 to 109.

(2) A police officer must have regard to any guidance issued under subsection (1) when exercising a function to which the guidance relates.

[UK Crime & Security Act 2010 s.31]

Human organ transplants

109. Prohibition of commercial dealings in human organs

(1) A person who —

(a) makes or receives any payment for the supply of, or for an offer to supply, an organ which has been or is to be removed from a dead or living person and which is intended to be transplanted into another person whether in the Falkland Islands or elsewhere;

(b) seeks to find a person willing to supply for payment such an organ as is mentioned in paragraph (a), or to offer to supply such an organ for payment;

(c) initiates or negotiates any arrangement involving the making of any payment for the supply of, or for an offer to supply, such an organ; or

(d) takes part in the management or control of a body of persons corporate or unincorporate whose activities consist of or include the initiation or negotiation of such arrangements,

commits an offence.

Penalty: Imprisonment for 3 months or a fine at level 5 on the standard scale, or both.

(2) Without limiting subsection (1)(b), a person who causes to be published or distributed, or knowingly publishes or distributes in the Falkland Islands an advertisement —

(a) inviting persons to supply for payment any such organs as are mentioned in subsection (1)(a) or offering to supply any such organs for payment; or

(b) indicating that the advertiser is willing to initiate or negotiate any such arrangement as is mentioned in subsection (1)(c),

commits an offence.

Penalty: A fine at level 5 on the standard scale.

(3) In this section “payment” means payment in money or money’s worth but does not include any payment for defraying or reimbursing —

(a) the cost of removing, transporting or preserving the organ to be supplied; or

(b) any expenses or loss of earnings incurred by a person reasonably and directly attributable to the person's supplying an organ from his or her body.

(4) In this section "advertisement" includes any form of advertising whether to the public generally, to any section of the public or individually to selected persons.

[UK Human Organs Transplant Act 1989 s.1]

110. Restriction on transplants between persons not genetically related

(1) A person who —

(a) removes from a living person an organ intended to be transplanted into another person; or

(b) transplants an organ removed from a living person into another person,

commits an offence unless the person into whom the organ is to be or, as the case may be, is transplanted is genetically related to the person from whom the organ is removed.

Penalty: Imprisonment for 3 months or a fine at level 5 on the standard scale, or both.

(2) For the purposes of this section a person is genetically related to —

(a) his or her natural parents and children;

(b) his or her brothers and sisters of the whole or half blood;

(c) the brothers and sisters of the whole or half blood of either of his or her natural parents; and

(d) the natural children of his or her brothers and sisters of the whole or half blood or of the brothers and sisters of the whole or half blood of either of his or her natural parents,

but a person is not in any particular case to be treated as related in any of those ways unless the fact of the relationship has been established by means specified by regulations made by the Governor.

(3) The prohibition in subsection (1) does not apply if —

(a) the authority constituted under section 111(1)(a) is satisfied —

(i) that no payment has been or is to be made in contravention of section 109; and

(ii) that any other conditions specified in the regulations are satisfied; and

(b) any other requirements specified in the regulations under that section are complied with.

[UK Human Organs Transplant Act 1989 s.2]

111. Human organ transplants: Supplementary

(1) The Governor may make regulations —

(a) constituting or designating an authority to exercise powers under section 110 and this section;

(b) requiring the persons specified in the regulations to supply to the authority information so specified with respect to transplants that have been or are proposed to be carried out in the Falkland Islands using organs removed from dead or living persons;

(c) providing for other matters for which regulations are required by section 110.

(2) The authority must keep a record of information supplied to it pursuant to the regulations made under this section.

(3) A person who without reasonable excuse fails to comply with regulations made under subsection (1)(b) commits an offence.

Penalty: A fine at level 3 on the standard scale.

(4) A person who, in purported compliance with such regulations, knowingly or recklessly supplies information which is false or misleading in a material respect commits an offence.

Penalty: A fine at level 5 on the standard scale.

(5) The power to make regulations under this section and section 110 is exercisable by the Governor in Council after consulting the Criminal Justice Council.

(6) The expenses of the authority must be defrayed by the Governor out of money provided by the Legislative Assembly.

[UK Human Organs Transplant Act 1989 s.3]

Crimes against humanity

112. Genocide, crimes against humanity and war crimes

(1) It is an offence against the law of the Falkland Islands for a person to commit genocide, a crime against humanity or a war crime.

Penalty: As provided in subsections (3) and (4).

(2) It is an offence against the law of the Falkland Islands for a person to engage in conduct ancillary to an offence under subsection (1).

Penalty: As provided in subsections (3) and (4).

(3) A person convicted of —

(a) an offence under this section involving murder; or

(b) an offence ancillary to an offence involving murder,

must be sentenced as for an offence of murder.

(4) In any other case a person convicted of an offence under this section is liable to imprisonment for 30 years.

(5) An offence under subsection (1) or (2) is triable on indictment only.

[UK International Criminal Court (Overseas Territories) Order 2001 Schedule 2 Arts.55 and 56]

113. Genocide, etc.: Supplementary provisions

(1) For the purposes of this Part —

“crime against humanity” means a crime against humanity as defined in Article 7 of the Statute;

“genocide” means an act of genocide as defined in Article 6 of the Statute;

“war crime” means a war crime as defined in Article 8.2 of the Statute; and

“the Statute” means the Rome Statute of the International Criminal Court which entered into force on 1 July 2002, as amended from time to time.

(2) In interpreting and applying the provisions of the Articles mentioned in subsection (1) a court must take into account —

(a) any relevant Elements of Crimes adopted in accordance with Article 9 of the Statute; and

(b) until such time as Elements of Crimes are adopted under that article, any relevant Elements of Crimes contained in the report of the Preparatory Commission for the International Criminal Court adopted on 30 June 2000.

(3) The Articles referred to in subsection (1) are for the purposes of this Part to be construed subject to and in accordance with any relevant reservation or declaration made by the United Kingdom when ratifying any treaty or agreement relevant to the interpretation of those Articles.

(4) In interpreting and applying the provisions of the Articles referred to in subsection (1) the court must take into account any relevant judgment or decision of the International Criminal Court. Account may also be taken of any other relevant international jurisprudence.

(5) Section 112(1) and (2) apply to acts committed —

(a) in the Falkland Islands; or

(b) outside the Falkland Islands by a person who has Falkland Islands status or is a United Kingdom national or a Falkland Islands resident or a person subject to Falkland Islands service jurisdiction.

(6) Subsection (5) applies to an act that if committed in the Falkland Islands would constitute an offence under section 112 (1) or (2) but which, being committed (or intended to be committed) outside the Falkland Islands, does not constitute such an offence.

(7) No proceedings for an offence under section 112 may be commenced except by, or with the consent of, the Attorney General.

(8) In section 112(3) “murder” means the killing of a person in such circumstances as would, if committed in the Falkland Islands, constitute murder.

[UK International Criminal Court (Overseas Territories) Order 2009 Schedule 2 Art.57]

Miscellaneous offences

114. Piracy endangering life

(1) A person who, with intent to commit or at the time of or immediately before or immediately after committing the crime of piracy in respect of any ship or vessel —

(a) assaults, with intent to murder, any person who is on board of or belongs to the ship or vessel;

(b) stabs, cuts, or wounds any such person; or

(c) unlawfully does any act by which the life of any such person may be endangered,

commits an offence.

Penalty: Life imprisonment.

(2) For purposes of this Part, “piracy” means piracy *jure gentium* as understood in the courts of England and Wales, and includes, but is not limited to, piracy as defined in Articles 101 to 103 United Nations Convention on the Law of the Sea.

(3) An offence under this section is triable on indictment only.

[UK Piracy Act 1837 s.2 adapted]

115. Kidnapping and false imprisonment

(1) A person who, by force or fraud, takes or carries away a person —

(a) without the consent of that person; and

(b) without lawful excuse,

commits an offence.

Penalty: Imprisonment for 18 years or a fine, or both.

(2) A person who imprisons another person or restrains another person from freely moving from any place —

(a) without the consent of that person; and

(b) without lawful excuse,

commits an offence.

Penalty: Imprisonment for 14 years or a fine, or both.

[Common law and UK case law]

116. Torture

(1) A person who is —

(a) a public officer; or

(b) a person of any nationality acting in an official capacity,

and who, in the Falkland Islands or elsewhere, intentionally inflicts severe pain or suffering on another person in the performance or purported performance of official duties, commits the offence of torture.

Penalty: Imprisonment for life.

(2) A person who does not fall within subsection (1) above and who, in the Falkland Islands or elsewhere, intentionally inflicts severe pain or suffering on another person at the instigation or with the consent or acquiescence of —

(a) a public officer; or

(b) a person of any nationality acting in an official capacity,

who is performing or purporting to perform official duties when he or she instigates the commission of the offence or consents to or acquiesces in it, commits the offence of torture.

Penalty: Imprisonment for life.

(3) It is immaterial whether the pain or suffering is physical or mental and whether it is caused by an act or an omission.

(4) It is a defence for a person charged with an offence under this section in respect of any conduct to prove that the person had lawful authority, justification or excuse for that conduct.

(5) For the purposes of this section “lawful authority, justification or excuse” means —

(a) in relation to pain or suffering inflicted in the Falkland Islands – lawful authority, justification or excuse under the law of the Falkland Islands;

(b) in relation to pain or suffering inflicted outside the Falkland Islands —

(i) if it was inflicted by a the Falkland Islands public officer acting under Falkland Islands law or by a person acting in an official capacity under that law - lawful authority, justification or excuse under that law;

(ii) in any other case - lawful authority, justification or excuse under the law of the place where it was inflicted.

(6) No prosecution for an offence under this section may be commenced except by, or with the consent of, the Attorney General

(7) An offence under subsection (1) or (2) is triable on indictment only.

[UK Criminal Justice Act 1988 ss.134, 135; Criminal Justice Act (OT) Order 1988]

117. Slavery, servitude and forced or compulsory labour

(1) A person ('A') commits an offence if —

(a) A holds another person in slavery or servitude and the circumstances are such that A knows or ought to know that the person is so held; or

(b) A requires another person to perform forced or compulsory labour and the circumstances are such that A knows or ought to know that the person is being required to perform such labour.

Penalty: Imprisonment for 14 years or a fine, or both.

(2) In subsection (1) the references to holding a person in slavery or servitude or requiring a person to perform forced or compulsory labour are to be construed in accordance with Article 4 of the Human Rights Convention (Convention for the Protection of Human Rights and Fundamental Freedoms) agreed by the Council of Europe at Rome on 4 November 1950.

[UK Coroners and Justice Act 2009 s.71]

118. Bigamy

(1) Subject to subsection (2), a married person ('A') who marries any other person during the life of A's former husband or wife commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) Subsection (1) does not apply to a person ('A') who marries a second time if —

(a) A's husband or wife has been continually absent from A for at least 7 years up to the date of the second marriage and has not been known by A to be living within that time;

(b) at the time of the second marriage, A has been divorced from the bonds of the first marriage; or

(c) A's first marriage has been annulled or declared void by a court of competent jurisdiction.

[UK Offences against the Person Act 1861 s.57]

Use of force

119. Use of force in making arrest, etc.

Section 780 of the Criminal Procedure and Evidence Ordinance 2014 applies in relation to the use of force in effecting an arrest or in assisting in the prevention of crime.

120. Self-defence

(1) This section applies if in proceedings for an offence —

- (a) an issue arises as to whether a person charged with the offence (“D”) is entitled to rely on a defence within subsection (2); and
- (b) the question arises whether the degree of force used by D against a person (“V”) was reasonable in the circumstances.

(2) The defences are —

- (a) the common law defence of self-defence;
- (b) the common law defence of defence of property; and
- (c) the defence provided by section 119.

(3) The question whether the degree of force used by D was reasonable in the circumstances is to be decided by reference to the circumstances as D believed them to be, and subsections (4) to (8) also apply in connection with deciding that question.

(4) If D claims to have held a particular belief as regards the existence of any circumstances —

- (a) the reasonableness or otherwise of that belief is relevant to the question whether D genuinely held it; but
- (b) if it is determined that D did genuinely hold it, D is entitled to rely on it for the purposes of subsection (3), whether or not —
 - (i) it was mistaken; or
 - (ii) if it was mistaken - the mistake was a reasonable one to have made.

(5) Subsection (4)(b) does not enable D to rely on any mistaken belief attributable to intoxication that was voluntarily induced.

(6) The degree of force used by D is not to be regarded as having been reasonable in the circumstances as D believed them to be if it was disproportionate in those circumstances.

(7) In deciding the question mentioned in subsection (3) the following considerations are to be taken into account (so far as relevant in the circumstances of the case) —

(a) that a person acting for a legitimate purpose may not be able to weigh to a nicety the exact measure of any necessary action; and

(b) that evidence of a person's having only done what the person honestly and instinctively thought was necessary for a legitimate purpose constitutes strong evidence that only reasonable action was taken by that person for that purpose.

(8) In deciding the question mentioned in subsection (3), a possibility that D could have retreated is to be considered (so far as relevant) as a factor to be taken into account, rather than as giving rise to a duty to retreat.

(9) Subsection (7) is not to be read as preventing other matters from being taken into account if they are relevant to deciding the question mentioned in subsection (3).

(10) In this section —

(a) “legitimate purpose” means —

(i) the purpose of self-defence under the common law; or

(ii) the prevention of crime or effecting or assisting in the lawful arrest of persons mentioned in the provisions referred to in subsection (2)(b);

(b) references to self-defence include acting in defence of another person; and

(c) references to the degree of force used are to the type and amount of force used.

[UK Criminal Justice & Immigration Act 2008 s.76 am. by LASPO Act 2012 s.148]

PART 5 - CORPORATE MANSLAUGHTER

Preliminary

121. Interpretation

(1) In this Part —

“corporation” does not include a corporation sole but includes any corporate body wherever incorporated;

“employee” means an individual who works under a contract of employment or apprenticeship (whether express or implied and, if express, whether oral or in writing), and related expressions are to be construed accordingly;

“employers’ association” means an organisation which consists wholly or mainly of employers and whose principal purposes include the regulation of relations between employers and workers or trade unions; or any constituent or affiliated organisation having the same purposes;

[UK Trade Union and Labour (Consolidation) Act 1992 s.122]

“enforcement authority” means an authority responsible for the enforcement of any health and safety legislation of or applicable to the Falkland Islands;

“exempt department” means a department of the Government that is exempted from the application of this Part by an order made under subsection (2) in relation to the whole or any provision of this Part;

“health and safety legislation” means any enactment of or applied to the Falkland Islands that deals with health and safety matters;

“partnership” means a partnership within the Companies and Private Partnership Ordinance or a firm or entity of a similar character formed under the law of a place outside the Falkland Islands;

“premises” includes land, buildings and moveable structures;

“public authority” includes any person any of whose functions are functions of a public nature, but does not include —

(a) any court or tribunal;

(b) the Legislative Assembly or a person exercising functions in connection with proceedings in the Legislative Assembly;

“publicity order” means an order under section 134(1);

“remedial order” means an order under section 133(1);

“trade union” has the meaning given by the Trade Unions and Trade Disputes Ordinance.

(2) The Governor may by order exempt any department of the Government from the application of this Part, or any provision of this Part, if the Governor considers it to be in the public interest to do so.

[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.25 adapted; Human Rights Act 1998 s.6]

122. Corporate manslaughter

(1) An organisation to which this section applies commits the offence of corporate manslaughter if the way in which its activities are managed or organised —

(a) causes a person’s death; and

(b) amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased.

Penalty: A fine.

(2) The organisations to which this section applies are —

- (a) a corporation;
- (b) a department of the Government (other than an exempt body);
- (c) a police force;
- (d) a partnership, or a trade union or employers' association that is an employer.

(3) An organisation commits an offence under this section only if the way in which its activities are managed or organised by its senior management is a substantial element in the breach referred to in subsection (1).

(4) For the purposes of this Part —

- (a) “relevant duty of care” has the meaning given by section 123, read with sections 124 to 128;
- (b) a breach of a duty of care by an organisation is a “gross” breach if the conduct alleged to amount to a breach of that duty falls far below what can reasonably be expected of the organisation in the circumstances;
- (c) “senior management”, in relation to an organisation, means the persons who play significant roles in —
 - (i) the making of decisions about how the whole or a substantial part of its activities are to be managed or organised; or
 - (ii) the actual managing or organising of the whole or a substantial part of those activities.

(5) The offence of corporate manslaughter is triable on indictment only
[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.1]

Relevant duty of care

123. Meaning of “relevant duty of care”

(1) A “relevant duty of care”, in relation to an organisation, means any of the following duties owed by it under the law of negligence —

- (a) a duty owed to its employees or to other persons working for the organisation or performing services for it;
- (b) a duty owed as occupier of premises;
- (c) a duty owed in connection with —

- (i) the supply by the organisation of goods or services (whether for consideration or not);
 - (ii) the carrying on by the organisation of any construction or maintenance operations;
 - (iii) the carrying on by the organisation of any other activity on a commercial basis; or
 - (iv) the use or keeping by the organisation of any plant, vehicle or other thing;
- (d) a duty owed to a person who, by reason of being a person within subsection (2), is someone for whose safety the organisation is responsible.
- (2) A person is within this subsection if the person —
- (a) is detained at a prison or in a custody area at a court or police station;
 - (b) is being transported in a vehicle, or being held in any premises, pursuant to prison escort arrangements or immigration escort arrangements;
 - (c) is detained under the Mental Health Ordinance.
- (3) Subsection (1) is subject to sections 124 to 129.
- (4) A reference in subsection (1) to a duty owed under the law of negligence includes a reference to a duty that would be owed under the law of negligence but for any statutory provision under which liability is imposed in place of liability under that law.
- (5) For the purposes of this Part —
- (a) whether a particular organisation owes a duty of care to a particular individual is a question of law; and
 - (b) the judge must make any findings of fact necessary to decide that question.
- (6) For the purposes of this Part there is to be disregarded —
- (a) any rule of the common law that has the effect of preventing a duty of care from being owed by one person to another by reason of the fact that they are jointly engaged in unlawful conduct;
 - (b) any such rule that has the effect of preventing a duty of care from being owed to a person by reason of the person's acceptance of a risk of harm.
- (7) In this section —
- “construction or maintenance operations” means operations of any of the following descriptions—

(a) construction, installation, alteration, extension, improvement, repair, maintenance, decoration, cleaning, demolition or dismantling of —

(i) any building or structure;

(ii) anything else that forms, or is to form, part of the land; or

(iii) any plant, vehicle or other thing;

(b) operations that form an integral part of, or are preparatory to, or are for rendering complete, any operations within paragraph (a);

“the law of negligence” includes, but is not limited to, health and safety legislation.

[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.2]

124. Public policy decisions, exclusively public functions and statutory inspections

(1) Any duty of care owed by a public authority in respect of a decision as to matters of public policy (including in particular the allocation of public resources or the weighing of competing public interests) is not a “relevant duty of care”.

(2) Any duty of care owed in respect of things done in the exercise of an exclusively public function is not a “relevant duty of care” unless it falls within paragraph (a), (b) or (d) of section 123(1).

(3) Any duty of care owed by a public authority in respect of inspections carried out in the exercise of a statutory function is not a “relevant duty of care” unless it falls within paragraph (a) or (b) of section 123(1).

(4) In this section —

“exclusively public function” means a function that falls within the prerogative of the Crown or is, by its nature, exercisable only with authority conferred —

(a) by the exercise of that prerogative; or

(b) by or under a statutory provision;

“statutory function” means a function conferred by or under a statutory provision.

[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.3]

125. Military activities

(1) Any duty of care owed by the Ministry of Defence of the United Kingdom in respect of —

(a) operations within subsection (2);

(b) activities carried on in preparation for, or directly in support of, such operations; or

(c) training of a hazardous nature, or training carried out in a hazardous way, which it is considered needs to be carried out, or carried out in that way, in order to improve or maintain the effectiveness of the armed forces with respect to such operations,

is not a “relevant duty of care”.

(2) The operations within this subsection are operations, including peacekeeping operations and operations for dealing with terrorism, civil unrest or serious public disorder, in the course of which members of the armed forces come under attack or face the threat of attack or violent resistance.

(3) Any duty of care owed by the Ministry of Defence in respect of activities carried on by members of the special forces is not a “relevant duty of care”.

(4) In this section “the special forces” means those units of the armed forces the maintenance of whose capabilities is the responsibility of the Commander British Forces, South Atlantic Islands, or which are for the time being subject to the operational command of the Commander.

[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.4]

126. Policing and law enforcement

(1) Any duty of care owed by a public authority in respect of —

(a) operations within subsection (2);

(b) activities carried on in preparation for, or directly in support of, such operations; or

(c) training of a hazardous nature, or training carried out in a hazardous way, which it is considered needs to be carried out, or carried out in that way, in order to improve or maintain the effectiveness of officers or employees of the public authority with respect to such operations,

is not a “relevant duty of care”.

(2) Operations are within this subsection if —

(a) they are operations for dealing with terrorism, civil unrest or serious disorder;

(b) they involve the carrying on of policing or law-enforcement activities; and

(c) officers or employees of the public authority in question come under attack, or face the threat of attack or violent resistance, in the course of the operations.

(3) Any duty of care owed by a public authority in respect of other policing or law-enforcement activities is not a “relevant duty of care” unless it falls within paragraph (a), (b) or (d) of section 123(1).

(4) In this section “policing or law-enforcement activities” includes —

(a) activities carried on in the exercise of functions that are —

(i) functions of the police force; or

(ii) functions of the same or a similar nature exercisable by public authorities other than the police force;

(b) activities carried on in the exercise of functions of police officers employed by a public authority;

(c) activities carried on to enforce any provision contained in or made under the Immigration Ordinance.

[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.5]

127. Emergencies

(1) Any duty of care owed by an organisation within subsection (2) in respect of the way in which it responds to emergency circumstances is not a “relevant duty of care” unless it falls within paragraph (a), (b) or (d) of section 123(1).

(2) The organisations within this subsection are —

(a) a fire and rescue authority;

(b) any other organisation providing a service of responding to emergency circumstances either —

(i) pursuant to an arrangement made with the Government; or

(ii) (if not pursuant to such an arrangements) otherwise than on a commercial basis;

(c) a public hospital;

(d) an organisation providing ambulance services pursuant to an arrangement made with the Government;

(e) an organisation providing services for the transport of organs, blood, equipment or personnel pursuant to an arrangement with the Government;

(f) the armed forces.

(3) For the purposes of subsection (1), the way in which an organisation responds to emergency circumstances does not include the way in which —

(a) medical treatment is carried out; or

(b) decisions within subsection (4) are made.

(4) The decisions within this subsection are decisions as to the carrying out of medical treatment, other than decisions as to the order in which persons are to be given such treatment.

(5) Any duty of care owed in respect of the carrying out, or attempted carrying out, of a rescue operation at sea in emergency circumstances is not a “relevant duty of care” unless it falls within section 123(1)(a) or (b).

(6) Any duty of care owed in respect of action taken in order to comply with a safety direction under the Merchant Shipping Ordinance or any UK enactment applied by the Merchant Shipping (Adoption of Legislation) Ordinance, or with action in lieu of direction, is not a “relevant duty of care” unless it falls within section 123(1)(a) or (b).

(7) In this section —

“emergency circumstances” means circumstances that are present or imminent and —

(a) are causing, or are likely to cause, serious harm or a worsening of such harm; or

(b) are likely to cause the death of a person;

“medical treatment” includes any treatment or procedure of a medical or similar nature;

“serious harm” means —

(a) serious injury to or the serious illness (including mental illness) of a person;

(b) serious harm to the environment (including the life and health of plants and animals);

(c) serious harm to any building or other property.

(8) A reference in this section to emergency circumstances includes a reference to circumstances that are believed to be emergency circumstances.

[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.6]

128. Child protection and probation functions

(1) A duty of care to which this section applies is not a “relevant duty of care” unless it falls within paragraph (a), (b) or (d) of section 123(1).

(2) This section applies to any duty of care that the Crown owes in respect of the exercise by it of functions conferred by or under the Children Ordinance 2014.

(3) This section also applies to any duty of care that a public authority owes in respect of the exercise by it of supervision or similar functions conferred by or under the Criminal Procedure and Evidence Ordinance 2014.

[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.7]

129. Gross breach: Factors

(1) This section applies if —

- (a) it is established that an organisation owed a relevant duty of care to a person; and
- (b) it falls to the court, or the jury, if there is one, to decide whether there was a gross breach of that duty.

(2) The court or jury, as the case may be, must consider whether the evidence shows that the organisation failed to comply with any health and safety legislation that relates to the alleged breach, and if so —

- (a) how serious that failure was;
- (b) how much of a risk of death it posed.

(3) The court or jury, as the case may be, may also —

- (a) consider the extent to which the evidence shows that there were attitudes, policies, systems or accepted practices within the organisation that were likely to have encouraged any such failure as is mentioned in subsection (2), or to have produced tolerance of it;
- (b) have regard to any health and safety guidance that relates to the alleged breach.

(4) This section does not prevent the jury from having regard to any other matters they consider relevant.

(5) In this section “health and safety guidance” means any code, guidance, manual or similar publication that is concerned with health and safety matters and is made or issued (under a statutory provision or otherwise) by an authority responsible for the enforcement of any health and safety legislation.

[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.8]

Application to particular categories of organisation

130. Application to public bodies

(1) An organisation that is a servant or agent of the Crown is not by virtue of its status immune from prosecution under this Part.

(2) For the purposes of this Part —

- (a) every department of the Government (other than an exempt department); and
- (b) every corporation that is a servant or agent of the Crown,

is to be treated as owing whatever duties of care it would owe if it were a corporation that was not a department of the Government or servant or agent of the Crown.

(3) For the purposes of section 122 —

(a) a person who is —

(i) employed by or under the Crown for the purposes of a department of the Government;
or

(ii) employed by a person whose staff constitute such a department,

is to be treated as employed by that department.

(b) any premises occupied for the purposes of —

(i) a department of the Government; or

(ii) a person whose staff constitute such a department,

are to be treated as occupied by that department.

(4) For the purposes of sections 122 to 127, anything purporting to be done by a department or body of the Government, although in law done by the Crown or by the holder of a particular office, is to be treated as done by the department or body itself.

[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.11]

131. Application to police force

(1) For the purposes of this Part, the police force is to be treated as owing whatever duties of care it would owe if it were a corporate body.

(2) For the purposes of section 122 —

(a) a member of the police force is to be treated as employed by the force;

(b) a reserve police officer is to be treated as employed by the police force;

(c) a probationary police officer undergoing training with a view to becoming a member of the police force is to be treated as employed by the force.

(3) For the purposes of section 122, any premises occupied for the purposes of the police force are to be treated as occupied by the force.

(4) For the purposes of sections 122 to 127, anything that would be regarded as done by the police force if the force were a corporate body is to be so regarded.

(5) If —

(a) by virtue of subsection (3) a person is treated for the purposes of section 122 as employed by the police force; and

(b) by virtue of any other statutory provision (whenever made) the person is, or is treated as, employed by another organisation,

the person is to be treated for those purposes as employed by both the force and the other organisation.

[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.13]

132. Application to partnerships

(1) For the purposes of this Part a partnership is to be treated as owing whatever duties of care it would owe if it were a body corporate.

(2) Proceedings for an offence under this Part alleged to have been committed by a partnership are to be brought in the name of the partnership (and not in that of any of its members).

(3) A fine imposed on a partnership on its conviction of an offence under this Part is to be paid out of the funds of the partnership.

(4) This section does not apply to a partnership that is a legal person under the law by which it is governed.

[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.14]

Enforcement and procedure

133. Power to order breach, etc. to be remedied

(1) A court before which an organisation is convicted of corporate manslaughter may make an order (a “remedial order”) requiring the organisation to take specified steps to remedy —

(a) the breach mentioned in section 122(1) (“the relevant breach”);

(b) any matter that appears to the court to have resulted from the relevant breach and to have been a cause of the death;

(c) any deficiency, as regards health and safety matters, in the organisation’s policies, systems or practices of which the relevant breach appears to the court to be an indication.

(2) A remedial order —

(a) may be made only on an application by the prosecution specifying the terms of the proposed order;

(b) must be on such terms (whether those proposed or others) as the court considers appropriate having regard to any representations made, and any evidence adduced, in relation to that matter by the prosecution or on behalf of the organisation.

(3) Before making an application for a remedial order the prosecution must consult such enforcement authority or authorities as it considers appropriate having regard to the nature of the relevant breach.

(4) A remedial order —

(a) must specify a period within which the steps referred to in subsection (1) are to be taken;

(b) may require the organisation to supply to an enforcement authority consulted under subsection (3), within a specified period, evidence that those steps have been taken.

(5) A period specified under subsection (4) may be extended or further extended by order of the court on an application made before the end of that period or extended period.

(6) An organisation that fails to comply with a remedial order commits an offence, the maximum penalty for which is a fine.

[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.9]

134. Power to order conviction, etc. to be publicised

(1) A court before which an organisation is convicted of corporate manslaughter may make an order (a “publicity order”) requiring the organisation to publicise in a specified manner —

(a) the fact that it has been convicted of the offence;

(b) specified particulars of the offence;

(c) the amount of any fine imposed;

(d) the terms of any remedial order made.

(2) In deciding on the terms of a publicity order that it is proposing to make, the court must —

(a) ascertain the views of such enforcement authority or authorities (if any) as it considers appropriate; and

(b) have regard to any representations made by the prosecution or on behalf of the organisation.

(3) A publicity order —

(a) must specify a period within which the requirements referred to in subsection (1) are to be complied with;

(b) may require the organisation to supply to any enforcement authority whose views have been ascertained under subsection (2), within a specified period, evidence that those requirements have been complied with.

(4) An organisation that fails to comply with a publicity order commits an offence, and liable on conviction on indictment to a fine.

[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.10]

135. Procedure, evidence and sentencing

(1) Any statutory provision (whenever made) about criminal proceedings applies, subject to any prescribed adaptations or modifications, in relation to proceedings under this Part against —

- (a) a department of the Government;
- (b) the police force;
- (c) a partnership;
- (d) a trade union; or
- (e) an employers' association that is not a corporation,

as it applies in relation to proceedings against a corporation.

(2) An individual cannot be guilty of aiding, abetting, counselling or procuring the commission of an offence of corporate manslaughter.

(3) No proceedings for an offence of corporate manslaughter may be commenced except by, or with the consent of, the Attorney General.

(4) In this section —

“prescribed” means prescribed by criminal procedure rules made under the Criminal Procedure and Evidence Ordinance 2014;

“provision about criminal proceedings” includes —

- (a) provision about procedure in or in connection with criminal proceedings;
- (b) provision about evidence in such proceedings;
- (c) provision about sentencing, or otherwise dealing with, persons convicted of offences.

[UK Corporate Manslaughter and Corporate Homicide Act 2007 ss.15, 17 and 18]

136. Convictions under this Part and under health and safety legislation

(1) If in the same proceedings there is —

(a) a charge of corporate manslaughter arising out of a particular set of circumstances; and

(b) a charge against the same defendant of a health and safety offence arising out of some or all of those circumstances,

the court, or the jury, if there is one, may, if the interests of justice so require, be invited to return a verdict on each charge.

(2) An organisation that has been convicted of corporate manslaughter arising out of a particular set of circumstances may, if the interests of justice so require, be charged with a health and safety offence arising out of some or all of those circumstances.

(3) In this section “health and safety offence” means an offence under any health and safety legislation.

[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.19]

Miscellaneous

137. Transfer of functions

(1) This section applies if —

(a) a person’s death has occurred, or is alleged to have occurred, in connection with the carrying out of functions by a relevant public organisation; and

(b) subsequently there is a transfer of those functions, with the result that they are still carried out but no longer by that organisation.

(2) In this section “relevant public organisation” means —

(a) a department of the Government (other than an exempt department);

(b) a corporation that is a servant or agent of the Crown or Government;

(c) the police force.

(3) Subject to subsection (4), any proceedings commenced against a relevant public organisation after the transfer for an offence under this Part in respect of the person’s death are to be commenced against —

(a) the relevant public organisation, if any, by which the functions mentioned in subsection (1) are currently carried out;

(b) if no such organisation currently carries out the functions - the relevant public organisation by which the functions were last carried out.

(4) If an order made by the Governor so provides in relation to a particular transfer of functions, the proceedings referred to in subsection (3) may be commenced, or (if they have already been commenced) may be continued, against —

(a) the organisation mentioned in subsection (1); or

(b) any relevant public organisation (other than the one mentioned in subsection (1) or subsection (3)(a) or (b)) specified in the order.

(5) Subject to subsection (6), if the transfer occurs while proceedings for an offence under this Part in respect of the person's death are in progress against a relevant public organisation, the proceedings are to be continued against —

(a) the relevant public organisation, if any, by which the functions mentioned in subsection (1) are carried out as a result of the transfer;

(b) if as a result of the transfer no such organisation carries out the functions - the same organisation as before.

(6) If an order made by the Governor so provides in relation to a particular transfer of functions, the proceedings referred to in subsection (5) may be continued against —

(a) the organisation mentioned in subsection (1); or

(b) any relevant public organisation (other than the one mentioned in subsection (1) or subsection (5)(a) or (b)) specified in the order.

[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.16]

138. Abolition of liability of corporations for manslaughter at common law

The common law offence of manslaughter by gross negligence is abolished in its application to corporations, and in any application it has to other organisations to which section 192 applies.

[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.20]

139. Power to extend section 122 to other organisations

(1) The Governor may by order amend section 122 so as to extend the categories of organisation to which that section applies.

(2) An order under this section may make any amendment to this Part that is incidental or supplemental to, or consequential on, an amendment made by virtue of subsection (1).

[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.21]

140. Power to extend section 123(2)

(1) The Governor in Council, after consulting the Criminal Justice Council, may by order amend section 123(2) to make it include any category of person (not already included) who is —

(a) required by virtue of a statutory provision to remain or reside on particular premises; or

(b) otherwise subject to a restriction of his or her liberty.

(2) An order under this section may make any amendment to this Part that is incidental or supplemental to, or consequential on, an amendment made by virtue of subsection (1).

[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.23]

PART 6 – PROTECTION FROM HARASSMENT

141. Interpretation of Part

(1) This section applies for the interpretation of this Part.

(2) References to harassing a person include alarming the person or causing the person distress.

(3) References to a person, in the context of the harassment of a person, are references to a person who is an individual.

(4) A “course of conduct” must involve —

(a) in the case of conduct in relation to a single person (see section 142(1)), conduct on at least 2 occasions in relation to that person; or

(b) in the case of conduct in relation to 2 or more persons (see section 142(2)), conduct on at least one occasion in relation to each of those persons.

(5) A person’s conduct on any occasion, if aided, abetted, counselled or procured by another, is to be taken to be —

(a) conduct on that occasion of the other (as well as conduct of the person whose conduct it is); and

(b) conduct in relation to which the other’s knowledge and purpose, and what the other ought to have known, are the same as they were in relation to what was contemplated or reasonably foreseeable at the time of the aiding, abetting, counselling or procuring.

(6) “Conduct” includes speech.

[UK Protection from Harassment Act 1997 s.7 am. by Serious Organised Crime & Police Act 2005]

Harassment and stalking

142. Prohibition of harassment

(1) A person must not pursue a course of conduct which —

(a) amounts to harassment of another; and

(b) the person knows or ought to know amounts to harassment of the other.

(2) A person ('A') must not pursue a course of conduct —

(a) which involves harassment of 2 or more persons;

(b) which A knows or ought to know involves harassment of those persons, and

(c) by which A intends to persuade any person (whether or not one of those mentioned in (a) or (b)) —

(i) not to do something that that person is entitled or required to do; or

(ii) to do something that that person is not under any obligation to do.

(3) For the purposes of this section or section 143, the person whose course of conduct is in question ought to know that it amounts to or involves harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to or involved harassment of the other.

(4) Subsection (1) or (2) does not apply to a course of conduct if the person who pursued it shows —

(a) that it was pursued for the purpose of preventing or detecting crime;

(b) that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment; or

(c) that in the particular circumstances the pursuit of the course of conduct was reasonable.

[UK Protection from Harassment Act 1997 s.1 am. by Serious & Organised Crime & Police Act 2005]

143. Offence of harassment

A person who pursues a course of conduct in breach of section 142(1) or (2) commits an offence. Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

[UK Protection from Harassment Act 1997 s.2]

144. Offence of stalking

(1) A person commits an offence if —

(a) the person pursues a course of conduct in breach of section 142; and

(b) the course of conduct amounts to stalking.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) For the purposes of subsection (1)(b) and section 146(1)(a), a person's course of conduct amounts to stalking of another person if —

- (a) it amounts to harassment of that person;
- (b) the acts or omissions involved are ones associated with stalking; and
- (c) the person whose course of conduct it is knows or ought to know that the course of conduct amounts to harassment of the other person.

(3) The following are examples of acts or omissions which, in particular circumstances, are ones associated with stalking —

- (a) following a person;
- (b) contacting, or attempting to contact, a person by any means;
- (c) publishing any statement or other material —
 - (i) relating or purporting to relate to a person; or
 - (ii) purporting to originate from a person;
- (d) monitoring the use by a person of the internet, e-mail or any other form of electronic communication;
- (e) loitering in any place (whether public or private);
- (f) interfering with any property in the possession of a person;
- (g) watching or spying on a person.

(4) This section does not limit the effect of section 146.

[UK Protection from Harassment Act s.2A ins. by Protection of Freedoms Act 2012 s.111]

145. Putting people in fear of violence

(1) A person ('A') whose course of conduct causes another person ('B') to fear that violence will be used against ('B'), commits an offence if A knows or ought to know that his or her course of conduct will cause B so to fear on each of those occasions.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) For the purposes of this section, A ought to know that his or her course of conduct will cause B to fear that violence will be used against B on any occasion if a reasonable person in possession of the same information would think the course of conduct would cause B so to fear on that occasion.

(3) It is a defence for a person charged with an offence under this section to show that —

- (a) the course of conduct was pursued for the purpose of preventing or detecting crime;

(b) the course of conduct was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment; or

(c) the pursuit of the course of conduct was reasonable for the protection of the defendant or another or for the protection of property of the defendant another.

(4) If on the trial of a person charged with an offence under this section the court or jury finds the person not guilty of the offence charged, it may find the person guilty of an offence under section 143 or 144.

(5) If by virtue of subsection (4) a person is convicted of an offence under section 143, the court has the same powers and duties in relation to the person as it would have on convicting the person of that offence.

[UK Protection from Harassment Act 1997 s.4]

146. Stalking involving fear of violence or serious alarm or distress

(1) A person (“A”) whose course of conduct —

(a) amounts to stalking; and

(b) either —

(i) causes another (“B”) to fear, on at least 2 occasions, that violence will be used against B; or

(ii) causes B serious alarm or distress which has a substantial adverse effect on B’s usual day-to-day activities,

commits an offence if A knows or ought to know that A’s course of conduct will cause B so to fear on each of those occasions or (as the case may be) will cause such alarm or distress.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) For the purposes of this section A ought to know that A’s course of conduct will cause B to fear that violence will be used against B on any occasion if a reasonable person in possession of the same information would think the course of conduct would cause B so to fear on that occasion.

(3) For the purposes of this section A ought to know that A’s course of conduct will cause B serious alarm or distress which has a substantial adverse effect on B’s usual day-to-day activities if a reasonable person in possession of the same information would think the course of conduct would cause B such alarm or distress.

(4) It is a defence for A to show that —

(a) A’s course of conduct was pursued for the purpose of preventing or detecting crime;

(b) A's course of conduct was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment; or

(c) the pursuit of A's course of conduct was reasonable for the protection of A or another or for the protection of A's or another's property.

(5) If on the trial of a person charged with an offence under this section the court finds the person not guilty of the offence charged, it may find the person guilty of an offence under section 143 or 144.

(6) If by virtue of subsection (5) a person is convicted of an offence under section 143 or 144, the court has the same powers and duties in relation to the person as it would have on convicting the person of that offence.

(7) This section does not limit the effect of section 145.

[UK Protection from Harassment Act s.2A ins. by Protection of Freedoms Act 2012 s.111]

147. Harassment outside a house

(1) A person ('A') commits an offence if —

(a) A is present outside or in the vicinity of any premises that are used by any individual ("the resident") as his or her dwelling;

(b) A is present there for the purpose (by his or her presence or otherwise) of representing to the resident or another individual (whether or not one who uses the premises as his or her dwelling), or of persuading the resident or such another individual —

(i) that he or she should not do something that he or she is entitled or required to do; or

(ii) that he or she should do something that he or she is not under any obligation to do;

(c) A —

(i) intends his or her presence to amount to the harassment of, or to cause alarm or distress to, the resident; or

(ii) knows or ought to know that his or her presence is likely to result in the harassment of, or to cause alarm or distress to, the resident; and

(d) the presence of A —

(i) amounts to the harassment of, or causes alarm or distress to, any person falling within subsection (2); or

- (ii) is likely to result in the harassment of, or to cause alarm or distress to, any such person.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) A person falls within this subsection if he or she is —

- (a) the resident;
- (b) a person in the resident's dwelling; or
- (c) a person in another dwelling in the vicinity of the resident's dwelling.

(3) The references in subsection (1)(c) and (d) to a person's presence are references to his or her presence either alone or together with that of any other persons who are also present.

(4) For the purposes of this section a person ('A') ought to know that his or her presence is likely to result in the harassment of, or to cause alarm or distress to, a resident if a reasonable person in possession of the same information would think that A's presence was likely to have that effect.

(5) In this section "dwelling" has the same meaning as in Part 21 of this Ordinance.

(6) A police officer in uniform may arrest without warrant any person he or she reasonably suspects is committing or has committed an offence under this section.

[UK Criminal Justice & Police Act 2001 s.42A ins. by Serious & Organised Crime and Police Act 2005 s.126]

Ancillary provisions

148. Civil remedy for breach of section 142(1)

(1) An actual or apprehended breach of section 142(1) may be the subject of a claim in civil proceedings in the Magistrate's Court by the person who is or may be the victim of the course of conduct in question.

(2) On such a claim, damages may be awarded for (among other things) any anxiety caused by the harassment and any financial loss resulting from the harassment.

(3) If —

- (a) in such proceedings the Magistrate's Court grants an injunction for the purpose of restraining the defendant from pursuing any conduct which amounts to harassment; and
- (b) the claimant considers that the defendant has done anything which the defendant is prohibited from doing by the injunction,

the claimant may apply for the issue of a warrant for the arrest of the defendant.

(4) The court on an application under subsection (3) may only issue a warrant if —

- (a) the application is substantiated on oath; and
- (b) the court has reasonable grounds for believing that the defendant has done anything which the defendant is prohibited from doing by the injunction.

(5) If —

- (a) the court grants an injunction for the purpose mentioned in subsection (3)(a); and
- (b) without reasonable excuse the defendant does anything which the defendant is prohibited from doing by the injunction,

the defendant commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

(6) If a person is convicted of an offence under subsection (5) in respect of any conduct, that conduct is not punishable as a contempt of court.

(7) A person cannot be convicted of an offence under subsection (5) in respect of any conduct which has been punished as a contempt of court.

[UK Protection from Harassment Act 1997 s.3]

149. Injunction for breach of section 142(2)

(1) This section applies if there is an actual or apprehended breach of section 142(2) by any person (“the relevant person”).

(2) In such a case, any person who is or may be —

- (a) a victim of the course of conduct in question; or
- (b) a person falling within section 142(2)(c),

may apply to the Magistrate’s Court for an injunction restraining the relevant person from pursuing any conduct which amounts to harassment in relation to any person or persons mentioned or described in the injunction.

(3) Section 148(3) to (7) apply in relation to an injunction granted under subsection (2) above as they apply in relation to an injunction granted as mentioned in section 148(3)(a).

[UK Protection from Harassment Act 1997 s.3A ins. by Serious & Organised Crime Act 2005 s.125]

150. Power of entry in relation to offence of stalking

(1) A justice of the peace may, on an application by a police officer, issue a warrant authorising a police officer to enter and search premises if the justice of the peace is satisfied that there are reasonable grounds for believing that —

- (a) an offence under section 144 or 146 has been, or is being, committed;
- (b) there is material on the premises which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence;
- (c) the material —
 - (i) is likely to be admissible in evidence at a trial for the offence; and
 - (ii) does not consist of, or include, items subject to legal privilege, excluded material or special procedure material (within the meanings given by Part 2 of the Criminal Procedure & Evidence Ordinance 2014; and
- (d) either —
 - (i) entry to the premises will not be granted unless a warrant is produced; or
 - (ii) 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.

(2) A police officer may —

- (a) seize and retain anything for which a search has been authorised under subsection (1);
- (b) use reasonable force, if necessary, in the exercise of any power conferred by virtue of this section.

[UK Protection from Harassment Act s.2B ins. by Protection of Freedoms Act 2012 s.112]

151. Restraining orders on conviction

(1) A court sentencing or otherwise dealing with a person (“the defendant”) convicted of an offence may (as well as sentencing the person or dealing with the person in any other way) make an order under this section.

(2) For the purpose of protecting the victim or victims of the offence, or any other person mentioned in the order, from further conduct which —

- (a) amounts to harassment; or
- (b) will cause a fear of violence,

the court may prohibit the defendant from doing anything described in the order.

- (3) The order may have effect for a specified period or until further order.
- (4) In proceedings under this section both the prosecution and the defence may lead, as further evidence, any evidence that would be admissible in proceedings for an injunction under section 148.
- (5) The prosecutor, the defendant or any other person mentioned in the order may apply to the court which made the order for it to be varied or discharged by a further order.
- (6) Any person mentioned in the order is entitled to be heard on the hearing of an application under subsection (5).
- (7) A defendant who without reasonable excuse does anything which the defendant is prohibited from doing by an order under this section commits an offence.
Penalty: Imprisonment for 5 years or a fine, or both.
- (8) A court dealing with a person for an offence under this section may vary or discharge the order in question by a further order.
[UK Protection from Harassment Act 1997 s.5 am. by Domestic Violence, Crime and Victims Act 2004 s.12]

152. Restraining orders on acquittal

- (1) A court before which a person (“the defendant”) is acquitted of an offence under this Ordinance may, if it considers it necessary to do so to protect a person from harassment or fear of violence by the defendant, make an order prohibiting the defendant from doing anything described in the order.
- (2) Subsections (2) to (8) of section 151 apply to an order under this section as they apply to an order under that section.
- (3) If the Supreme Court allows an appeal against conviction it may remit the case to the Magistrate’s Court or Summary Court, as the case may be to consider whether to proceed under this section.
- (4) If a case is remitted to the Magistrate’s Court or Summary Court under subsection (3), the reference in subsection (1) to a court before which a person is acquitted of an offence is to be read as referring to that court.
- (5) A person who is subject to an order under this section has the same right of appeal against the order as if —
- (a) the person had been convicted of the offence in question before the court which made the order; and
 - (b) the order had been made under section 151.

[UK Protection from Harassment Act 1997 s.5A ins. by Domestic Violence, Crime and Victims Act 2004 s.12]

Sending letters, etc. with intent to cause distress

153. Offence of sending letters etc. with intent to cause distress or anxiety

(1) A person who sends to another person —

(a) a letter, communication, or article of any description which conveys —

- (i) a message which is indecent or grossly offensive;
- (ii) a threat; or
- (iii) information which is false and known or believed to be false by the sender; or

(b) any article or communication which is, in whole or part, of an indecent or grossly offensive nature,

commits an offence if the conditions in subsection (2) are met.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale.

(2) The conditions are that the defendant's purpose, or one of the defendant's purposes, in sending the letter, article or communication is that it should cause distress or anxiety to the recipient or to any other person to whom the defendant intends that it or its contents or nature should be communicated.

(3) A person does not commit an offence under subsection (1)(a)(ii) if the person shows —

- (a) that the threat was used to reinforce a demand made by the person on reasonable grounds; and
- (b) that the person believed, and had reasonable grounds for believing, that the use of the threat was a proper means of reinforcing the demand.

(4) In this section references to sending include references to delivering or transmitting and to causing to be sent, delivered or transmitted, and "sender" is to be construed accordingly.

[UK Malicious Communications Act 1988 s.1]

Improper use of public electronic communications network

154. Offence of improper use of public electronic communications network

(1) A person who —

- (a) sends by means of a public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or

(b) causes any such message or matter to be so sent,

commits an offence.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) A person who, for the purpose of causing annoyance, inconvenience or needless anxiety to another —

(a) sends by means of a public electronic communications network a message that the person knows to be false;

(b) causes such a message to be sent; or

(c) persistently makes use of a public electronic communications network,

commits an offence.

(3) Subsections (1) and (2) do not apply to anything done in the course of providing a programme service.

(4) In this section, “electronic communications network” means —

(a) a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description; and

(b) such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals —

(i) apparatus comprised in the system;

(ii) apparatus used for the switching or routing of the signals; and

(iii) software and stored data.

[UK Communications Act 2003 ss.127 and 32]

PART 7 – OFFENSIVE WEAPONS

155. Interpretation of Part

In this Part, unless the context otherwise requires —

“caravan” means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted;

“implement” means a flick knife, razor blade, axe or other article of the kind described in section 160(2) or 161(2);

“knife” means an instrument which has a blade or is sharply pointed;

“offensive weapon” means any article —

- (a) made or adapted for use for causing injury to persons; or
- (b) intended by the person who has it with him or her for such use by him or her or by some other person;

“public place” means —

- (a) any highway; and
- (b) any place to which at the material time 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;

“publication” includes publication in electronic form and, in the case of a publication which is, or may be, produced from electronic data, any medium on which the data are stored;

“school” means an institution in which education is provided to persons under the age of 18, whether or not the institution also provides education to persons above the age of 18 years, and whether or not any person is at the time in question present upon the premises for the purpose of education;

“school premises” means land used for the purposes of a school, excluding any land occupied solely as a dwelling by a person employed at the school;

“suitable for combat” means suitable for use as a weapon for inflicting injury on a person or causing a person to fear injury;

“vehicle” includes —

- (a) any vehicle, whether or not it is in a fit state for use on roads;
- (b) any chassis or body, with or without wheels, which appears to have formed part of such a vehicle;
- (c) any load carried by, and anything attached to, such a vehicle; and
- (d) a caravan;

“violent behaviour” means an unlawful act inflicting injury on a person or causing a person to fear injury.

Knives

156. Unlawful marketing of knives

(1) It is an offence for a person to market a knife in a way which —

- (a) indicates, or suggests, that it is suitable for combat; or
- (b) is otherwise likely to stimulate or encourage violent behaviour involving the use of the knife as a weapon.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) For the purposes of this Part, an indication or suggestion that a knife is suitable for combat may, in particular, be given or made by a name or description —

- (a) applied to the knife;
- (b) on the knife or on any packaging in which it is contained; or
- (c) included in any advertisement which, expressly or by implication, relates to the knife.

(3) For the purposes of this Part, a person markets a knife if the person —

- (a) sells or hires it;
- (b) offers, or exposes, it for sale or hire; or
- (c) has it in his or her possession for the purpose of sale or hire.

[UK Knives Act 1997 s.1]

157. Publications

It is an offence for a person to publish any written, pictorial or other material in connection with the marketing of any knife which —

- (a) indicates, or suggests, that the knife is suitable for combat; or
- (b) is otherwise likely to stimulate or encourage violent behaviour involving the use of the knife as a weapon.

Penalty: Imprisonment for 2 years or a fine, or both.

[UK Knives Act 1997 s.2]

158. Exempt trades

(1) It is a defence for a person charged with an offence under section 156 to prove that —

- (a) the knife was marketed —
 - (i) for use by the armed forces of any country;

- (ii) as an antique or curio; or
 - (iii) as falling within some other prescribed category;
- (b) it was reasonable for the knife to be marketed in that way; and
- (c) there were no reasonable grounds for suspecting that a person into whose possession the knife might come in consequence of the way in which it was marketed would use it for an unlawful purpose.
- (2) It is a defence for a person charged with an offence under section 157 to prove that —
- (a) the material was published in connection with marketing a knife —
 - (i) for use by the armed forces of any country;
 - (ii) as an antique or curio; or
 - (iii) as falling within some other prescribed category;
 - (b) it was reasonable for the knife to be marketed in that way; and
 - (c) there were no reasonable grounds for suspecting that a person into whose possession the knife might come in consequence of the publishing of the material would use it for an unlawful purpose.
- (3) The Governor, after consulting the Criminal Justice Council, may by order prescribe the categories for the purpose of subsection (1)(a)(iii) or (2)(a)(iii) by reference to the type of knife or the circumstances of the marketing or publication, as the case may be.

[UK Knives Act 1997 s.3]

159. Other defences

- (1) It is a defence for a person charged with an offence under section 156 to prove that the person did not know or suspect, and had no reasonable grounds for suspecting, that the way in which the knife was marketed —
- (a) amounted to an indication or suggestion that the knife was suitable for combat; or
 - (b) was likely to stimulate or encourage violent behaviour involving the use of the knife as a weapon.
- (2) It is a defence for a person charged with an offence under section 157 to prove that the person did not know or suspect, and had no reasonable grounds for suspecting, that the material—
- (a) amounted to an indication or suggestion that the knife was suitable for combat; or

(b) was likely to stimulate or encourage violent behaviour involving the use of the knife as a weapon.

(3) It is a defence for a person charged with an offence under section 156 or 157 to prove that the person took all reasonable precautions and exercised all due diligence to avoid committing the offence.

[UK Knives Act 1997 s.4]

160. Manufacture and sale of flick knives, etc.

(1) It is an offence for a person to —

- (a) manufacture;
- (b) sell or hire or offer for sale or hire, or to expose for sale or hire;
- (c) have in the person's possession for the purpose of sale or hire; or
- (d) lend or give to any other person,

a weapon to which this section applies.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) This section applies to —

- (a) a knife which has a blade which opens automatically by hand pressure applied to a button, spring or other device in or attached to the handle of the knife, sometimes known as a “flick knife” or “flick gun”; or
- (b) a knife which has a blade which is released from the handle or sheath by the force of gravity or the application of centrifugal force and which, when released, is locked in place by means of a button, spring, lever or other device, sometimes known as a “gravity knife”.

[Gibraltar Criminal Offences Act s.41]

161. Sale of knives etc. to persons under 16

(1) A person who sells to a person under the age of 16 an article to which this section applies commits an offence.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) This section applies to —

- (a) any knife, knife blade or razor blade;
- (b) any axe; and
- (c) any other article which has a blade or which is sharply pointed and which is made or adapted for use for causing injury to the person.

(3) It is a defence for a person charged with an offence under subsection (1) to prove that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

[UK Criminal Justice Act 1988 s.141A added by Offensive Weapons Act 1996]

162. Entry, seizure and retention

(1) If, on an application made by a police officer, a justice of the peace is satisfied that there are reasonable grounds for suspecting that —

(a) a person has committed an offence under section 156, 160 or 161 in relation to knives or other implements of a particular description; and

(b) knives or implements of that description and in the person's possession or under the person's control are to be found on particular premises,

the justice of the peace may issue a warrant authorising a police officer to enter those premises, search for the knives or implements and seize and remove any that the officer finds.

(2) If, on an application made by a police officer, a justice of the peace is satisfied that there are reasonable grounds for suspecting that —

(a) a person has committed an offence under section 157 in relation to particular material; and

(b) publications consisting of or containing that material and in the person's possession or under the person's control are to be found on particular premises,

the justice of the peace may issue a warrant authorising a police officer to enter those premises, search for the publications and seize and remove any that the officer finds.

(3) A police officer, in the exercise of the powers under a warrant issued under this section, may if necessary use reasonable force.

(4) Any knives, implements or publications which have been seized and removed by a police officer under a warrant issued under this section in respect of a person may be retained until the conclusion of proceedings against the person.

(5) For the purposes of this section, proceedings in relation to a person are concluded if —

(a) the person is convicted and sentenced or otherwise dealt with for the offence;

(b) the person is acquitted;

(c) proceedings for the offence are discontinued; or

(d) it is decided not to prosecute the person.

[UK Knives Act 1997 s.5]

163. Forfeiture of knives and publications

(1) If a person is convicted of an offence under section 156, section 160 or section 161 in relation to a knife or other implement of a particular description, the court may make an order for forfeiture in respect of any knives or implements of that description —

(a) seized under a warrant issued under section 162; or

(b) in the person's possession or under the person's control at the relevant time.

(2) If a person is convicted of an offence under section 157 in relation to particular material, the court may make an order for forfeiture in respect of any publications consisting of or containing that material which —

(a) have been seized under a warrant issued under section 162; or

(b) were in the person's possession or under the person's control at the relevant time.

(3) The court may make an order under subsection (1) or (2) —

(a) whether or not it also deals with the convicted person in respect of the offence in any other way; and

(b) without regard to any restrictions on forfeiture in any enactment.

(4) In considering whether to make an order, the court must have regard —

(a) to the value of the property; and

(b) to the likely financial and other effects on the convicted person of the making of the order (taken together with any other order that the court contemplates making).

(5) In this section "relevant time", in relation to an offence under section 156 or 157, means the time of the arrest for the offence or of the issue of a summons in respect of it.

[UK Knives Act 1997 s.6]

164. Effect of a forfeiture order

(1) An order under section 163 (a "forfeiture order") operates to deprive the convicted person of that person's rights, if any, in the property to which it relates.

(2) The property to which a forfeiture order relates must be taken into the possession of the police (if it is not already in their possession).

(3) The court may, on an application made by a person who —

(a) claims property to which a forfeiture order applies, but

(b) is not the person from whom it was forfeited,

make an order (a “recovery order”) for delivery of the property to the applicant if it appears to the court that the applicant owns it.

(4) No application for a recovery order may be made later than 6 months after the date on which the forfeiture order was made.

(5) No application for a recovery order may succeed unless the applicant satisfies the court that the applicant —

(a) did not consent to the convicted person having possession of the property; or

(b) did not know, and had no reason to suspect, that the offence was likely to be committed.

(6) Any right to recover property which is in the possession of another in pursuance of a recovery order —

(a) is not affected by the making of the recovery order for up to 6 months from the date on which the order was made; but

(b) is lost at the end of that period.

(7) Section 622 of the Criminal Procedure and Evidence Ordinance applies in relation to property forfeited under section 163 if —

(a) no application for a recovery order has been made within 6 months of the forfeiture order being made; or

(b) no such application has succeeded.

[UK Knives Act 1997 s.7 adapted]

Crossbows

165. Sale, etc., of crossbows to young persons

(1) Subject to subsection (2), it is an offence for a person (‘A’) to sell or let on hire a crossbow or a part of a crossbow to a person (‘B’) under the age of 17 years.

Penalty: A fine at level 4 on the standard scale.

(2) It is a defence for A to prove that on reasonable grounds A believed that B was aged 17 years or over.

(3) A person under the age of 17 who buys or hires a crossbow or part of a crossbow commits an offence.

Penalty: A fine at level 4 on the standard scale.

(4) Nothing in subsection (1) or (3) applies to a toy crossbow, that is to say a crossbow with a draw weight of less than 1.4 kilograms.

[Crimes Ord. s.17; UK Crossbows Act 1987 ss.1, 2 and 6]

166. Possession of crossbow by person under the age of 17

(1) Except as provided by subsection (2), a person under the age of 17 commits an offence if the person has with him or her —

(a) a crossbow (other than a toy crossbow) which is capable of discharging a missile; or

(b) parts of a crossbow (other than a toy crossbow) which together (and without any other parts) can be assembled to form a crossbow capable of discharging a missile.

Penalty: A fine at level 4 on the standard scale.

(2) No offence is committed under subsection (1) if —

(a) the person under the age of 17 is under the supervision of a person who aged 21 or more; or

(b) the crossbow is within the dwelling-house within which the person under the age of 17 usually resides.

[Crimes Ord. s.18; UK Crossbows Act 1987 ss.3 and 6]

167. Prohibited use of crossbows

(1) It is an offence for a person to discharge a crossbow (other than a toy crossbow) —

(a) in any road or public place;

(b) on any beach;

(c) on any other land without the permission of the occupier of that land;

(d) in any sanctuary or reserve (including Stanley Common); or

(e) in any place so that a bolt or missile discharged by the crossbow falls in or traverses a place in which, had the crossbow been discharged there, an offence would have been committed under any of paragraphs (a) to (d).

Penalty: A fine at level 4 on the standard scale.

(2) A person who uses at night a crossbow (other than a toy crossbow) in any place outside a building commits an offence.

Penalty: A fine at level 4 on the standard scale.

[Crimes Ord. s.19]

168. Forfeiture of crossbows

(1) A court which convicts a person of an offence to which subsection (1) relates may, on conviction, order that the crossbow be delivered up to the court and be forfeited to the Crown.

(2) A person who fails to deliver up the crossbow in question within 7 days of the making of the order under subsection (1) or any longer time the court allows when making the order, commits an offence.

Penalty: Imprisonment for 3 months or to a fine at level 4 on the standard scale, or both.

(3) An appeal lies against an order under subsection (1) as if it were a sentence imposed on conviction.

[Crimes Ord. s.20; UK Crossbows Act 1987 s.7 (part)]

Offensive weapons generally

169. Having a an article with blade or point in a public place

(1) Subject to subsections (4) and (5), any person who has an article to which this section applies with him or her in a public place commits an offence.

Penalty: Imprisonment for 12 months or a fine at level 6 on the standard scale, or both.

(2) This section applies, subject to subsection (3), to any article which has a blade or is sharply pointed.

(3) This section does not apply to a folding pocket knife unless the cutting edge of its blade exceeds 3 inches.

(4) It is a defence for a person charged with an offence under this section to prove that the person had good reason or lawful authority for having the article with him or her in a public place.

(5) Without limiting subsection (4), it is a defence for a person charged with an offence under this section to prove that the person had the article with him or her —

(a) for use at work;

(b) for religious reasons; or

(c) as part of a national costume.

[Crimes Ord. s.16; UK Criminal Justice Act 1988 s.139]

170. Having an offensive weapon, etc. on school premises

(1) A person who has with him or her on school premises an article to which section 169 applies commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) A person who has with him or her on school premises any other offensive weapon as defined in section 155 commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(3) It is a defence for a person charged with an offence under subsection (1) or (2) to prove that the person had good reason or lawful authority for having the article or weapon with him or her on the school premises.

(4) Without limiting subsection (3), it is a defence for a person charged with an offence under subsection (1) or (2) to prove that the person had the article or weapon in question with him or her —

(a) for use at work;

(b) for educational purposes;

(c) for religious reasons; or

(d) as part of a national costume.

[Crimes Ord. s.16A; UK Criminal Justice Act 1988 s.139A]

171. Threatening with offensive weapon, etc. on school premises

(1) A person who —

(a) has an article to which this section applies with him or her on school premises;

(b) unlawfully and intentionally threatens another person with the article; and

(c) does so in such a way that there is an immediate risk of serious physical harm to that other person,

commits an offence.

Penalty: Imprisonment for 4 years or a fine, or both.

(2) This section applies to an offensive weapon and any article to which section 169 applies.

(3) For the purposes of this section physical harm is serious if it amounts to grievous bodily harm for the purposes of Part 4.

(4) If on a person's trial for an offence under this section the person is found not guilty of that offence but it is proved that the person committed an offence under any of sections 169, 170 or 172, the person may be convicted of the offence under that other section.

[UK Criminal Justice Act 1988 s.139AA and Prevention of Crime Act 1953 s.1A ins. by LASPO Act 2012 s.142]

172. Entry and search of school premises for offensive weapons, etc.

(1) A police officer may enter school premises and search those premises and any person on those premises for —

- (a) any article to which section 169 applies; or
- (b) any other offensive weapon as defined in section 155,

if the officer has reasonable grounds for believing that an offence under section 170 or section 171 is being, or has been, committed.

(2) If in the course of a search under this section a police officer discovers an article or weapon which he or she has reasonable grounds for suspecting to be an article or weapon of a kind described in subsection (1), the officer may seize and retain it.

(3) A police officer may use any reasonable force that is necessary in the exercise of the power of entry conferred by this section.

[UK Criminal Justice Act 1988 s.139B]

173. Carrying offensive weapon

(1) A person who, without lawful authority or reasonable excuse, which the person must prove, has with him or her in any public place any offensive weapon commits an offence.

Penalty: Imprisonment for 4 years or a fine, or both.

(2) If a person is convicted of an offence under subsection (1), the court may make an order for the forfeiture or disposal of the weapon in respect of which the offence was committed.

[UK Prevention of Crime Act 1953 s.1 am. by Offensive Weapons Act 1996]

174. Dealing in offensive weapons

(1) A person who —

- (a) manufactures, sells or hires or offers for sale or hire;
- (b) exposes or has in the person's possession for the purpose of sale or hire;
- (c) lends or gives to any other person; or
- (d) imports,

an offensive weapon to which this section applies commits an offence.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) This section applies to the following weapons —

- (a) a knuckleduster, that is, a band of metal or other hard material worn on one or more fingers, and designed to cause injury, and any weapon incorporating a knuckleduster;

- (b) a swordstick, that is, a hollow walking-stick or cane containing a blade which may be used as a sword;
- (c) the weapon sometimes known as a “handclaw”, being a band of metal or other hard material from which a number of sharp spikes protrude, and worn around the hand;
- (d) the weapon sometimes known as a “belt buckle knife”, being a buckle which incorporates or conceals a knife;
- (e) the weapon sometimes known as a “push dagger”, being a knife the handle of which fits within a clenched fist and the blade of which protrudes from between two fingers;
- (f) the weapon sometimes known as a “hollow kubotan”, being a cylindrical container containing a number of sharp spikes;
- (g) the weapon sometimes known as a “footclaw”, being a bar of metal or other hard material from which a number of sharp spikes protrude, and worn strapped to the foot;
- (h) the weapon sometimes known as a “shuriken”, “shaken” or “death star”, being a hard non-flexible plate having three or more sharp radiating points and designed to be thrown;
- (i) the weapon sometimes known as a “balisong” or “butterfly knife”, being a blade enclosed by its handle, which is designed to split down the middle, without the operation of a spring or other mechanical means, to reveal the blade;
- (j) the weapon sometimes known as a “telescopic truncheon”, being a truncheon which extends automatically by hand pressure applied to a button, spring or other device in or attached to its handle;
- (k) the weapon sometimes known as a “blowpipe” or “blow gun”, being a hollow tube out of which hard pellets or darts are shot by the use of breath;
- (l) the weapon sometimes known as a “kusari gama”, being a length of rope, cord, wire or chain fastened at one end to a sickle;
- (m) the weapon sometimes known as a “kyoketsu shoge”, being a length of rope, cord, wire or chain fastened at one end to a hooked knife;
- (n) the weapon sometimes known as a “manrikigusari” or “kusari”, being a length of rope, cord, wire or chain fastened at each end to a hard weight or hand grip;
- (o) a disguised knife, that is any knife which has a concealed blade or concealed sharp point and is designed to appear to be an everyday object of a kind commonly carried on the person or in a handbag, briefcase, or other hand luggage (such as a comb, brush, writing instrument, cigarette lighter, key, lipstick or telephone);

(p) a stealth knife, that is a knife or spike, which has a blade, or sharp point, made from a material that is not readily detectable by apparatus used for detecting metal and which is not designed for domestic use or for use in the processing, preparation or consumption of food or as a toy;

(q) a straight, side-handled or friction-lock truncheon (sometimes known as a baton);

(r) a sword with a curved blade of 50 cms or over in length; and for the purposes of this subparagraph, the length of the blade is the straight line distance from the top of the handle to the tip of the blade.

(3) The Governor, after consulting the Criminal Justice Council, may by order amend subsection (2).

(4) It is a defence for any person charged with an offence under this section to prove that the person's conduct was only for the purpose of —

(a) performing functions on behalf of the Crown or a visiting force; or

(b) making the weapon available to a museum or gallery in the Falkland Islands or elsewhere.

(5) If a person acting on behalf of a museum or gallery is charged with hiring or lending a weapon to which this section applies, it is a defence for the person to prove that he or she had reasonable grounds for believing that the person to whom he or she lent or hired it would use it only for cultural, artistic or educational purposes.

(6) It is a defence for a person charged with an offence relating to a weapon mentioned in subsection (2)(r) to show —

(a) that the weapon in question was made in Japan before 1954 or was made in Japan at any other time according to traditional methods of forging swords; and

(b) that the person's conduct was for the purpose only of making the weapon available for the holding of a permitted activity by an organisation which holds public liability insurance in relation to liabilities to third parties arising from or in connection with the organisation and the holding of the activity.

(7) For the purposes of subsection (6), a person is taken to have shown a matter specified in that subsection if —

(a) sufficient evidence of that matter is adduced to raise an issue with respect to it; and

(b) the contrary is not proved beyond a reasonable doubt.

(8) In this section —

“historical re-enactment” means any presentation or other event held for the purpose of re-enacting an event from the past or of illustrating conduct from a particular time or period in the past;

insurance” means a contract of insurance or other arrangement made for the purpose of indemnifying a person or persons named in the contract or under the arrangement;

“museum or gallery” —

(a) includes any institution which has as its purpose, or one of its purposes, the preservation, display and interpretation of material of historical, artistic or scientific interest and gives the public access to it; but

(b) does not include an institution that distributes profits.

“permitted activity” means an historical re-enactment or a sporting activity;

“sporting activity” means the practising of a sport which requires the use of a weapon described in subsection (2)(r);

third parties” includes participants in, and spectators of, a permitted activity and members of the public.

[UK Criminal Justice Act 1988 s.141; Criminal Justice Act 1988 (Offensive Weapons) Order 1988 (S.I. 1988/2019 as am. by 2002/1668, 2004/1271 and 2008/97)

175. Authorisation in anticipation of violence in an area

(1) If the Chief Police Officer reasonably believes —

(a) that —

(i) incidents involving serious violence may occur in any area of the Falkland Islands; and

(ii) it is expedient to do so to prevent their occurrence; or

(b) that persons are carrying knives or offensive weapons in any area of the Falkland Islands without good reason,

the Chief Police Officer may authorise the powers to stop and search persons and vehicles conferred by section 176 to be exercised in that area for a specified period not exceeding 24 hours.

(2) The authorisation referred to in subsection (1) may be given by an officer of the rank of Inspector or above if the officer reasonably believes that incidents involving serious violence or

use of knives or offensive weapons in the area are imminent and the Chief Police Officer is not available.

(3) If it appears to the Chief Police Officer or to the officer who gave the authorisation that it is expedient to do so, having regard to offences which have, or are reasonably suspected to have, been committed in connection with any incident or activity in the area, the officer may extend the authorisation for a further period not exceeding 24 hours.

(4) An authorisation or extension under this section must be in writing signed by the Chief Police Officer or the police officer who gives it, and must specify —

(a) the area in which and the period during which the powers conferred by section 176 are exercisable;

(b) the grounds for the authorisation or extension.

(5) If an officer other than the Chief Police Officer gives an authorisation under subsection (1) or an extension under subsection (3) the officer must as soon as practicable inform the Chief Police Officer.

[UK Knives Act 1997 s.8 incorporating s.60 of the CJ and PO Act 1994 as am by Anti-terrorism, Crime & Security Act 2001]

176. Powers to search for and seize offensive weapons in an area

(1) An authorisation under section 175 in relation to an area of the Falkland Islands confers on any police officer in uniform power in the area and during the period specified in the authorisation —

(a) to stop any pedestrian and search the pedestrian or anything carried by the pedestrian for knives or offensive weapons;

(b) to stop any vehicle and search the vehicle, its driver and any passenger for knives or offensive weapons.

(2) A police officer may, in the exercise of the power in subsection (1), stop any person or vehicle in the area and make any search the officer thinks fit, whether or not he or she has any grounds for suspecting that the person or vehicle is carrying knives or offensive weapons.

(3) If in the course of a search under this section a police officer discovers a knife or an article which the officer has reasonable grounds for suspecting to be an offensive weapon, the officer may seize it.

(4) This section applies (with the necessary modifications) to ships and aircraft as it applies to vehicles.

(5) A person who fails to stop or (as the case may be) to stop a vehicle when required to do so by a police officer in the exercise of the powers under this section commits an offence, for which the maximum penalty on conviction is imprisonment for 1 month.

(6) If —

(a) a vehicle is stopped by a police officer under this section; and

(b) the driver applies in writing within 12 months from the day on which the vehicle was stopped,

the Chief Police Officer must give the driver a written statement that the vehicle was stopped under the powers conferred by this section.

(7) If —

(a) a pedestrian is stopped and searched by a police officer under this section; and

(b) the pedestrian applies in writing within 12 months from the day on which he or she was stopped and searched,

the Chief Police Officer must give the pedestrian a written statement that he or she was stopped under the powers conferred by this section.

(8) Anything seized by a police officer under subsection (3) may be retained in accordance with Part 3 of the Criminal Procedure and Evidence Ordinance 2014 (Powers of Seizure).

(9) For the purposes of this section, a person carries a knife or an offensive weapon if the person has it in his or her possession.

(10) The powers conferred by this section are in addition to and do not limit any power of stopping, search and seizure otherwise conferred by any other law.

[UK Knives Act 1997 s.8 incorporating s.60 & 60A of the CJ and PO Act 1994 as am. by Anti-terrorism, Crime & Security Act 2001]

PART 8 - EXPLOSIVE SUBSTANCES

177. Interpretation of Part

(1) In this Part, unless the context otherwise requires —

“explosive” —

(a) means gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting powders, fulminate of mercury or of other metals, coloured fires, and every other substance, whether similar to those above-mentioned or not, used or manufactured with a view to produce a practical effect by explosion or a pyrotechnic effect; and

(b) includes fog-signals, fireworks, fuses, rockets, percussion caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an explosive as above defined;

“explosive substance” includes —

(a) explosives and ingredients for making explosives;

(b) any apparatus, machine, implement, or materials used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance;

(c) any part of any such apparatus, machine, or implement;

(2) The Governor may by order declare that any substance which appears to the Governor to be specially dangerous to life or property by reason either of its explosive properties, or of any process in the manufacture of it being liable to explosion, is deemed to be an explosive within the meaning of this Part and the provisions of this Part (subject to any exceptions, limitations, and restrictions specified in the order) then extend to such a substance as if it were included in the term “explosive” in this Part.

[UK Explosives Act 1875 ss.3 and 104; Explosive Substances Act 1883 s.9]

Explosive substances offences

178. Causing grievous harm by explosion

A person who unlawfully and maliciously, by the explosion of any explosive substance, burns, maims, disfigures, disables or does any grievous bodily harm to any person, commits an offence. Penalty: Imprisonment for 14 years.

[UK Offences against the Person Act 1861, s.28]

179. Causing explosion, etc. with intent

(1) A person who unlawfully and maliciously —

(a) causes any explosive substance to explode;

(b) sends or delivers to or causes to be taken or received by any person any explosive substance or any other dangerous or noxious thing; or

(c) puts or lays at any place, or casts or throws at or upon or otherwise applies to any person, any corrosive fluid or any destructive or explosive substance,

with intent to burn, maim, disfigure or disable any person, or to do some grievous bodily harm to any person, commits an offence.

Penalty: Imprisonment for 14 years.

(2) It is immaterial for the purposes of subsection (1) whether any bodily injury is caused or not.

[UK Offences against the Person Act 1861, s.29]

180. Causing explosion likely to endanger life or property

(1) A person who unlawfully and maliciously causes by any explosive substance an explosion of a nature likely to —

- (a) endanger life; or
- (b) cause serious injury to property,

commits an offence.

Penalty: Imprisonment for life.

(2) It is immaterial for the purposes of subsection (1) whether any injury to person or property is caused or not.

(3) An offence under subsection (1) is triable on indictment only.

[UK Explosive Substances Act 1883 s.2 as am. by Criminal Jurisdiction Act 1975]

181. Acting or conspiring to cause explosion, or making or keeping explosives with intent

(1) A person who unlawfully and maliciously —

- (a) does any act with intent to cause; or
- (b) conspires to cause,

by an explosive substance an explosion of a nature likely to endanger life or cause serious injury to property, commits an offence.

Penalty: Imprisonment for life.

(2) A person who unlawfully and maliciously makes or has in the person's possession or under the person's control an explosive substance with intent by means of it —

- (a) to endanger life;
- (b) to cause serious injury to property; or
- (c) to enable any other person to endanger life or cause serious injury to property,

commits an offence.

Penalty: Imprisonment for life.

(3) It is immaterial for the purposes of subsection (1) or (2) whether —

- (a) any explosion does or does not take place;
- (b) any injury to person or property is caused or not.

(4) An offence under subsection (1) or (2) is triable on indictment only.

[UK Explosive Substances Act 1883 s.3 as am. by Criminal Jurisdiction Act 1975 and Criminal Law Act 1977]

182. Placing explosives with intent

(1) A person who unlawfully and maliciously places or throws in, into, upon, against or near any building, ship, or aircraft any explosive substance, with intent to do any bodily injury to any person, commits an offence.

Penalty: Imprisonment for 14 years.

(2) It is immaterial for the purposes of subsection (1) whether —

(a) any explosion takes place or not;

(b) any bodily injury is caused or not.

[UK Offences against the Person Act 1861, s.30]

183. Making explosives for an unlawful purpose

(1) A person ('A') who makes any explosive substance in circumstances that give rise to a reasonable suspicion that A made the substance, or is making it, for an unlawful purpose, commits an offence.

Penalty: Imprisonment for 14 years.

(2) A does not commit an offence under subsection (1) if A can show that A made or is making the explosive substance for a lawful purpose.

[UK Explosive Substances Act 1883 s.4 adapted]

184. Possession of explosives with intent

A person who has in the person's possession any explosive substance —

(a) with intent by means of the substance to commit an offence under this Ordinance; or

(b) for the purpose of enabling any other person to commit such an offence,

commits an offence.

Penalty: Imprisonment for 2 years.

[UK Offences against the Person Act 1861 s.64 adapted]

185. Ancillary offences

(1) A person who, by supplying or soliciting for money, providing premises, supplying materials, or in any other manner procures, counsels, aids, abets, or is accessory to, the commission of an offence under this Part commits that offence and is liable to be tried and punished for it as if the person had been a principal.

(2) A person who —

- (a) knows that another person has an explosive substance in that person's possession or under that person's control;
- (b) knows facts giving rise to a reasonable suspicion that that person did not have the substance in that person's possession or under that person's control for a lawful object; and
- (c) was present actively encouraging or in some way helping that person in the commission of the offence,

commits the offence of aiding and abetting an offence under section 184 and is liable on conviction to the penalty there specified.

(3) A person may be prosecuted for an offence under this section, or under Part 3 for the offence of aiding and abetting an offence under this Part, but not for both offences arising out of the same facts.

[UK Explosive Substances Act 1883 s.5 amplified]

186. Explosives found on vessels

(1) If the master or owner of any vessel has reasonable cause to suspect that any explosive substance or other goods of a dangerous nature which, if found, the master would be entitled to throw overboard pursuant to the merchant shipping laws are concealed on board the vessel —

- (a) the master may search any part of the vessel for such goods, and for the purpose of such search may, if necessary, break open any box, package, parcel, or receptacle on board the vessel;
- (b) if the master finds any such goods they may be dealt with in the manner provided by the merchant shipping laws; and
- (c) if the master does not find any such goods, he or she is not subject to any liability, civil or criminal, if it appears to a tribunal before which the question of the master's liability is raised that he or she had reasonable cause to suspect that such goods were so concealed.

(2) In this section, "the merchant shipping laws" means merchant shipping legislation of the United Kingdom that applies to the Falkland Islands by its own force or by Order in Council, or any Ordinance of the Falkland Islands replacing that legislation.

[UK Explosive Substances Act 1883 s.8]

Offences relating to public safety

187. Offences related to minefields

(1) A person who —

- (a) wilfully enters a minefield without lawful authority; or
- (b) without lawful authority wilfully causes a mine to explode or attempts so to do; or

(c) without lawful authority wilfully cuts or removes any part of any fence dividing any minefield from any other land; or

(d) without lawful authority removes, damages or obscures any sign or notice warning of the existence of or depicting the boundaries or a boundary of a minefield, or warning of the possibility that mines may be found in the vicinity; or

(e) wilfully drives any animal into a minefield,

commits an offence.

Penalty: Imprisonment for 12 months or a fine at level 4 on the standard scale, or both

(2) For the purposes of subsection (1), “without lawful authority” means without authority given by or on behalf of the Commander British Forces.

[Crimes Ord. s.12]

188. Possession of unexploded ordinance

(1) A person who knowingly possesses any unexploded ordinance without lawful authority commits an offence.

Penalty: Imprisonment for 6 months or a fine at level 3 on the standard scale, or both.

(2) For the purposes of this section —

“unexploded ordinance” means any grenade, mine, mortar round, rocket or shell containing any explosive substance; and

“without lawful authority” has the same meaning as it has under section 187(2).

(3) A person does not commit an offence under subsection (1) if the ordinance in question is upon any land or in any building of which the person is the occupier and the person or a predecessor in occupation has reported the presence of the ordinance to the Royal Engineers Explosive Ordinance Detachment or to the police; but the burden of proof of such report lies upon the person.

[Crimes Ordinance s.13]

189. Sale of explosives

A person who —

(a) sells any explosive to any other person under the age of 16 years; or

(b) sells or offers for sale any explosive in any road, street, alleyway, thoroughfare or public place,

commits an offence.

Penalty: A fine at level 3 on the standard scale.

[Crimes Ordinance s.14]

190. Casting fireworks, etc.

A person who casts any firework —

- (a) in any road, street, alleyway, thoroughfare or public place; or
- (b) without the authority of the occupier, into or upon any land or building,

commits an offence.

Penalty: A fine at level 2 on the standard scale.

[Crimes Ordinance s.15]

Miscellaneous provisions

191. Procedure and saving

(1) No proceedings for an offence under this Part may be commenced except by, or with the consent of, the Attorney General.

(2) This Part does not exempt any person from any proceeding for an offence punishable at common law, under the UK Explosives Acts 1875 or 1923 as applied to the Falkland Islands, or under any other written law other than this Ordinance, but no person may be punished twice for the same criminal act.

[UK Explosive Substances Act 1883 s.7 (1) and (4)]

192. Seizure and detention of explosives liable to forfeiture

(1) If a police officer has reasonable cause to believe that any explosive substance found by the officer, whether in the course of a criminal investigation or otherwise, is liable to be forfeited under this Ordinance or the Criminal Procedure and Evidence Ordinance 2014, the officer may seize and detain the substance until the Magistrate's Court has decided, on an application by the Attorney General, whether or not it is liable to be forfeited.

(2) An officer who seizes an explosive substance pursuant to subsection (1) may —

- (a) require the occupier of the place in which it was seized (whether a building or other place, including a vehicle, vessel or aircraft) to detain it in that place or in any place under the control of the occupier; or
- (b) remove it in a manner and to a place that will in the officer's opinion least endanger the public safety, and there detain it and, if it appears necessary for the public safety, and on the written authority of a justice of the peace or a police officer of the rank of Inspector or above, cause it to be destroyed or otherwise rendered harmless.

(3) Before destroying or rendering harmless the explosive substance, the officer must —

- (a) take and keep a sample of it; and

(b) if requested, give a portion of the sample to the person who owns the explosive substance, or has it under the person's control at the time of the seizure.

(4) A person who is an occupier of premises or a vehicle, vessel or aircraft and who —

(a) by that person or by others, fails to keep the explosive substance when required pursuant to subsection (2)(a) to detain it; or

(b) except with the authority of the officer who seized it, or in case of emergency for the purpose of preventing explosion or fire, removes, alters, or in any way tampers or deals with it while it is so detained,

commits an offence.

Penalty: A fine at level 4 on the standard scale.

(5) A person convicted of an offence under subsection (4) is liable to forfeit all explosive substances which are at the time of the offence in the person's possession or under the person's control at the place to which the offence relates.

(6) Proceedings before the Magistrate's Court to decide whether an explosive substance is liable to forfeiture must be commenced as soon as practicable after the seizure.

(7) A receptacle containing any explosive substance may be seized, detained, and removed in the same way as the contents of it.

(8) A police officer who seizes any explosive substance under this section —

(a) may use for the purposes of the removal and detention of it any vehicle, vessel or aircraft in which it was seized, and any equipment belonging to the vehicle, vessel or aircraft; and

(b) must pay to the owner reasonable compensation for such use, to be determined, in case of dispute, by the Magistrate's Court and recovered as a civil debt of the Government.

(9) The explosive substance must, as far as practicable, be kept and conveyed in accordance with the UK Explosives Act 1875 and regulations made under it, as applied to the Falkland Islands, and with all due care to prevent accident.

(10) A person who seizes, removes, detains, keeps or conveys the substance is not liable to any penalty or forfeiture under this or any other Ordinance, or to any damages, for keeping or conveying it, if the person does so using all due care as mentioned.

(11) A person who seizes an explosive substance, or deals with it pursuant to this section, is not liable for damage caused by the seizure or dealing, or any act incidental to or consequential on it, unless it is proved that the person acted without reasonable cause, or caused the damage by some wilful neglect or default.

[UK Explosives Act 1875 s.74]

193. Forfeiture of subject-matter of offence

(1) If a person is convicted of an offence against this Part, the court may order that the explosive substance in respect of which the offence was committed or any part of that substance be forfeited to the Crown.

(2) A receptacle containing any explosive substance may be forfeited, sold, destroyed, or otherwise disposed of, in the same way as the contents of it.

(3) Any explosive substance or receptacle forfeited pursuant to this Part may be sold, destroyed, or otherwise disposed of in the manner the court declaring the forfeiture directs, and the proceeds of any such sale or disposal must be paid as provided by section 90 of the Interpretation and General Clauses Ordinance.

[UK Explosives Act 1875 s.89]

PART 9 - CRIMINAL DAMAGE

194. Meaning of “property”

(1) For purposes of this Part, “property” means property of a tangible nature, whether real or personal, including money and —

(a) includes wild creatures that have been tamed or are normally kept in captivity, and any other wild creatures or their carcasses if, but only if, they have been reduced into possession which has not been lost or abandoned or are in the course of being reduced into possession; but

(b) does not include mushrooms growing wild on any land, or flowers, fruit or foliage or plants growing wild on any land.

(2) In subsection (1), “mushroom” includes any fungus and “plant” includes any shrub or tree.

(3) Property is to be treated for the purposes of this Part as belonging to any person who —

(a) has the custody or control of it;

(b) has in it any proprietary right or interest (other than an equitable interest arising only from an agreement to transfer or grant an interest); or

(c) has a charge on it.

(4) If property is subject to a trust, the persons to whom it belongs are to be treated as including any person who has a right to enforce the trust.

(5) Property of a corporation sole is to be treated as belonging to the corporation even if there is a vacancy in the corporation.

(6) For the purposes of this Part, a modification of the contents of a computer is not to be regarded as damaging any computer or computer storage medium unless its effect on that computer or storage medium impairs its physical condition.

[UK Criminal Damage Act 1971 s.10 am. by Police & Justice Act 2006]

195. Destroying or damaging property

(1) A person who without lawful excuse destroys or damages any property belonging to another, intending to destroy or damage the property or being reckless as to whether the property would be destroyed or damaged, commits an offence.

Penalty: Imprisonment for 10 years.

(2) A person who without lawful excuse destroys or damages any property, whether belonging to that person or another—

(a) intending to destroy or damage any property or being reckless as to whether any property would be destroyed or damaged; and

(b) intending by the destruction or damage to endanger the life of another, or being reckless as to whether the life of another would be thereby endangered,

commits an offence.

Penalty: Imprisonment for life.

(3) In this part, “damage” includes not only permanent or temporary physical harm to property but also permanent or temporary impairment of value or usefulness of the property.

(4) An offence under subsection (2) is triable on indictment only.

[UK Criminal Damage Act 1971 s.1(1) and (2)]

196. Arson

(1) A person who commits an offence under section 195(1) by destroying or damaging property by fire commits the offence of arson.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) A person who commits an offence under section 195(2) by destroying or damaging property by fire commits the offence of aggravated arson.

Penalty: Imprisonment for life.

(3) An offence under subsection (2) is triable on indictment only.

(4) The offence of arson at common law is abolished.

[UK Criminal Damage Act 1971 s.1(3)]

197. Threats to destroy or damage property

A person (‘A’) who without lawful excuse makes to another person (‘B’) a threat, intending that (‘B’) would fear it would be carried out —

(a) to destroy or damage any property belonging to B or a third person; or

(b) to destroy or damage A's own property in a way which A knows is likely to endanger the life of B or a third person,

commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

[UK Criminal Damage Act 1971 s.2]

198. Possessing anything with intent to destroy or damage property

It is an offence for a person ('A') to have anything in A's custody or under A's control, if A intends without lawful excuse to use it or cause or permit another person ('B') to use it —

(a) to destroy or damage any property belonging to some other person ('C'); or

(b) to destroy or damage A's own or B's property in a way which A knows is likely to endanger the life of C or some other person.

Penalty: Imprisonment for 10 years or a fine, or both.

[UK Criminal Damage Act 1971 s.3]

199. Lawful excuse

(1) This section applies to —

(a) any offence under section 195; and

(b) any offence under section 197 or 198 except one involving —

(i) a threat by the person charged to destroy or damage property in a way that the person knows is likely to endanger the life of another; or

(ii) an intent by the person charged to use or cause or permit the use of something in that person's custody or under that person's control so to destroy or damage property.

(2) A defendant charged with an offence to which this section applies is, whether or not the person would be treated for the purposes of this Part as having a lawful excuse apart from this subsection, to be treated for those purposes as having a lawful excuse —

(a) if at the time of the act or acts alleged to constitute the offence the defendant believed that the person or persons whom the defendant believed to be entitled to consent to the destruction of or damage to the property in question had so consented, or would have so consented if that person or persons had known of the destruction or damage and its circumstances; or

(b) if the defendant destroyed or damaged or threatened to destroy or damage the property in question or, in the case of a charge of an offence under section 198, intended to use or cause or permit the use of something to destroy or damage it, in order to protect property belonging

to the defendant or another, or a right or interest in property which was or which the defendant believed to be vested in the defendant or another, and at the time of the act or acts alleged to constitute the offence the defendant believed that —

- (i) the property, right or interest was in immediate need of protection; and
- (ii) the means of protection adopted or proposed to be adopted were or would be reasonable having regard to all the circumstances.

(3) For the purposes of this section it is immaterial whether a belief is justified or not if it is honestly held.

(4) For the purposes of subsection (2) a right or interest in property includes any right or privilege in or over land, whether created by grant, licence or otherwise.

(5) This section is not to be construed as casting doubt on any defence recognised by law as a defence to criminal charges.

[UK Criminal Damage Act 1971 s.5]

200. Search for things intended for use in committing offences of criminal damage

(1) If it is made to appear by information on oath before a justice of the peace that there is reasonable cause to believe that any person has in his or her custody or under his or her control or on his or her premises anything which there is reasonable cause to believe has been used or is intended for use without lawful excuse —

- (a) to destroy or damage property belonging to another; or
- (b) to destroy or damage any property in a way likely to endanger the life of another,

the justice may grant a warrant authorising any police officer to search for and seize that thing.

(2) A police officer who is authorised under this section to search premises for anything, may enter (if need be by force) and search the premises accordingly and may seize anything which the officer believes to have been used or to be intended to be used as aforesaid.

(3) Sections 621 to 623 of the Criminal Procedure and Evidence Ordinance 2014 (disposal of property in the possession of the police) apply to property which has come into the possession of the police under this section as it applies to property which has come into the possession of the police in the circumstances mentioned in those sections.

[UK Criminal Damage Act 1971 s.6]

201. Evidence in connection with offences under this Part

(1) A person is not to be excused from —

(a) answering any question put to the person in proceedings for the recovery or administration of any property, for the execution of any trust or for an account of any property or dealings with property; or

(b) complying with any order made in any such proceedings,

on the ground that do so may incriminate the person or the person's spouse of an offence under this Part.

(2) No statement or admission made by a person in answering a question put or complying with an order made pursuant to subsection (1) is, in proceedings for an offence under this Part, admissible in evidence against the person or (unless they married or became partners after the making of the statement or admission) against the person's spouse or partner.

[UK Criminal Damage Act 1971 s.9]

202. Damaging public gardens

(1) A person who, without lawful authority —

(a) wilfully breaks, destroys or damages any tree, plant, shrub, or seat in any public walk or garden;

(b) wilfully breaks or plucks any flower, fruit or other produce growing on any tree, plant or shrub in any public walk or garden; or

(c) damages, cuts down, pulls up or removes any tree, plant or shrub growing on any land in the Falkland Islands belonging to the Crown,

commits an offence.

(2) The maximum penalty for an offence under this section is —

(a) a fine at level 4 on the standard scale; or

(b) a fine of twice the sum which appears to the court to be the value of the thing broken, destroyed, damaged, plucked, cut down, pulled up or removed,

whichever is the greater amount.

[Gibraltar Crimes Act; SH Crimes Bill]

PART 10 – SEXUAL OFFENCES

203. Interpretation of Part

(1) In this Part, unless the context otherwise requires —

“care worker” has the meaning given to it by section 244;

“consent” has the meaning given to it by sections 293 to 295;

“image” means a moving or still image and includes an image produced by any means and, if the context permits, a three-dimensional image;

“indecent” in relation to an act or thing means an act or thing that right-thinking people will consider an affront to sexual modesty when applying the objective test of the recognised standards of propriety pertaining in the Falkland Islands at the time;

“mental disorder” has the meaning given by section 4 of the Mental Health Ordinance;

“penetration” is a continuing act from entry to withdrawal;

“touching” includes touching —

- (a) with any part of the body;
- (b) with anything else;
- (c) through anything,

and includes touching amounting to penetration;

“vagina” includes vulva.

(2) For the purposes of this Part —

- (a) references to a part of the body include references to a part surgically constructed (in particular, through gender reassignment surgery);
- (b) references to an image of a person include references to an image of an imaginary person;
- (c) references to observation (however expressed) are to observation whether direct or by looking at an image;
- (d) in relation to an animal, references to the vagina or anus include references to any similar part.

(3) For the purposes of this Part (except section 292), penetration, touching or any other activity is sexual if a reasonable person would consider that —

- (a) whatever its circumstances or any person’s purpose in relation to it, it is because of its nature sexual; or
- (b) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual.

UK Sexual Offences Act 2003 ss.78 and.79]

Rape and related offences

204. Rape

(1) A male person ('A') commits an offence if —

(a) he intentionally penetrates the vagina, anus or mouth of another person ('B') with his penis;

(b) B does not consent to the penetration; and

(c) A does not reasonably believe that B consents.

Penalty: Imprisonment for life.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 293 to 295 (meaning of consent) apply to an offence under this section.

(4) An offence under subsection (1) is triable on indictment only.

[UK Sexual Offences Act 2003 s.1]

205. Assault by penetration

(1) A person ('A') commits an offence if —

(a) A intentionally penetrates the vagina or anus of another person ('B') with a part of A's body or anything else;

(b) the penetration is sexual;

(c) B does not consent to the penetration; and

(d) A does not reasonably believe that B consents.

Penalty: Imprisonment for life.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 293 to 295 (meaning of consent) apply to an offence under this section.

(4) An offence under subsection (1) is triable on indictment only.

[UK Sexual Offences Act 2003 s.2]

206. Sexual assault

(1) A person ('A') commits an offence if —

- (a) A intentionally touches another person ('B');
- (b) the touching is sexual;
- (c) B does not consent to the touching; and
- (d) A does not reasonably believe that B consents.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 293 to 295 (meaning of consent) apply to an offence under this section.

[UK Sexual Offences Act 2003 s.3]

207. Causing a person to engage in sexual activity without consent

(1) A person ('A') commits an offence if —

- (a) A intentionally causes another person ('B') to engage in an activity;
- (b) the activity is sexual;
- (c) B does not consent to engaging in the activity; and
- (d) A does not reasonably believe that B consents.

Penalty: As provided in subsection (4) or (5).

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 293 to 295 (meaning of consent) apply to an offence under this section.

(4) The maximum penalty on conviction for an offence under this section, if the activity caused involved —

- (a) penetration of B's anus or vagina;
- (b) penetration of B's mouth with a person's penis;
- (c) penetration of a person's anus or vagina with a part of B's body or by B with anything else; or
- (d) penetration of a person's mouth with B's penis,

is imprisonment for life.

(5) If subsection (4) does not apply, the maximum penalty on conviction for an offence under this section is imprisonment for 10 years.

(6) An offence under subsection (1) for which the maximum sentence is imprisonment for life is triable on indictment only.

[UK Sexual Offences Act 2003 s.4]

Rape etc. against children under 13

208. Rape of a child under 13

(1) A person commits an offence if —

(a) he intentionally penetrates the vagina, anus or mouth of another person with his penis; and

(b) the other person is under 13.

Penalty: Imprisonment for life.

(2) An offence under subsection (1) is triable on indictment only.

[UK Sexual Offences Act 2003 s.5]

209. Assault of a child under 13 by penetration

(1) A person ('A') commits an offence if —

(a) A intentionally penetrates the vagina or anus of another person with a part of A's body or anything else;

(b) the penetration is sexual; and

(c) B is under 13.

Penalty: Imprisonment for life.

(2) An offence under subsection (1) is triable on indictment only.

[UK Sexual Offences Act 2003 s.6]

210. Sexual assault of a child under 13

A person ('A') commits an offence if —

(a) A intentionally touches another person ('B');

(b) the touching is sexual; and

(c) B is under 13.

Penalty: Imprisonment for 14 years or a fine, or both.

[UK Sexual Offences Act 2003 s.7]

211. Causing or encouraging a child under 13 to engage in sexual activity

(1) A person ('A') commits an offence if —

- (a) A intentionally causes or encourages another person ('B') to engage in an activity;
- (b) the activity is sexual; and
- (c) B is under 13.

Penalty: As provided in subsection (2) or (3).

(2) The maximum penalty on conviction for an offence under this section, if the activity caused or encouraged involved —

- (a) penetration of B's anus or vagina;
- (b) penetration of B's mouth with a person's penis;
- (c) penetration of a person's anus or vagina with a part of B's body or by B with anything else; or
- (d) penetration of a person's mouth with B's penis,

is imprisonment for life.

(3) If subsection (2) does not apply, the maximum penalty on conviction for an offence under this section is imprisonment for 14 years.

(4) An offence under subsection (1) for which the maximum sentence is imprisonment for life is triable on indictment only.

[UK Sexual Offences Act 2003 s.8]

Child sex offences

212. Sexual activity with a child

(1) A person aged 18 or over ('A') commits an offence if —

- (a) A intentionally touches another person ('B');
- (b) the touching is sexual; and
- (c) either —
 - (i) B is under 16 and A does not reasonably believe that B is 16 or over; or
 - (ii) B is under 13.

Penalty: As provided in subsection (2) or (3).

(2) The maximum penalty on conviction for an offence under this section, if the touching involved —

- (a) penetration of B's anus or vagina with a part of A's body or anything else;
- (b) penetration of B's mouth with A's penis;
- (c) penetration of A's anus or vagina with a part of B's body; or
- (d) penetration of A's mouth with B's penis,

is imprisonment for 14 years.

(3) If subsection (2) does not apply, the maximum penalty on conviction for an offence under this section is imprisonment for 10 years.

[UK Sexual Offences Act 2003 s.9]

213. Causing or encouraging a child to engage in sexual activity

(1) A person aged 18 or over ('A') commits an offence if —

- (a) A intentionally causes or encourages another person ('B') to engage in an activity;
- (b) the activity is sexual; and
- (c) either —
 - (i) B is under 16 and A does not reasonably believe that B is 16 or over; or
 - (ii) B is under 13.

Penalty: As provided in subsection (2) or (3).

(2) The maximum penalty on conviction for an offence under this section, if the touching involved —

- (a) penetration of B's anus or vagina with a part of A's body or anything else;
- (b) penetration of B's mouth with A's penis;
- (c) penetration of A's anus or vagina with a part of B's body; or
- (d) penetration of A's mouth with B's penis,

is imprisonment for 14 years.

(3) If subsection (2) does not apply, the maximum penalty on conviction for an offence under this section is imprisonment for 10 years.

[UK Sexual Offences Act 2003 s.10]

214. Engaging in sexual activity in the presence of a child

A person aged 18 or over ('A') commits an offence if —

- (a) A intentionally engages in an activity;
- (b) the activity is sexual;
- (c) for the purpose of obtaining sexual gratification, A engages in it —
 - (i) when another person ('B') is present or is in a place from which A can be observed;
 - (ii) knowing or believing that B is aware, or intending that B should be aware, that A is engaging in it; and
- (d) either —
 - (i) B is under 16 and A does not reasonably believe that B is 16 or over; or
 - (ii) B is under 13.

Penalty: Imprisonment for 10 years or a fine, or both.

[UK Sexual Offences Act 2003 s.11]

215. Causing a child to watch a sexual act

A person aged 18 or over ('A') commits an offence if —

- (a) for the purpose of obtaining sexual gratification, A intentionally causes another person ('B') to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity;
- (b) the activity is sexual; and
- (c) either —
 - (i) B is under 16 and A does not reasonably believe that B is 16 or over; or
 - (ii) B is under 13.

Penalty: Imprisonment for 10 years or a fine, or both.

[UK Sexual Offences Act 2003 s.12 modified]

216. Child sex offences committed by youths

A person who is a youth commits an offence if the person does anything which would be an offence under any of sections 212 to 215 if the person were an adult.

Penalty: Imprisonment for 5 years or a fine, or both.

[UK Sexual Offences Act 2003 s.13]

217. Arranging or facilitating commission of a child sex offence

(1) A person ('A') commits an offence if —

(a) A intentionally arranges or facilitates something that A intends to do, intends another person to do, or believes that another person will do, in any part of the world; and

(b) doing it will involve the commission of an offence under any of sections 212 to 216.

Penalty: Imprisonment for 14 years or a fine, or both.

(2) A person ('A') does not commit an offence under this section if —

(a) A arranges or facilitates something that A believes another person will do, but that A does not intend to do or intend another person to do; and

(b) any offence within subsection (1)(b) would be an offence against a child for whose protection A acts.

(3) For the purposes of subsection (2), a person acts for the protection of a child if the person acts for the purpose of —

(a) protecting the child from sexually transmitted infection;

(b) protecting the physical safety of the child;

(c) preventing the child from becoming pregnant; or

(d) promoting the child's emotional well-being by the giving of advice,

and not for the purpose of obtaining sexual gratification or for the purpose of causing or encouraging the activity constituting the offence within subsection (1)(b) or the child's participation in it.

[UK Sexual Offences Act 2003 s.14]

218. Meeting a child following sexual grooming etc.

(1) A person aged 18 or over ('A') commits an offence if —

(a) A has met or communicated with another person ('B') on at least 2 occasions and subsequently —

(i) A intentionally meets B;

(ii) A travels with the intention of meeting B in any part of the world, or arranges to meet B in any part of the world; or

(iii) B travels with the intention of meeting A in any part of the world;

(b) A intends to do anything to or in respect of B, during or after the meeting and in any part of the world, which if done will involve the commission by A of a relevant offence;

(c) B is under 16; and

(d) A does not reasonably believe that B is 16 or over.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) In subsection (1) —

(a) the reference to A having met or communicated with B is a reference to A having met B in any part of the world or having communicated with B by any means from, to or in any part of the world;

(b) “relevant offence” means —

(i) an offence under this Part; or

(ii) anything done in a place outside the Falkland Islands which is not an offence in that place but would be an offence under this Part if done in the Falkland Islands.

[UK Sexual Offences Act 2003 s.15 am. by Criminal Justice & Immigration Act 2008]

Abuse of position of trust

219. Abuse of position of trust: Sexual activity with a child

(1) A person aged 18 or over (‘A’) commits an offence if —

(a) A intentionally touches another person (‘B’);

(b) the touching is sexual;

(c) A is in a position of trust in relation to B;

(d) if subsection (2) applies - A knows or could reasonably be expected to know of the circumstances by virtue of which A is in a position of trust in relation to B; and

(e) either —

(i) B is under 18 and A does not reasonably believe that B is 18 or over; or

(ii) B is under 13.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) This subsection applies if A —

(a) is in a position of trust in relation to B by virtue of circumstances within section 223(2), (3), (4) or (5); and

(b) is not in such a position of trust by virtue of other circumstances.

(3) If in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over, unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.

(4) If in proceedings for an offence under this section —

(a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 223(2), (3), (4) or (5); and

(b) it is not proved that the defendant was in such a position of trust by virtue of other circumstances,

it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he or she was in such a position of trust, unless sufficient evidence is adduced to raise an issue as to whether he or she knew or could reasonably have been expected to know of those circumstances.

[UK Sexual Offences Act 2003 s.16]

220. Abuse of position of trust: Causing or encouraging a child to engage in sexual activity

(1) A person aged 18 or over ('A') commits an offence if —

(a) A intentionally causes or encourages another person ('B') to engage in an activity;

(b) the activity is sexual;

(c) A is in a position of trust in relation to B;

(d) if subsection (2) applies - A knows or could reasonably be expected to know of the circumstances by virtue of which A is in a position of trust in relation to B; and

(e) either —

(i) B is under 18 and A does not reasonably believe that B is 18 or over; or

(ii) B is under 13.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) This subsection applies if A —

(a) is in a position of trust in relation to B by virtue of circumstances within section 223(2), (3), (4) or (5); and

(b) is not in such a position of trust by virtue of other circumstances.

(3) If in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over, unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.

(4) If in proceedings for an offence under this section —

(a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 223(2), (3), (4) or (5); and

(b) it is not proved that the defendant was in such a position of trust by virtue of other circumstances,

it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he or she was in such a position of trust, unless sufficient evidence is adduced to raise an issue as to whether he or she knew or could reasonably have been expected to know of those circumstances.

[UK Sexual Offences Act 2003 s.17]

221. Abuse of position of trust: Sexual activity in the presence of a child

(1) A person aged 18 or over ('A') commits an offence if —

(a) A intentionally engages in an activity;

(b) the activity is sexual;

(c) for the purpose of obtaining sexual gratification, A engages in it—

(i) when another person ('B') is present or is in a place from which A can be observed; and

(ii) knowing or believing that B is aware, or intending that B should be aware, that A is engaging in it;

(d) A is in a position of trust in relation to B;

(e) if subsection (2) applies - A knows or could reasonably be expected to know of the circumstances by virtue of which A is in a position of trust in relation to B; and

(f) either —

(i) B is under 18 and A does not reasonably believe that B is 18 or over; or

(ii) B is under 13.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) This subsection applies if A is —

(a) in a position of trust in relation to B by virtue of circumstances within section 223(2), (3), (4) or (5); and

(b) not in such a position of trust by virtue of other circumstances.

(3) If in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over, unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.

(4) If in proceedings for an offence under this section —

(a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 223(2), (3), (4) or (5); and

(b) it is not proved that the defendant was in such a position of trust by virtue of other circumstances,

it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he or she was in such a position of trust, unless sufficient evidence is adduced to raise an issue as to whether he or she knew or could reasonably have been expected to know of those circumstances.

[UK Sexual Offences Act 2003 s.18]

222. Abuse of position of trust: Causing a child to watch a sexual act

(1) A person aged 18 or over ('A') commits an offence if —

(a) for the purpose of obtaining sexual gratification, A intentionally causes another person ('B') to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity;

(b) the activity is sexual;

(c) A is in a position of trust in relation to B;

(d) if subsection (2) applies, A knows or could reasonably be expected to know of the circumstances by virtue of which A is in a position of trust in relation to B; and

(e) either —

(i) B is under 18 and A does not reasonably believe that B is 18 or over; or

(ii) B is under 13.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) This subsection applies if A —

(a) is in a position of trust in relation to B by virtue of circumstances within section 223(2), (3), (4) or (5); and

(b) is not in such a position of trust by virtue of other circumstances.

(3) If in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over, unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.

(4) If in proceedings for an offence under this section —

(a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 223(2), (3), (4) or (5); and

(b) it is not proved that the defendant was in such a position of trust by virtue of other circumstances,

it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he or she was in such a position of trust, unless sufficient evidence is adduced to raise an issue as to whether he or she knew or could reasonably have been expected to know of those circumstances.

[UK Sexual Offences Act 2003 s.19]

223. Positions of trust

(1) For the purposes of sections 219 to 222, a person ('A') is in a position of trust in relation to another person ('B') if —

(a) A has attained the age of 18 years and B has not; and

(b) A holds any position mentioned in subsection (2); or

(c) the Governor, after consulting the Criminal Justice Council, by order declares a position held by A to be a position of trust for those purposes.

(2) The positions which are positions of trust are —

- (a) A is a probation officer appointed to supervise B under the Criminal Procedure and Evidence Ordinance 2014 and in that capacity has regular unsupervised access to the child as a requirement of a court order made in criminal proceedings;
- (b) A is a guardian for the child, appointed under the Children Ordinance 2014 or any other enactment relating to adoption, family proceedings or otherwise;
- (c) A looks after persons under 18 who are detained in an institution by virtue of a court order, or under an enactment, and B is so detained in that institution;
- (d) A looks after persons under 18 who are resident in a community home or other place in which accommodation and maintenance are provided under the Children Ordinance 2014 or any other enactment and B is resident, and is so provided with accommodation and maintenance or accommodation, in that place;
- (e) A looks after persons under 18 who are accommodated and cared for in a hospital, a nursing home, an independent clinic, a care home or a private hospital, and B is accommodated and cared for in that institution;
- (f) A looks after persons under 18 who are receiving education at an educational institution and B is receiving, and A is not receiving, education at that institution;
- (g) A is engaged in the provision of services under, or pursuant to anything done under the Education Ordinance and, in that capacity, looks after B on an individual basis;
- (h) A regularly has unsupervised contact with B (whether face to face or by any other means) in the exercise of functions of the Crown;
- (i) A, as a person who is to report to the court under the Children Ordinance 2014 or any other enactment on matters relating to the welfare of B, regularly has unsupervised contact with B (whether face to face or by any other means);
- (j) B is subject to requirements imposed by or under an enactment on his or her release from detention for a criminal offence, or is subject to requirements imposed by a court order made in criminal proceedings, and A looks after B on an individual basis pursuant to those requirements;
- (k) B is subject to a care order or a supervision order under the Children Ordinance 2014 or any other enactment and A looks after B on an individual basis in the exercise of functions conferred on A by the order.

[UK Sexual Offences Act 2003 s.21 am. by Children Act 2004 and adapted]

224. Positions of trust: Interpretation

- (1) The following provisions apply for the purposes of section 223.

(2) Subject to subsection (3), a person ('A') looks after persons under 18 if A is regularly involved in caring for, training, supervising or being in sole charge of such persons.

(3) A person ('A') looks after another person ('B') on an individual basis if —

(a) A is regularly involved in caring for, training or supervising B; and

(b) in the course of A's involvement, A regularly has unsupervised contact with B (whether face to face or by any other means).

(4) A person receives education at an educational institution who —

(a) is registered or otherwise enrolled as a pupil or student at the institution; or

(b) receives education at the institution under arrangements with another educational institution at which the person is so registered or otherwise enrolled.

(5) In section 223 —

"care home" means an establishment which provides accommodation, together with nursing or personal care for persons who —

(a) are or have been ill;

(b) have or have had a mental disorder;

(c) are disabled or infirm; or

(d) are or have been dependent on alcohol or drugs,

but an establishment is not a care home if it is a school, a hospital, an independent clinic or a children's home or the child's family home;

"children's home" means an establishment which provides care and accommodation wholly or mainly for children, other than a school, hospital or care home or the child's family home;

"community home" means a home provided by the Crown —

(a) for the care and accommodation of children looked after by the Crown; or

(b) for purposes connected with the welfare of children, (whether or not looked after by the Crown);

"hospital" means the King Edward VII Memorial Hospital Stanley and any other establishment the main purpose of which is provide medical or psychiatric treatment for illness or mental illness or palliative care;

“independent clinic” means an establishment, other than a hospital, in which services are provided by a medical practitioner (whether or not any services are also provided for the purposes of the establishment elsewhere).

[UK Sexual Offences Act 2003 s.22 adapted]

225. Sections 219 to 222: Exception for spouses or civil partners

(1) Conduct by a person (‘A’) which would otherwise be an offence under any of sections 219 to 222 against another person (‘B’) is not an offence under that section if at the time —

(a) B is 16 or over; and

(b) A and B are lawfully married or are civil partners of each other.

(2) In proceedings for such an offence it is for the defendant to prove that A and B were at the time lawfully married or were civil partners of each other.

[UK Sexual Offences Act 2003 s.23]

226. Sections 219 to 222: Sexual relationships which pre-date position of trust

(1) Conduct by a person (‘A’) which would otherwise be an offence under any of sections 219 to 222 against another person (‘B’) is not an offence under that section if, immediately before the position of trust arose, a sexual relationship existed between A and B.

(2) Subsection (1) does not apply if at that time sexual intercourse between A and B would have been unlawful.

(3) In proceedings for an offence under any of sections 219 to 222 it is for the defendant to prove that such a relationship existed at that time.

[UK Sexual Offences Act 2003 s.24 adapted]

Familial child sex offences

227. Sexual activity with a child family member

(1) A person (‘A’) commits an offence if —

(a) A intentionally touches another person (‘B’);

(b) the touching is sexual;

(c) the relation of A to B is within section 229;

(d) A knows or could reasonably be expected to know that A’s relation to B is of a description falling within that section; and

(e) either —

(i) B is under 18 and A does not reasonably believe that B is 18 or over; or

(ii) B is under 13.

Penalty: As provided in subsection (4) or (5).

(2) If in proceedings against a person ('A') for an offence under this section it is proved that the other person ('B') was under 18, A is to be taken not to have reasonably believed that B was 18 or over, unless sufficient evidence is adduced to raise an issue as to whether A reasonably believed it.

(3) If in proceedings against a person ('A') for an offence under this section it is proved that the relation of A to the other person ('B') was of a description falling within section 229, it is to be taken that A knew or could reasonably have been expected to know that A's relation to B was of that description, unless sufficient evidence is adduced to raise an issue as to whether A knew or could reasonably have been expected to know that it was.

(4) The maximum penalty on conviction for an offence under this section, if the defendant is aged 18 or over at the time of the offence and subsection (6) applies, is imprisonment for 14 years.

(5) The maximum penalty on conviction for an offence under this section if the defendant is under 18 at the time of the offence, or if subsection (6) does not apply, is imprisonment for 5 years.

(6) This subsection applies if the touching involved —

(a) penetration of B's anus or vagina with a part of A's body or anything else;

(b) penetration of B's mouth with A's penis;

(c) penetration of A's anus or vagina with a part of B's body; or

(d) penetration of A's mouth with B's penis.

[UK Sexual Offences Act 2003 s.25]

228. Encouraging a child family member to engage in sexual activity

(1) A person ('A') commits an offence if —

(a) A intentionally encourages another person ('B') to touch, or allow himself or herself to be touched by, A;

(b) the touching is sexual;

(c) the relation of A to B is within section 229;

(d) A knows or could reasonably be expected to know that A's relation to B is of a description falling within that section; and

(e) either –

(i) B is under 18 and A does not reasonably believe that B is 18 or over; or

(ii) B is under 13.

Penalty: As provided in subsection (4) or (5).

(2) If in proceedings against a person ('A') for an offence under this section it is proved that the other person ('B') was under 18, A is to be taken not to have reasonably believed that B was 18 or over, unless sufficient evidence is adduced to raise an issue as to whether A reasonably believed it.

(3) If in proceedings against a person ('A') for an offence under this section it is proved that the relation of A to the other person ('B') was of a description falling within section 229, it is to be taken that A knew or could reasonably have been expected to know that A's relation to B was of that description, unless sufficient evidence is adduced to raise an issue as to whether A knew or could reasonably have been expected to know that it was.

(4) The maximum penalty on conviction for an offence under this section, if the defendant is aged 18 or over at the time of the offence and subsection (6) applies, is imprisonment for 14 years.

(5) The maximum penalty on conviction for an offence under this section if the defendant is under 18 at the time of the offence, or if subsection (6) does not apply, is imprisonment for 5 years.

(6) This subsection applies if the touching to which the encouragement related involved —

(a) penetration of B's anus or vagina with a part of A's body or anything else;

(b) penetration of B's mouth with A's penis;

(c) penetration of A's anus or vagina with a part of B's body; or

(d) penetration of A's mouth with B's penis.

[UK Sexual Offences Act 2003 s.26]

229. Family relationships

(1) The relation of one person ('A') to another ('B') is within this section if it is within any of subsections (2) to (4).

(2) The relation of A to B is within this subsection if —

(a) one of them is the other's parent, grandparent, brother, sister, half-brother, half-sister, aunt or uncle, including by adoption; or

(b) A is or has been B's foster parent or guardian.

(3) The relation of A to B is within this subsection if A and B live or have lived in the same household, or A is or has been regularly involved in caring for, training, supervising or being in sole charge of B, and —

(a) one of them is or has been the other's step-parent;

(b) A and B are cousins;

(c) one of them is or has been the other's stepbrother or stepsister; or

(d) the parent or present or former foster parent or guardian of one of them is or has been the other's foster parent or guardian.

(4) The relation of A to B is within this subsection if —

(a) A and B live in the same household; and

(b) A is regularly involved in caring for, training, supervising or being in sole charge of B.

(5) For the purposes of this section —

(a) "aunt" means the sister or half-sister of a person's parent, and "uncle" has a corresponding meaning;

(b) "cousin" means the child of an aunt or uncle;

(c) a person is a child's foster parent if the person fosters the child under arrangements made with the person by the Crown or fosters the child privately;

(d) a person is a child's guardian if he or she has been appointed guardian of the child under the Children Ordinance 2014;

(e) "step-parent" includes a parent's partner; and "stepbrother" and "stepsister" includes the child of a parent's partner;

(f) "partner" means either one of 2 people who live together in an enduring family relationship that is not marriage or a civil partnership.

[UK Sexual Offences Act 2003 s.27 am. by Criminal Justice & Immigration Act 2008]

230. Section 227 and 228: Exception for spouses and civil partners

(1) Conduct by a person ('A') which would otherwise be an offence under section 227 or 228 against another person ('B') is not an offence under that section if at the time —

(a) B is 16 or over; and

(b) A and B are lawfully married or are civil partners of each other.

(2) In proceedings for such an offence it is for the defendant to prove that A and B were at the time lawfully married or were civil partners of each other.

[UK Sexual Offences Act 2003 s.28]

231. Sections 227 and 228: Sexual relationships which pre-date family relationships

(1) Conduct by a person ('A') which would otherwise be an offence under section 227 or 228 against another person ('B') is not an offence under that section if —

(a) the relation of A to B is not within subsection (2) of section 229; or

(b) immediately before the relation of A to B first became such as to fall within section 229, a sexual relationship existed between A and B.

(2) Subsection (1) does not apply if at the time referred to in subsection (1)(c) sexual intercourse between A and B would have been unlawful.

(3) In proceedings for an offence under section 227 or 228 it is for the defendant to prove the matters mentioned in subsection (1)(a) to (c).

[UK Sexual Offences Act 2003 s.29 am. by Criminal Justice & Immigration Act 2008]]

Offences against persons with a mental disorder impeding choice

232. Sexual activity with a person with a mental disorder impeding choice

(1) A person ('A') commits an offence if —

(a) A intentionally touches another person ('B');

(b) the touching is sexual;

(c) B is unable to refuse because of or for a reason related to a mental disorder; and

(d) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

Penalty: As provided in subsection (3) or (4).

(2) B is unable to refuse if —

(a) B lacks the capacity to choose whether to agree to the touching (whether because B lacks sufficient understanding of the nature or reasonably foreseeable consequences of what is being done, or for any other reason); or

(b) B is unable to communicate such a choice to A.

(3) The maximum penalty on conviction for an offence under this section, if the touching involved —

- (a) penetration of B's anus or vagina with a part of A's body or anything else;
- (b) penetration of B's mouth with A's penis;
- (c) penetration of A's anus or vagina with a part of B's body; or
- (d) penetration of A's mouth with B's penis,

is imprisonment for life.

(4) If subsection (3) does not apply, the maximum penalty on conviction for an offence under this section is imprisonment for 14 years.

(5) An offence under subsection (1) for which the maximum penalty is imprisonment for life is triable on indictment only.

[UK Sexual Offences Act 2003 s.30]

233. Causing or encouraging a person with a mental disorder to engage in sexual activity

(1) A person ('A') commits an offence if —

- (a) A intentionally causes or encourages another person ('B') to engage in an activity;
- (b) the activity is sexual;
- (c) B is unable to refuse because of or for a reason related to a mental disorder; and
- (d) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

Penalty: As provided in subsection (3) or (4).

(2) B is unable to refuse if —

- (a) B lacks the capacity to choose whether to agree to engaging in the activity caused or encouraged (whether because B lacks sufficient understanding of the nature or reasonably foreseeable consequences of the activity, or for any other reason); or
- (b) B is unable to communicate such a choice to A.

(3) The maximum penalty on conviction for an offence under this section, if the activity caused or encouraged involved —

- (a) penetration of B's anus or vagina;

(b) penetration of B's mouth with a person's penis;

(c) penetration of a person's anus or vagina with a part of B's body or by B with anything else; or

(d) penetration of a person's mouth with B's penis,

is imprisonment for life.

(4) If subsection (3) does not apply, the maximum penalty on conviction for an offence under this section is imprisonment for 14 years.

(5) An offence under subsection (1) for which the maximum penalty is imprisonment for life is triable on indictment only.

[UK Sexual Offences Act 2003 s.31]

234. Engaging in sexual activity in the presence of a person with a mental disorder

(1) A person ('A') commits an offence if —

(a) A intentionally engages in an activity;

(b) the activity is sexual;

(c) for the purpose of obtaining sexual gratification, the person engages in it —

(i) when another person ('B') is present or is in a place from which A can be observed; and

(ii) knowing or believing that B is aware, or intending that B should be aware, that A is engaging in it;

(d) B is unable to refuse because of or for a reason related to a mental disorder; and

(e) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) B is unable to refuse if —

(a) B lacks the capacity to choose whether to agree to being present (whether because B lacks sufficient understanding of the nature of the activity, or for any other reason); or

(b) B is unable to communicate such a choice to A.

[UK Sexual Offences Act 2003 s.32]

235. Causing a person with a mental disorder to watch a sexual act

(1) A person ('A') commits an offence if —

- (a) for the purpose of obtaining sexual gratification, A intentionally causes another person ('B') to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity;
- (b) the activity is sexual;
- (c) B is unable to refuse because of or for a reason related to a mental disorder; and
- (d) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) B is unable to refuse if —

- (a) B lacks the capacity to choose whether to agree to watching or looking (whether because B lacks sufficient understanding of the nature of the activity, or for any other reason); or
- (b) B is unable to communicate such a choice to A.

[UK Sexual Offences Act 2003 s.33]

Inducements, etc. to persons with a mental disorder

236. Inducement etc. to procure sexual activity with a person with a mental disorder

(1) A person ('A') commits an offence if —

- (a) with the agreement of another person ('B'), A intentionally touches that person;
- (b) the touching is sexual;
- (c) A obtains B's agreement by means of an inducement offered or given, a threat made or a deception practised by A for that purpose;
- (d) B has a mental disorder; and
- (e) A knows or could reasonably be expected to know that B has a mental disorder.

Penalty: As provided in subsection (2) or (3).

(2) The maximum penalty on conviction for an offence under this section, if the touching involved —

- (a) penetration of B's anus or vagina with a part of A's body or anything else;
- (b) penetration of B's mouth with A's penis;

(c) penetration of A's anus or vagina with a part of B's body; or

(d) penetration of A's mouth with B's penis,

is imprisonment for life.

(3) If subsection (2) does not apply, the maximum penalty on conviction for an offence under this section is imprisonment for 14 years.

(4) An offence under subsection (1) for which the maximum penalty is imprisonment for life is triable on indictment only.

[UK Sexual Offences Act 2003 s.34]

237. Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, etc.

(1) A person ('A') commits an offence if —

(a) by means of an inducement offered or given, a threat made or a deception practiced by A for this purpose, A intentionally causes another person ('B') to engage in, or to agree to engage in, an activity;

(b) the activity is sexual;

(c) B has a mental disorder; and

(d) A knows or could reasonably be expected to know that B has a mental disorder.

Penalty: As provided in subsection (2) or (3).

(2) The maximum penalty on conviction for an offence under this section, if the activity caused or agreed to involved —

(a) penetration of B's anus or vagina;

(b) penetration of B's mouth with a person's penis;

(c) penetration of a person's anus or vagina with a part of B's body or by B with anything else; or

(d) penetration of a person's mouth with B's penis,

is imprisonment for life.

(3) If subsection (2) does not apply, the maximum penalty on conviction for an offence under this section is imprisonment for 14 years.

(4) An offence under subsection (1) for which the maximum penalty is imprisonment for life is triable on indictment only.

[UK Sexual Offences Act 2003 s.35]

238. Engaging in sexual activity in the presence, procured by inducement, etc., of a person with a mental disorder

A person ('A') commits an offence if —

- (a) A intentionally engages in an activity;
- (b) the activity is sexual;
- (c) for the purpose of obtaining sexual gratification, A engages in it —
 - (i) when another person ('B') is present or is in a place from which A can be observed; and
 - (ii) knowing or believing that B is aware, or intending that B should be aware, that A is engaging in it;
- (d) B agrees to be present or in the place referred to in paragraph (c)(i) because of an inducement offered or given, a threat made or a deception practised by A for the purpose of obtaining that agreement;
- (e) B has a mental disorder; and
- (f) A knows or could reasonably be expected to know that B has a mental disorder.

Penalty: Imprisonment for 10 years or a fine, or both.

[UK Sexual Offences Act 2003 s.36]

239. Causing a person with a mental disorder to watch a sexual act by inducement, etc.

A person ('A') commits an offence if —

- (a) for the purpose of obtaining sexual gratification, A intentionally causes another person ('B') to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity;
 - (b) the activity is sexual;
 - (c) B agrees to watch or look because of an inducement offered or given, a threat made or a deception practised by A for the purpose of obtaining that agreement;
 - (d) B has a mental disorder; and
 - (e) A knows or could reasonably be expected to know that B has a mental disorder.
- Penalty: Imprisonment for 10 years or a fine, or both.

[UK Sexual Offences Act 2003 s.37]

Care workers for persons with a mental disorder

240. Care workers: Sexual activity with a person with a mental disorder

(1) A person ('A') commits an offence if —

- (a) A intentionally touches another person ('B');
- (b) the touching is sexual;
- (c) B has a mental disorder;
- (d) A knows or could reasonably be expected to know that B has a mental disorder; and
- (e) A is involved in B's care in a way that falls within section 244.

Penalty: As provided in subsection (3) or (4).

(2) If in proceedings against a person ('A') for an offence under this section it is proved that the other person ('B') had a mental disorder, it is to be taken that A knew or could reasonably have been expected to know that B had a mental disorder, unless sufficient evidence is adduced to raise an issue as to whether A knew or could reasonably have been expected to know it.

(3) The maximum penalty on conviction for an offence under this section, if the touching involved —

- (a) penetration of B's anus or vagina with a part of A's body or anything else;
- (b) penetration of B's mouth with A's penis;
- (c) penetration of A's anus or vagina with a part of B's body; or
- (d) penetration of A's mouth with B's penis,

is imprisonment for life.

(4) If subsection (3) does not apply, the maximum penalty on conviction for an offence under this section is imprisonment for 14 years or a fine, or both.

(5) An offence under subsection (1) for which the maximum penalty is imprisonment for life is triable on indictment only.

[UK Sexual Offences Act 2003 s.38]

241. Care workers: Causing or encouraging sexual activity

(1) A person ('A') commits an offence if —

- (a) A intentionally causes or encourages another person ('B') to engage in an activity;
- (b) the activity is sexual;
- (c) B has a mental disorder;
- (d) A knows or could reasonably be expected to know that B has a mental disorder; and
- (e) A is involved in B's care in a way that falls within section 252.

Penalty: As provided in subsection (3) or (4).

(2) If in proceedings against a person ('A') for an offence under this section it is proved that the other person ('B') had a mental disorder, it is to be taken that A knew or could reasonably have been expected to know that B had a mental disorder, unless sufficient evidence is adduced to raise an issue as to whether A knew or could reasonably have been expected to know it.

(3) The maximum penalty on conviction for an offence under this section, if the activity caused or encouraged involved —

- (a) penetration of B's anus or vagina;
- (b) penetration of B's mouth with a person's penis;
- (c) penetration of a person's anus or vagina with a part of B's body or by B with anything else; or
- (d) penetration of a person's mouth with B's penis,

is imprisonment for 14 years or a fine, or both.

(4) If subsection (3) does not apply, the maximum penalty on conviction for an offence under this section is imprisonment for 10 years or a fine, or both.

[UK Sexual Offences Act 2003 s.39]

242. Care workers: Sexual activity in the presence of a person with a mental disorder

(1) A person ('A') commits an offence if —

- (a) A intentionally engages in an activity;
- (b) the activity is sexual;
- (c) for the purpose of obtaining sexual gratification, A engages in it —
 - (i) when another person ('B') is present or is in a place from which A can be observed; and

(ii) knowing or believing that B is aware, or intending that B should be aware, that A is engaging in it;

(d) B has a mental disorder;

(e) A knows or could reasonably be expected to know that B has a mental disorder; and

(f) A is involved in B's care in a way that falls within section 244.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) If in proceedings against a person ('A') for an offence under this section it is proved that the other person ('B') had a mental disorder, it is to be taken that A knew or could reasonably have been expected to know that B had a mental disorder, unless sufficient evidence is adduced to raise an issue as to whether A knew or could reasonably have been expected to know it.

[UK Sexual Offences Act 2003 s.40]

243. Care workers: Causing a person with a mental disorder to watch a sexual act

(1) A person ('A') commits an offence if —

(a) for the purpose of obtaining sexual gratification, A intentionally causes another person ('B') to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity;

(b) the activity is sexual;

(c) B has a mental disorder;

(d) A knows or could reasonably be expected to know that B has a mental disorder; and

(e) A is involved in B's care in a way that falls within section 244.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) If in proceedings against a person ('A') for an offence under this section it is proved that the other person ('B') had a mental disorder, it is to be taken that A knew or could reasonably have been expected to know that B had a mental disorder, unless sufficient evidence is adduced to raise an issue as to whether A knew or could reasonably have been expected to know it.

[UK Sexual Offences Act 2003 s.41]

244. Care workers: Interpretation

(1) For the purposes of sections 240 to 243, a person ('A') is involved in the care of another person ('B') in a way that falls within this section if any of subsections (2) to (4) applies.

(2) This subsection applies if —

(a) B is accommodated and cared for in a care home, community home, children's home or voluntary home; and

(b) A has functions to perform in the home in the course of employment which have brought A, or are likely to bring A, into regular face to face contact with B.

(3) This subsection applies if B is a patient for whom services are provided by the Crown or in an independent hospital or independent clinic, and A has functions to perform for the Crown or hospital in the course of employment which have brought A or are likely to bring A into regular face to face contact with B.

(4) This subsection applies if A —

(a) is, whether or not in the course of employment, a provider of care, assistance or services to B in connection with B's mental disorder; and

(b) as such, has had or is likely to have regular face to face contact with B.

(5) In this section —

“care home”, “children's home”, “community home”, “hospital” and “independent clinic” each have the meanings given those terms by section 224(5);

“employment” means any employment, whether paid or unpaid and whether under a contract of service or apprenticeship or under a contract for services or otherwise than under a contract and includes service under the Crown;

“independent hospital” means a hospital which is not a hospital operated by the Crown;

“voluntary home” means a children's home which is operated by a voluntary organisation which is not a community home.

[UK Sexual Offences Act 2003 s.42]

245. Sections 240 to 243: Exception for spouses and civil partners

(1) Conduct by a person (‘A’) which would otherwise be an offence under any of sections 240 to 243 against another person (‘B’) is not an offence under that section if at the time —

(a) B is 16 or over; and

(b) A and B are lawfully married or are civil partners of each other.

(2) In proceedings for such an offence it is for the defendant to prove that A and B were at the time lawfully married or were civil partners of each other.

[UK Sexual Offences Act 2003 s.43]

246. Sections 240 to 243: Sexual relationships which pre-date care relationships

(1) Conduct by a person (‘A’) which would otherwise be an offence under any of sections 240 to 243 against another person (‘B’) is not an offence under that section if, immediately before A

became involved in B's care in a way that falls within section 244, a sexual relationship existed between A and B.

(2) Subsection (1) does not apply if at that time sexual intercourse between A and B would have been unlawful.

(3) In proceedings for an offence under any of sections 240 to 243, it is for the defendant to prove that such a relationship existed at that time.

[UK Sexual Offences Act 2003 s.44]

Indecent photographs of youths

247. Possession of indecent photograph of a youth

(1) Subject to section 249, it is an offence for a person to have any indecent photograph or pseudo-photograph of a youth in the person's possession.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) If a person is charged with an offence under subsection (1), it is a defence for the person to prove that —

(a) he or she had a legitimate reason for having the photograph or pseudo-photograph in his or her possession;

(b) he or she had not seen the photograph or pseudo-photograph and did not know, nor had any cause to suspect, it to be indecent; or

(c) the photograph or pseudo-photograph was sent to him or her without any prior request made by him or her or on his or her behalf and that he or she did not keep it for an unreasonable time.

[UK Criminal Justice Act 1988 s.160 am. by Criminal Justice & Public Order Act 1994]

248. Taking and publishing indecent photographs of youths

(1) Subject to section 249, it is an offence for a person ('A') —

(a) to take or permit to be taken, or to make, any indecent photograph or pseudo-photograph of a youth;

(b) to distribute or show such indecent photographs or pseudo-photographs;

(c) to have in A's possession such indecent photographs or pseudo-photographs, with a view to their being distributed or shown by A or others; or

(d) to publish or cause to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent photographs or pseudo-photographs, or intends to do so.

Penalty: Imprisonment for 10 years, or a fine, or both.

(2) For the purpose of subsection (1)(b), a person ('A') is to be regarded as distributing an indecent photograph or pseudo-photograph if A parts with possession of it to, or exposes or offers it for acquisition by, another person.

(3) If a person ('A') is charged with an offence under subsection (1)(b) or (c), it is a defence for A to prove that —

(a) A had a legitimate reason for distributing or showing the photographs or pseudo-photographs or (as the case may be) having them in his or her possession; or

(b) A had not seen the photographs or pseudo-photographs and did not know, nor had any cause to suspect, them to be indecent.

[UK Protection of Children Act 1978 s.1 as am. by Sexual Offences Act 2003]

249. Marriage or similar relationship

(1) This section applies if, in proceedings for an offence under section 247(1) relating to an indecent photograph or pseudo-photograph of a youth, the defendant ('A') proves that the photograph or pseudo-photograph was of the youth aged 18 or over, and that at the time of the offence charged the youth and A —

(a) were married or civil partners of each other; or

(b) lived together as partners in an enduring family relationship.

(2) This section also applies if, in proceedings for an offence under section 248(1) relating to an indecent photograph or pseudo-photograph of a youth, the defendant proves that the photograph or pseudo-photograph was of the youth aged 16 or over, and that at the time when A obtained it the youth and A —

(a) were married or civil partners of each other; or

(b) lived together as partners in an enduring family relationship.

(3) This section applies whether the photograph shows the youth alone or with the defendant, but not if it shows any other person.

(4) If sufficient evidence is adduced to raise an issue as to whether —

(a) the youth consented to the photograph or pseudo-photograph being taken or made, distributed, or in the defendant's possession, as the case may be; or

(b) the defendant reasonably believed that the youth so consented,

the defendant is not guilty of the offence unless it is proved that the youth did not so consent and that the defendant did not reasonably believe that the youth so consented.

(5) In the case of an offence under section 248(1)(b), the defendant is not guilty of the offence unless it is proved that the distributing or showing was to a person other than the youth.

(6) In the case of an offence under section 248(1)(c), if sufficient evidence is adduced to raise an issue both as to whether —

(a) the youth consented to the photograph being in the possession of the defendant ('A'), or as to whether A reasonably believed that the youth so consented; and

(b) A had the photograph in A's possession with a view to its being distributed or shown to anyone other than the youth,

the defendant is not guilty of the offence unless it is proved either that —

(i) the youth did not so consent and that A did not reasonably believe that the youth so consented; or

(ii) A had the photograph in A's possession with a view to its being distributed or shown to a person other than the youth.

[UK Criminal Justice Act 1988 s.160A; UK Protection of Children Act 1978 s.1A ins. by Sexual Offences Act 2003]

250. Exception for criminal proceedings, investigations etc.

(1) In proceedings for an offence under section 248(1)(a) of making an indecent photograph or pseudo-photograph of a youth, the defendant ('A') is not guilty of the offence if A proves that it was necessary for A to make the photograph or pseudo-photograph for the purposes of the prevention, detection or investigation of crime, or for the purposes of criminal proceedings, in any part of the world.

(2) No proceedings for an offence under section 247 or 248 may be commenced except by, or with the consent of, the Attorney General.

[UK Protection of Children Act 1978 s.1B ins. by Sexual Offences Act 2003 and adapted]

251. Entry, search and seizure – Schedule 1

(1) The following subsections apply if a justice of the peace is satisfied by information on oath, laid by or on behalf of the Attorney General or by a police officer, that there is reasonable ground for suspecting that, in any premises, there is an indecent photograph or pseudo-photograph of a child.

(2) The justice of the peace may issue a warrant under his or her hand authorising any police officer to enter (if need be by force) and search the premises, and to seize and remove any articles which the officer believes (with reasonable cause) to be or include indecent photographs or pseudo-photographs of children.

(3) Articles seized under the authority of the warrant, and not returned to the occupier of the premises, must be disposed of in accordance with Schedule 1.

(4) This section and Schedule 1 apply in relation to any stall, vehicle or vessel, as they apply in relation to premises, with the necessary modifications of references to premises and the substitution of references to use for references to occupation.

[UK Protection of Children Act 1978 s.4 as am. by Sexual Offences Act 2003]

252. Indecent photographs: Interpretation

(1) The following subsections apply for the interpretation of sections 247 and 248 and Schedule 1.

(2) References to an indecent photograph include an indecent film, a copy of an indecent photograph or film, and an indecent photograph comprised in a film.

(3) Photographs (including those comprised in a film), if they show youths and are indecent, are to be treated for all purposes of this Part as indecent photographs of youths and similarly in respect of pseudo-photographs.

(4) References to a photograph include —

(a) the negative as well as the positive version; and

(b) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph.

(5) “Film” includes any form of video-recording.

(6) A person is to be taken as having been a youth at any material time if it appears from the evidence as a whole that he or she was then under the age of 18.

(7) “Pseudo-photograph” means an image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph.

(8) If the impression conveyed by a pseudo-photograph is that the person shown is a youth, the pseudo-photograph is to be treated for all purposes of this Ordinance as showing a youth and a pseudo-photograph is to be similarly treated if the predominant impression conveyed is that the person shown is a youth, even if some of the physical characteristics shown are those of an adult.

(9) References to an indecent pseudo-photograph include —

(a) a copy of an indecent pseudo-photograph; and

(b) data stored on a computer disc or by other electronic means which is capable of conversion into a pseudo-photograph.

[UK Protection of Children Act 1978 ss.2 and 7 as am. by Sexual Offences Act 2003]

Prohibited images of youths

253. Possession of prohibited images of youths

(1) It is an offence for a person to be in possession of a prohibited image of a youth.

Penalty: Imprisonment for 3 years or a fine, or both.

(2) A prohibited image is an image which —

(a) is pornographic;

(b) falls within subsection (6); and

(c) is grossly offensive, disgusting or otherwise of an obscene character.

(3) An image is “pornographic” if it is of such a nature that it must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal.

(4) Where (as found in the person’s possession) an image forms part of a series of images, the question whether the image is of such a nature as is mentioned in subsection (3) is to be determined by reference to —

(a) the image itself; and

(b) (if the series of images is such as to be capable of providing a context for the image) the context in which it occurs in the series of images.

(5) So, for example, if —

(a) an image forms an integral part of a narrative constituted by a series of images; and

(b) having regard to those images as a whole, they are not of such a nature that they must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal,

the image may, by virtue of being part of that narrative, be found not to be pornographic, even though it might have been found to be pornographic if taken by itself.

(6) An image falls within this subsection if it —

(a) is an image which focuses solely or principally on a youth’s genitals or anal region; or

(b) portrays any of the acts mentioned in subsection (7).

(7) Those acts are —

(a) the performance by a person of an act of intercourse or oral sex with or in the

presence of a youth;

(b) an act of masturbation by, of, involving or in the presence of a youth;

(c) an act which involves penetration of the vagina or anus of a youth with a part of a person's body or with anything else;

(d) an act of penetration, in the presence of a youth, of the vagina or anus of a person with a part of a person's body or with anything else;

(e) the performance by a youth of an act of intercourse or oral sex with an animal (whether dead or alive or imaginary);

(f) the performance by a person of an act of intercourse or oral sex with an animal (whether dead or alive or imaginary) in the presence of a youth.

(8) For the purposes of subsection (6), penetration is a continuing act from entry to withdrawal.

(9) No proceedings for an offence under subsection (1) may be commenced except by, or with the consent of, the Attorney General.

[UK Coroners & Justice Act 2009 ss.62 and 66]

254. Exclusion of classified film, etc.

(1) Section 253(1) does not apply to excluded images.

(2) An "excluded image" is an image which forms part of a series of images contained in a recording of the whole or part of a classified work.

(3) But such an image is not an "excluded image" if —

(a) it is contained in a recording of an extract from a classified work; and

(b) it is of such a nature that it must reasonably be assumed to have been extracted (whether with or without other images) solely or principally for the purpose of sexual arousal.

(4) If an extracted image is one of a series of images contained in the recording, the question whether the image is of such a nature as is mentioned in subsection (3)(b) is to be determined by reference to —

(a) the image itself; and

(b) (if the series of images is such as to be capable of providing a context for the image) the context in which it occurs in the series of images.

(5) In determining for the purposes of this section whether a recording is a recording of the whole or part of a classified work, any alteration attributable to —

- (a) a defect caused for technical reasons or by inadvertence on the part of any person; or
- (b) the inclusion in the recording of any extraneous material (such as advertisements),

is to be disregarded.

(5) In this section —

“extract” includes an extract consisting of a single image;

“pornographic” has the same meaning as in section 253;

“recording” means any disc, tape or other device capable of storing data electronically and from which images may be produced (by any means).

[UK Coroners & Justice Act 2009 s.63]

255. Defences

(1) If a person is charged with an offence under section 253(1), it is a defence for the person to prove that —

- (a) the person had a legitimate reason for being in possession of the image concerned;
- (b) the person had not seen the image concerned and did not know, nor had any cause to suspect, it to be a prohibited image of a child;
- (c) the person —
 - (i) was sent the image concerned without any prior request having been made by or on behalf of the person; and
 - (ii) did not keep it for an unreasonable time.

(2) In this section, “prohibited image” of a youth has the meaning given that term by section 253(2).

[UK Coroners & Justice Act 2009 s.64]

256. Sections 253 to 255: Supplementary

(1) For the purposes of sections 253 to 255, “image” includes —

- (a) a moving or still image (produced by any means); and
- (b) data (stored by any means) which is capable of conversion into an image within paragraph (a),

but does not include an indecent photograph, or indecent pseudo-photograph, of a youth.

- (2) If an image shows a person, the image is to be treated as an image of a youth if —
 - (a) the impression conveyed by the image is that the person shown is a youth; or
 - (b) the predominant impression conveyed is that the person shown is a youth, even if some of the physical characteristics shown are not those of a youth.
- (3) References to an image of a person include references to an image of an imaginary person.
- (4) References to an image of a youth include references to an image of an imaginary youth.
- (5) The provisions of section 251 and Schedule 1 apply in relation to prohibited images of youths as they apply in relation to indecent photographs of youths.
- (6) In this section —

“prohibited image” of a youth has the meaning given that term by section 253;

“prohibited photograph” and “prohibited pseudo-photograph” mean indecent photograph and indecent pseudo-photograph as in sections 247 and 248.

[UK Coroners & Justice Act 2009 ss.65 and 67]

Extreme pornographic images

257. Possession of extreme pornographic images

(1) It is an offence for a person to be in possession of an extreme pornographic image.

Penalty: (i) If the offence relates to an image that portrays an act within subsection (7)(a) or (b) - imprisonment for 3 years or a fine, or both.

(ii) In any other case – imprisonment for 12 months or a fine at level 4 on the standard scale, or both.

(2) An “extreme pornographic image” is an image which is both —

(a) pornographic, and

(b) an extreme image.

(3) An image is “pornographic” if it is of such a nature that it must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal.

(4) If (as found in the person’s possession) an image forms part of a series of images, the question whether the image is of such a nature as is mentioned in subsection (3) is to be determined by reference to —

(a) the image itself; and

(b) (if the series of images is such as to be capable of providing a context for the image) the context in which it occurs in the series of images.

(5) So, for example, if —

(a) an image forms an integral part of a narrative constituted by a series of images; and

(b) having regard to those images as a whole, they are not of such a nature that they must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal,

the image may, by virtue of being part of that narrative, be found not to be pornographic, even though it might have been found to be pornographic if taken by itself.

(6) An “extreme image” is an image which —

(a) falls within subsection (7); and

(b) is grossly offensive, disgusting or otherwise of an obscene character.

(7) An image falls within this subsection if it portrays, in an explicit and realistic way, any of the following —

(a) an act which threatens a person's life;

(b) an act which results, or is likely to result, in serious injury to a person's anus, breasts or genitals;

(c) an act which involves sexual interference with a human corpse; or

(d) a person performing an act of intercourse or oral sex with an animal (whether dead or alive),

and a reasonable person looking at the image would think that any such person or animal was real.

(8) In this section “image” means —

(a) a moving or still image (produced by any means); or

(b) data (stored by any means) which is capable of conversion into an image within paragraph (a).

(9) In this section references to a part of the body include references to a part surgically constructed (in particular through gender reassignment surgery).

(10) No proceedings for an offence under this section may be commenced except by, or with the consent of, the Attorney General.

[UK Criminal Justice & Immigration Act 1998 ss.63 and 67]

258. Exclusion of classified films etc.

(1) Section 257 does not apply to excluded images.

(2) An “excluded image” is an image which forms part of a series of images contained in a recording of the whole or part of a classified work.

(3) But such an image is not an “excluded image” if —

(a) it is contained in a recording of an extract from a classified work; and

(b) it is of such a nature that it must reasonably be assumed to have been extracted (whether with or without other images) solely or principally for the purpose of sexual arousal.

(4) If an extracted image is one of a series of images contained in the recording, the question whether the image is of such a nature as is mentioned in subsection (3)(b) is to be determined by reference to —

(a) the image itself; and

(b) (if the series of images is such as to be capable of providing a context for the image) the context in which it occurs in the series of images,

and section 257(5) applies in connection with determining that question as it applies in connection with determining whether an image is pornographic.

(5) In determining for the purposes of this section whether a recording is a recording of the whole or part of a classified work, any alteration attributable to —

(a) a defect caused for technical reasons or by inadvertence on the part of any person; or

(b) the inclusion in the recording of any extraneous material (such as advertisements), is to be disregarded.

(6) In this section —

“extract” includes an extract consisting of a single image;

“image” and “pornographic” have the same meanings as in section 257;

“recording” means any disc, tape or other device capable of storing data electronically and from which images may be produced (by any means).

[UK Criminal Justice & Immigration Act 1998 s.64]

259. Defences

(1) If a person is charged with an offence under section 257, it is a defence for the person to prove that the person —

- (a) had a legitimate reason for being in possession of the image concerned;
- (b) had not seen the image concerned and did not know, nor had any cause to suspect, it to be an extreme pornographic image;
- (c) was sent the image concerned without any prior request having been made by or on behalf of the person and did not keep it for an unreasonable time.

(2) If —

- (a) a person (“D”) is charged with an offence under section 257; and
- (b) the offence relates to an image that portrays an act or acts within paragraphs (a) to (c) (but not paragraph (d)) of subsection (7) of that section,

subsection (3) below applies.

(3) In the circumstances mentioned in subsection (2), it is a defence for D to prove —

- (a) that D directly participated in the act or any of the acts portrayed; and
- (b) that the act or acts did not involve the infliction of any non-consensual harm on any person; and
- (c) if the image portrays an act within section 257(7)(c), that what is portrayed as a human corpse was not in fact a corpse.

(4) For the purposes of this section harm inflicted on a person is “non-consensual” harm if —

- (a) the harm is of such a nature that the person cannot, in law, consent to it being inflicted on himself or herself; or
- (b) the person can, in law, consent to it being so inflicted, but does not in fact consent to it being so inflicted.

[UK Criminal Justice & Immigration Act 1998 ss.65 and 66]

Abuse of children through prostitution and pornography

260. Paying for sexual services of a child

(1) A person (‘A’) commits an offence if —

(a) A intentionally obtains for A, or for any other person, the sexual services of another person ('B');

(b) before obtaining those services, A has made or promised payment for those services to B or a third person, or knows that another person has made or promised such a payment; and

(c) either —

(i) B is under 18, and A does not reasonably believe that B is 18 or over; or

(ii) B is under 13.

Penalty: As provided in subsection (3), (4) or (5).

(2) In this section, "payment" means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.

(3) The maximum penalty on a conviction for an offence under this section against a person under 13 is —

(a) if subsection (6) applies - imprisonment for life;

(b) in any other case - imprisonment for 14 years or a fine, or both.

(4) The maximum penalty on conviction for an offence under this section against a person under 16, but not under 13, is —

(a) if subsection (6) applies - imprisonment for 14 years or a fine, or both;

(b) in any other case - imprisonment for 10 years or a fine, or both.

(5) The maximum penalty on conviction for an offence under this section against a person under 18, but not under 16, is imprisonment for 7 years or a fine, or both.

(6) This subsection applies if the offence involved —

(a) penetration of B's anus or vagina with a part of A's body or anything else;

(b) penetration of B's mouth with A's penis;

(c) penetration of A's anus or vagina with a part of B's body or by B with anything else; or

(d) penetration of A's mouth with B's penis.

(7) An offence under subsection (1) for which the maximum penalty is imprisonment for life is triable on indictment only.

[UK Sexual Offences Act 2003 s.47 adapted]

261. Causing or encouraging child prostitution or pornography

A person ('A') commits an offence if —

(a) A intentionally causes or encourages another person ('B') to become a prostitute, or to be involved in pornography, in any part of the world; and

(b) either —

(i) B is under 18, and A does not reasonably believe that B is 18 or over; or

(ii) B is under 13.

Penalty: Imprisonment for 14 years or a fine, or both.

[UK Sexual Offences Act 2003 s.48]

262. Controlling a child prostitute or a child involved in pornography

A person ('A') commits an offence if —

(a) A intentionally controls any of the activities of another person ('B') relating to B's prostitution or involvement in pornography in any part of the world, and

(b) either —

(i) B is under 18, and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

Penalty: Imprisonment for 14 years or a fine, or both.

[UK Sexual Offences Act 2003 s.49]

263. Arranging or facilitating child prostitution or pornography

A person ('A') commits an offence if —

(a) A intentionally arranges or facilitates the prostitution or involvement in pornography in any part of the world of another person ('B'); and

(b) either —

(i) B is under 18, and A does not reasonably believe that B is 18 or over; or

(ii) B is under 13.

Penalty: Imprisonment for 14 years or a fine, or both.

[UK Sexual Offences Act 2003 s.50]

264. Sections 260 to 263: Interpretation

(1) For the purposes of sections 260 to 263, a person is involved in pornography if an indecent image of that person is recorded; and “pornography” and similar expressions are to be interpreted accordingly.

(2) In those sections “prostitute” means a person (‘A’) who, on at least one occasion and whether or not compelled to do so, offers or provides sexual services to another person in return for payment or a promise of payment to A or a third person; and “prostitution” is to be interpreted accordingly.

(3) In subsection (2), “payment” means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.

[UK Sexual Offences Act 2003 s.51]

Exploitation of prostitution

265. Causing or encouraging prostitution for gain

A person (‘A’) commits an offence if —

(a) A intentionally causes or encourages another person to become a prostitute in any part of the world; and

(b) A does so for or in the expectation of gain for A or a third person.

Penalty: Imprisonment for 7 years or a fine, or both.

[UK Sexual Offences Act 2003 s.52]

266. Controlling prostitution for gain

A person (‘A’) commits an offence if —

(a) A intentionally controls any of the activities of another person (‘B’) relating to B’s prostitution in any part of the world; and

(b) A does so for or in the expectation of gain for A or a third person.

Penalty: Imprisonment for 7 years or a fine, or both.

[UK Sexual Offences Act 2003 s.53]

267. Paying for sexual services of a prostitute subjected to force, etc.

(1) A person (‘A’) commits an offence if —

(a) A makes or promises payment for the sexual services of a prostitute (‘B’);

(b) a third person (‘C’) has engaged in exploitative conduct of a kind likely to induce or encourage B to provide the sexual services for which A has made or promised payment; and

- (c) C engaged in that conduct for or in the expectation of gain for C or another person (apart from A or B).

Penalty: A fine at level 3 on the standard scale.

- (2) In relation to an offence under subsection (1), the following are irrelevant —

- (a) where in the world the sexual services are to be provided;
- (b) whether those services are provided; and
- (c) whether A is, or ought to be, aware that C has engaged in exploitative conduct.

- (3) C engages in exploitative conduct if —

- (a) C uses force, threats (whether or not relating to violence) or any other form of coercion; or

- (b) C practises any form of deception.

[UK Sexual Offences Act 2003 s.53A ins. by Policing and Crime Act 2009]

268. Loitering or soliciting for purposes of prostitution

- (1) It is an offence for a person persistently to loiter or solicit in a street or public place for the purpose of prostitution.

Penalty: As provided in subsection (3).

- (2) For the purpose of subsection (1) —

- (a) conduct is persistent if it takes place on 2 or more occasions in any period of 3 months;
- (b) a reference to a person loitering or soliciting for the purposes of prostitution is a reference to a person loitering or soliciting for the purposes of offering services as a prostitute.

- (3) A person who commits an offence under this section is liable on conviction to —

- (a) a fine at level 2 on the standard scale; or
- (b) for an offence committed after a previous conviction for a similar offence - a fine at level 3 on the standard scale.

- (4) A police officer may arrest without warrant a person the officer finds in a street or public place and suspects, with reasonable cause, to be committing an offence under this section.

[UK Street Offences Act 1959 s.1 am. by Criminal Justice Act 1982, Sexual Offences Act 2003 and Policing and Crime Act 2009]

269. Soliciting prostitution

(1) It is an offence for a person in a street or public place to solicit another ('B') for the purpose of obtaining B's sexual services as a prostitute.

Penalty: A fine at level 3 on the standard scale.

(2) The reference to a person in a street or public place includes a person in a motor vehicle in a street or public place.

[UK Sexual Offences Act 2003 s.51A ins. by Policing and Crime Act 2009]

270. Prostitution offences: Interpretation

(1) In sections 265 to 267, "gain" means —

(a) any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount; or

(b) the goodwill of any person which is or appears likely, in time, to bring financial advantage.

(2) In those sections, "prostitute" and "prostitution" have the meaning given by section 264(2).

(3) For the purposes of sections 265, 266 and 268 —

(a) "street" includes any bridge, road, lane, footway, subway, square, court, alley or passage, whether a thoroughfare or not, which is for the time being open to the public; and

(b) the doorways and entrances of premises abutting on a street (as defined), and any ground adjoining and open to a street, is to be treated as forming part of the street.

[UK Sexual Offences Act 1985 s.4 am. by Sexual Offences Act 2003; Sexual Offences Act 2003 s.54]

Brothel-keeping

271. Keeping a brothel

(1) It is an offence for a person to keep, or to manage, or to act or assist in the management of, a brothel to which people resort for practices involving prostitution (whether or not also for other practices).

Penalty: As provided in subsection (3) or (4)

(2) In this section "prostitution" has the meaning given by section 264(2).

(3) The maximum sentence on conviction for keeping a brothel, unless subsection (4) applies, is imprisonment for 3 months or a fine not exceeding level 3 on the standard scale, or both.

(4) If the defendant has previously been convicted of an offence under —

(a) this section;

(b) any of sections 272, 273 or 274; or

(c) any of sections 34, 35 or 36 of the UK Sexual Offences Act 1956 as applied to the Falkland Islands,

the maximum sentence on conviction for keeping a brothel is imprisonment for 7 years or a fine, or both.

[UK Sexual Offences Act 1956 ss.33 and 33A as am. by Sexual Offences Act 2003]

272. Landlord letting premises for use as brothel

(1) It is an offence for a person who is the lessor or landlord of any premises or an agent of that person —

(a) to let the whole or part of the premises with the knowledge that it is to be used, in whole or in part, as a brothel; or

(b) if the whole or part of the premises is used as a brothel - to be willfully a party to that use continuing.

Penalty: As provided in subsection (2) or (3).

(2) The maximum penalty on conviction for an offence under this section, unless section (3) applies, is imprisonment for 3 months or a fine at level 3 on the standard scale, or both.

(3) If the person has previously been convicted of an offence under —

(a) this section;

(b) any of sections 271, 273 or 274,; or

(c) any of sections 33, 33A, 35 or 36 of the UK Sexual Offences Act 1956 as applied to the Falkland Islands,

the maximum sentence on conviction for an offence under this section is imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

[UK Sexual Offences Act 1956 s.34 as am. by Sexual Offences Act 2003]

273. Tenant permitting premises to be used as a brothel

(1) It is an offence for the tenant or occupier, or person in charge, of any premises knowingly to permit the whole or part of the premises to be used as a brothel.

Penalty: As provided in subsection (6) or (7).

(2) If the tenant or occupier of any premises is convicted of knowingly permitting the whole or part of the premises to be used as a brothel, the rights of the lessor or landlord with respect to the assignment or determination of the lease or other contract under which the premises are held by the person convicted are varied as set out in subsection (3).

(3) The variations referred to in subsection (2) are —

- (a) the lessor or landlord may require the tenant to assign the lease or other contract under which the premises are held by the tenant to some person approved by the lessor or landlord;
- (b) if the tenant fails to do so within 3 months, the lessor or landlord may determine the lease or contract (but without prejudice to the rights or remedies of any party thereto accrued before the date of the determination);
- (c) if the lease or contract is determined under this subsection, the court by which the tenant was convicted may make a summary order for delivery of possession of the premises to the lessor or landlord;
- (d) the approval of the lessor or landlord for the purposes of paragraph (a) must not be unreasonably withheld.

(4) If the tenant or occupier of any premises is so convicted, or was so convicted under section 35 of the UK Sexual Offences Act 1956 before the commencement of this Part, and either —

- (a) the lessor or landlord ('A'), after having the conviction brought to A's notice, fails or failed to exercise A's statutory rights in relation to the lease or contract under which the premises are or were held by the person convicted; or
- (b) A, after exercising A's statutory rights so as to determine that lease or contract, grants or granted a new lease or enters or entered into a new contract of tenancy of the premises to, with or for the benefit of the same person, without having all reasonable provisions to prevent the recurrence of the offence inserted in the new lease or contract,

then, if subsequently an offence under this section is committed in respect of the premises during the subsistence of the lease or contract referred to in paragraph (a) or (if paragraph (b) applies) during the subsistence of the new lease or contract, A is deemed to be a party to that offence unless A shows that he or she took all reasonable steps to prevent the recurrence of the offence.

(5) References in subsection (4) to the statutory rights of a lessor or landlord refer to his or her rights under subsection (3).

(6) The maximum penalty on conviction for an offence under this section is imprisonment for 3 months or a fine at level 3 on the standard scale, or both, unless subsection (7) applies.

(7) If the person has previously been convicted of an offence under —

- (a) this section;
- (b) any of sections 271, 272 or 274; or

(c) any of sections 33, 33A, 34 or 36 of the UK Sexual Offences Act 1956 as applied to the Falkland Islands,

the maximum sentence on conviction for an offence under this section is imprisonment for 6 months or a fine at level 4 on the standard scale, or both.

[UK Sexual Offences Act 1956 s.35 as am. by Sexual Offences Act 2003]

274. Tenant permitting premises to be used for prostitution

(1) It is an offence for the tenant or occupier of any premises knowingly to permit the whole or part of the premises to be used for the purposes of prostitution.

Penalty: As provided in subsection (2) or (3).

(2) The maximum penalty on conviction for an offence under this section is imprisonment for 3 months or a fine at level 3 on the standard scale, or both, unless subsection (3) applies.

(3) If the person has previously been convicted of an offence under —

(a) this section;

(b) any of sections 271, 272 or 273; or

(c) any of sections 33, 33A, 34 or 35 of the UK Sexual Offences Act 1956 as applied to the Falkland Islands,

the maximum sentence on conviction for an offence under this section is imprisonment for 6 months or a fine at level 4 on the standard scale, or both.

[UK Sexual Offences Act 1956 s.36 as am. by Sexual Offences Act 2003]

275. Allowing persons under 16 to be in a brothel

It is an offence for a person who has responsibility for a child or young person who has attained the age of 4 years and is under the age of 16 years to allow that child or young person to reside in or to frequent a brothel.

Penalty: Imprisonment for 6 months or a fine at level 2 on the standard scale, or both.

[UK Children & Young Persons Act 1933 s.3]

Sex trafficking

276. Trafficking people for sexual exploitation

(1) A person ('A') commits an offence if A intentionally arranges or facilitates —

(a) the arrival in, or entry into, the Falkland Islands or another country of another person ('B');

(b) the travel of B within the Falkland Islands or another country; or

(c) the departure of B from the Falkland Islands or another country,

with a view to the sexual exploitation of B.

Penalty: Imprisonment for 14 years or fine, or both.

(2) For the purposes of subsection (1)(a) and (c), A's arranging or facilitating is with a view to the sexual exploitation of B if, and only if —

(a) A intends to do anything to or in respect of B, after B's arrival, entry or (as the case may be) departure but in any part of the world, which if done will involve the commission of a relevant offence; or

(b) A believes that another person is likely to do something to or in respect of B, after B's arrival, entry or (as the case may be) departure but in any part of the world, which if done will involve the commission of a relevant offence.

(3) For the purposes of subsection (1)(b), A's arranging or facilitating is with a view to the sexual exploitation of B if, and only if —

(a) A intends to do anything to or in respect of B, during or after the journey and in any part of the world, which if done will involve the commission of a relevant offence; or

(b) A believes that another person is likely to do something to or in respect of B, during or after the journey and in any part of the world, which if done will involve the commission of a relevant offence.

(4) A person who has Falkland Islands status commits an offence under this section regardless of —

(a) where the arranging or facilitating takes place; or

(b) which country is the country of arrival, entry, travel or (as the case may be) departure.

(5) A person who does not have Falkland Islands status commits an offence under this section if—

(a) any part of the arranging or facilitating takes place in the Falkland Islands; or

(b) the Falkland Islands are the country of arrival, entry, travel or (as the case may be) departure.

(6) In this section —

“country” includes any territory or other part of the world;

“relevant offence” means —

(a) any offence under this Part; or

- (b) anything done outside the Falkland Islands which is not an offence within paragraph (a) but would be if done in the Falkland Islands.

[UK Sexual Offences Act s.59A ins.by Protection of Freedom act 2012]

277. Forfeiture of land vehicle, ship or aircraft

- (1) This section applies if a person is convicted of an offence under section 276.
- (2) The court may order the forfeiture of a land vehicle used or intended to be used in connection with the offence if the convicted person —
 - (a) owned the vehicle at the time the offence was committed;
 - (b) was at that time a director, secretary or manager of a company which owned the vehicle;
 - (c) was at that time in possession of the vehicle under a hire-purchase agreement;
 - (d) was at that time a director, secretary or manager of a company which was in possession of the vehicle under a hire-purchase agreement; or
 - (e) was driving the vehicle in the course of the commission of the offence.
- (3) The court may order the forfeiture of a ship or aircraft used or intended to be used in connection with the offence if the convicted person —
 - (a) owned the ship or aircraft at the time the offence was committed;
 - (b) was at that time a director, secretary or manager of a company which owned the ship or aircraft;
 - (c) was at that time in possession of the ship or aircraft under a hire-purchase agreement;
 - (d) was at that time a director, secretary or manager of a company which was in possession of the ship or aircraft under a hire-purchase agreement;
 - (e) was at that time a charterer of the ship or aircraft; or
 - (f) committed the offence while acting as captain of the ship or aircraft.
- (4) In a case to which subsection (3)(a) or (b) does not apply, forfeiture may be ordered only—
 - (a) in the case of a ship - if subsection (5) or (6) applies;
 - (b) in the case of an aircraft - if subsection (5) or (7) applies.
- (5) This subsection applies if a person who, at the time the offence was committed, owned the ship or aircraft or was a director, secretary or manager of a company which owned it, knew or

ought to have known of the intention to use it in the course of the commission of an offence under section 276.

(6) This subsection applies if a ship's gross tonnage is less than 500 tons.

(7) This subsection applies if the maximum weight at which an aircraft (which is not a hovercraft) may take off in accordance with its certificate of airworthiness is less than 5,700 kgs.

(8) If a person who claims to have an interest in a land vehicle, ship or aircraft applies to a court to make representations on the question of forfeiture, the court may not make an order under this section in respect of the vehicle, ship or aircraft unless the person has been given an opportunity to make representations.

(9) Disposal of an item ordered to be forfeited under this section is governed by section 622 of the Criminal Procedure and Evidence Ordinance 2014.

[UK Sexual Offences Act 2003 s.60A ins.by Violent Crime Reduction Act 2006 and am. by Protection of Freedoms act 2012]

278. Detention of land vehicle, ship or aircraft

(1) If a person has been arrested for an offence under section 276, a police officer of the rank of inspector or above may detain a relevant vehicle, ship or aircraft —

(a) until a decision is taken as to whether or not to charge the arrested person with that offence;

(b) if the arrested person has been charged, until the person is acquitted, the charge is dismissed or the proceedings are discontinued; or

(c) if the person has been charged and convicted - until the court decides whether or not to order forfeiture of the vehicle, ship or aircraft.

(2) A vehicle, ship or aircraft is a relevant vehicle, ship or aircraft, in relation to an arrested person if it is a land vehicle, ship or aircraft which the police or immigration officer concerned has reasonable grounds for believing could, on conviction of the arrested person for the offence for which the person was arrested, be the subject of an order for forfeiture under section 277.

(3) A person (other than the arrested person) may apply to the court for the release of a land vehicle, ship or aircraft on the grounds that the applicant —

(a) owns the vehicle, ship or aircraft;

(b) was, immediately before the detention of the vehicle, ship or aircraft, in possession of it under a hire-purchase agreement; or

(c) is a charterer of the ship or aircraft.

(4) The court to which an application is made under subsection (3) may, on such security or surety being tendered as it considers satisfactory, release the vehicle, ship or aircraft on condition that it is made available to the court if —

(a) the arrested person is convicted; and

(b) an order for its forfeiture is made under section 277.

(5) In this section, “court” means —

(a) if the arrested person has not been charged, or the person has been charged but proceedings for the offence have not begun to be heard - the Magistrate’s Court or the Youth Court;

(b) if the person has been charged and proceedings for the offence are being heard - the court hearing the proceedings.

[UK Sexual Offences Act 2003 s.60B ins.by Violent Crime Reduction Act 2006 and am. by Protection of Freedoms act 2012]

279. Sections 277 and 278: Interpretation

(1) In sections 277 and 278, unless the contrary intention appears —

“aircraft” includes hovercraft;

“captain” means master (of a ship) or commander (of an aircraft);

“land vehicle” means any vehicle other than a ship or aircraft;

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

(2) In those sections a reference to being an owner of a vehicle, ship or aircraft includes a reference to being any of a number of persons who jointly own it.

[UK Sexual Offences Act 2003 s.60C ins.by Violent Crime Reduction Act 2006]

Preparatory offences

280. Administering a substance with intent

A person (‘A’) commits an offence if A intentionally administers a substance to, or causes a substance to be taken by, another person (‘B’) —

(a) knowing that B does not consent; and

(b) intending to stupefy or overpower B, so as to enable any other person (including A) to engage in a sexual activity that involves B.

Penalty: Imprisonment for 10 years or a fine, or both.

[UK Sexual Offences Act 2003 s.61]

281. Committing an offence with intent to commit a sexual offence

(1) A person who commits an offence with the intention of committing a relevant sexual offence commits an offence under this section.

Penalty: As provided in subsection (3)(a) or (b).

(2) In this section, “relevant sexual offence” means any offence under this Part (including an offence of encouraging, or aiding and abetting such an offence).

(3) The maximum sentence on conviction for an offence under this section is —

- (a) if the offence is committed by kidnapping or false imprisonment - imprisonment for life;
- (b) in other cases - imprisonment for 10 years.

(4) An offence under subsection (1) for which the maximum penalty is imprisonment for life is triable on indictment only.

[UK Sexual Offences Act 2003 s.62]

282. Trespass with intent to commit a sexual offence

(1) A person commits an offence if the person —

- (a) is a trespasser on any premises;
- (b) intends to commit a relevant sexual offence on the premises; and
- (c) knows that, or is reckless as to whether, he or she is a trespasser.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) In this section —

“premises” includes a structure or part of a structure;

“relevant sexual offence” has the same meaning as in section 281(2);

“structure” includes a tent, vehicle or vessel or other temporary or movable structure.

[UK Sexual Offences Act 2003 s.63]

Sex with an adult relative (Incest)

283. Sex with an adult relative: Penetration

(1) A person (‘A’) aged 16 or over commits an offence if —

- (a) A intentionally penetrates the vagina or anus of another person (‘B’) with a part of A’s body or anything else, or (being a male) penetrates B’s mouth with his penis;
- (b) the penetration is sexual;

(c) B is aged 18 or over;

(d) A and B are related in a way mentioned in subsection (2); and

(e) A knows or could reasonably be expected to know of the relationship.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) The relationship referred to in subsection (1) is that of parent, grandparent, child, grandchild, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece.

(3) In subsection (2) —

“parent” includes an adoptive parent;

“child” includes an adopted child;

“uncle” means the brother of a person’s parent, and “aunt” has a corresponding meaning;

“nephew” means the child of a person’s brother or sister, and “niece” has a corresponding meaning.

(4) If subsection (1) applies in a case where A is related to B as B’s child through adoption, A does not commit an offence unless A is 18 or over.

(5) If in proceedings for an offence under this section it is proved that the defendant was related to the other person in any of the ways mentioned in subsection (2), it is to be taken that the defendant knew or could reasonably have been expected to know of the relationship, unless sufficient evidence is adduced to raise an issue as to whether the defendant knew or could reasonably have been expected to know of it.

[UK Sexual Offences Act 2003 s.64 am. by Criminal Justice & Immigration Act 2008]

284. Sex with an adult relative: Consenting to penetration

(1) A person (‘A’) aged 16 or over commits an offence if —

(a) another person (‘B’) penetrates A’s vagina or anus with a part of B’s body or anything else, or penetrates A’s mouth with B’s penis;

(b) A consents to the penetration;

(c) the penetration is sexual;

(d) B is aged 18 or over;

(e) A is related to B in a way mentioned in subsection (2); and

(f) A knows or could reasonably be expected to know of the relationship.

Penalty: imprisonment for 2 years or a fine, or both.

(2) Subsections (2) to (5) of section 283 apply to an offence under subsection (1) of this section as they apply to an offence under subsection (1) of that section.

[UK Sexual Offences Act 2003 s.65 am. by Criminal Justice & Immigration Act 2008]

Other sexual offences

285. Genital exposure

A person commits an offence if the person —

(a) intentionally exposes his or her genitals; and

(b) intends that someone will see them and be caused alarm or distress.

Penalty: Imprisonment for 2 years or a fine, or both.

[UK Sexual Offences Act 2003 s.66]

286. Voyeurism

(1) A person ('A') commits an offence if A —

(a) for the purpose of obtaining sexual gratification, observes another person ('B') doing a private act; and

(b) knows that B does not consent to being observed for A's sexual gratification.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) A person ('A') commits an offence if A —

(a) operates equipment with the intention of enabling another person ('B') to observe, for the purpose of obtaining sexual gratification, a third person ('C') doing a private act; and

(b) knows that C does not consent to A's operating equipment with that intention.

(3) A person ('A') commits an offence if A —

(a) records another person ('B') doing a private act;

(b) does so with the intention that A or a third person will, for the purpose of obtaining sexual gratification, look at an image of B doing the act; and

(c) knows that B does not consent to A's recording the act with that intention.

(4) A person ('A') commits an offence if A installs equipment, or constructs or adapts a structure or part of a structure, with the intention of enabling A or another person to commit an offence under subsection (1).

(5) For the purposes of this section, a person is doing a private act if the person is in a place which, in the circumstances, would reasonably be expected to provide privacy, and —

- (a) the person's genitals, buttocks or breasts are exposed or covered only with underwear;
- (b) the person is using a lavatory; or
- (c) the person is doing a sexual act that is not of a kind ordinarily done in public.

(6) In this section "structure" includes a tent, vehicle or vessel or other temporary or movable structure.

[UK Sexual Offences Act 2003 ss.67 and 68]

287. Intercourse with an animal

(1) A male person commits an offence if —

- (a) he intentionally performs an act of penetration with his penis;
- (b) what is penetrated is the vagina or anus of an animal (whether dead or alive); and
- (c) he knows that, or is reckless as to whether, that is what is penetrated.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) A person of either gender ('A') commits an offence if —

- (a) A intentionally causes, or allows, A's vagina or anus to be penetrated;
- (b) the penetration is by the penis of an animal (whether dead or alive); and
- (c) A knows that, or is reckless as to whether, that is what A is being penetrated by.

Penalty: Imprisonment for 2 years or a fine, or both.

[UK Sexual Offences Act 2003 s.69]

288. Sexual penetration of a corpse

A person ('A') commits an offence if —

- (a) A intentionally performs an act of penetration with a part of A's body or anything else;
- (b) what is penetrated is a part of the body of a dead person;
- (c) A knows that, or is reckless as to whether, that is what is penetrated; and
- (d) the penetration is sexual.

Penalty: Imprisonment for 2 years or a fine, or both.

[UK Sexual Offences Act 2003 s.70]

289. Sexual activity in a public lavatory

(1) A person ('A') commits an offence if A —

(a) is in a lavatory to which the public or a section of the public has or is permitted to have access, whether on payment or otherwise;

(b) A intentionally engages in an activity; and

(c) the activity is sexual.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) For the purposes of this section, an activity is sexual if a reasonable person would, in all the circumstances, but regardless of any person's purpose, consider it to be sexual.

[UK Sexual Offences Act 2003 s.71]

Miscellaneous provisions

290. Sexual offences outside the Falkland Islands – Schedule 2

(1) If —

(a) a person who has Falkland Islands status does an act in a place outside the Falkland Islands; and

(b) the act, if done in the Falkland Islands, would constitute a sexual offence to which this section applies,

the person is guilty in the Falkland Islands of that sexual offence.

(2) If —

(a) a person who is a resident of the Falkland Islands does an act in a place outside the Falkland Islands;

(b) the act constitutes an offence under the law in force in that place; and

(c) the act, if done in the Falkland Islands, would constitute a sexual offence to which this section applies,

the person is guilty in the Falkland Islands of that sexual offence.

(3) If —

(a) a person does an act in a place outside the Falkland Islands at a time when the person did not have Falkland Islands status nor was a resident of the Falkland Islands;

(b) the act constituted an offence under the law in force in that place;

(c) the act, if done in the Falkland Islands, would have constituted a sexual offence to which this section applies; and

(d) the person meets the residence or nationality condition at the relevant time,

proceedings may be brought against the person in the Falkland Islands for that sexual offence as if the person had done the act there.

(4) The person meets the residence or nationality condition at the relevant time if the person has Falkland Islands status or is a resident of the Falkland Islands at the time when the proceedings are brought.

(5) An act punishable under the law in force in any place constitutes an offence under that law for the purposes of subsections (2) and (3) however it is described in that law.

(6) The condition in subsection (2)(b) or (3)(b) is to be taken to be met unless, not later than 28 days after the defendant is charged with the offence, the defendant serves on the prosecution a notice —

(a) stating that, on the facts as alleged with respect to the act in question, the condition is not in the defendant's opinion met;

(b) showing the grounds for that opinion; and

(c) requiring the prosecution to prove that it is met.

(7) The court, if it thinks fit, may permit the defendant to require the prosecution to prove that the condition is met without service of a notice under subsection (6).

(8) In the Supreme Court the question whether the condition is met is to be decided by the judge alone.

(9) The sexual offences to which this section applies are those listed in Part A of Schedule 2.

[UK Sexual Offences Act 2003 s.72 replaced by s.72(1) Criminal Justice & Immigration Act 2008]

291. Encouraging, etc. the commission of certain sexual acts outside the Falkland Islands – Schedule 2

(1) This section applies if —

(a) any act done by a person in the Falkland Islands would amount to the offence of encouraging, or aiding and abetting, the commission of an offence to which this section applies but for the fact that what the person had in view would not be an offence in the Falkland Islands;

(b) the whole or part of what the person had in view was intended to take place in a place

outside the Falkland Islands; and

(c) what the person had in view would involve the commission of an offence under the law of that place.

(2) If this section applies —

(a) what the person had in view is to be treated as that listed sexual offence for the purposes of any charge of encouraging brought in respect of that act; and

(b) any such offence is accordingly triable in the Falkland Islands.

(3) Any act done by means of a message (however communicated) is to be treated as done in the Falkland Islands if the message is sent or received in the Falkland Islands.

(4) Conduct punishable as an offence under the law of a place outside the Falkland Islands is an offence under that law for the purposes of subsection (1) and (2), however it is described in that law.

(5) Subject to subsection (6), a condition in subsection (1) is to be taken as met unless, not later than 28 days after the defendant is charged with the offence, the defendant serves on the prosecution a notice —

(a) stating that, on the facts as alleged with respect to what the accused had in view, the condition is not in the defendant's opinion met;

(b) showing the grounds for that opinion; and

(c) requiring the prosecution to show that it is met.

(6) The court, if it thinks fit, may permit the defendant to require the prosecution to show that the condition is met without the prior service of a notice under subsection (5).

(7) In the Supreme Court the question whether the condition is met is to be decided by the judge alone.

(8) In any proceedings in respect of an offence triable by virtue of this section, it is immaterial to guilt whether or not the accused had Falkland Islands status at the time of any act or other event proof of which is required for conviction of the offence.

(9) The sexual offences to which this section applies are those listed in Part B of Schedule 2. *[UK Sexual Offences (Conspiracy & Encouragement) Act 1996 ss.2 and 3 and Schedule amended by Sexual Offences Act 2003]*

292. Exceptions to encouraging, etc.

(1) A person is not guilty of encouraging, or aiding and abetting, the commission against a child of an offence to which this section applies if the person acts for the purpose of —

- (a) protecting the child from sexually transmitted infection;
- (b) protecting the physical safety of the child;
- (c) preventing the child from becoming pregnant; or
- (d) promoting the child's emotional well-being by the giving of advice,

and not for the purpose of obtaining sexual gratification or for the purpose of causing or encouraging the activity constituting the offence or the child's participation in it.

(2) This section applies to —

- (a) an offence under any of sections 208 to 211 (offences against children under 13);
- (b) an offence under section 212 (sexual activity with a child);
- (c) an offence under section 216 (child sex offences by youths) which would be an offence under section 212 if the offender were aged 18;
- (d) an offence under any of sections 219, 227, 232, 236 and 240 (sexual activity) against a person under the age of 16.

(3) This section does not affect any other enactment or any rule of law restricting the circumstances in which a person is guilty of encouraging, or aiding and abetting an offence under this Part.

[UK Sexual Offences Act 2003 s.73]

293. Meaning of “consent”

(1) For the purposes of this Part, a person consents only if the person agrees by choice, and has the freedom and capacity to make that choice.

(2) If in proceedings for an offence to which this section applies it is proved that —

- (a) the defendant did the relevant act;
- (b) any of the circumstances specified in subsection (3) existed; and
- (c) the defendant knew that those circumstances existed,

Then the complainant is to be taken not to have consented to the relevant act unless sufficient evidence is adduced to raise an issue as to whether he or she consented and the defendant is to be

taken not to have reasonably believed that the complainant consented unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.

(3) This section applies if —

- (a) any person was, at the time of the relevant act or immediately before it began, using violence against the complainant or causing the complainant to fear that immediate violence would be used against him or her;
- (b) any person was, at the time of the relevant act or immediately before it began, causing the complainant to fear that violence was being used, or that immediate violence would be used, against another person;
- (c) the complainant was, and the defendant was not, unlawfully detained at the time of the relevant act;
- (d) the complainant was asleep or otherwise unconscious at the time of the relevant act;
- (e) because of the complainant's physical disability, the complainant would not have been able at the time of the relevant act to communicate to the defendant whether the complainant consented;
- (f) any person had administered to or caused to be taken by the complainant, without the complainant's consent, a substance which, having regard to when it was administered or taken, was capable of causing or enabling the complainant to be stupefied or overpowered at the time of the relevant act.

(4) In subsection (2)(a) and (b), the reference to the time immediately before the relevant act began is, in the case of an act which is one of a continuous series of sexual activities, a reference to the time immediately before the first sexual activity began.

[UK Sexual Offences Act 2003 ss.74 and 75]

294. Conclusive presumptions about consent

(1) If in proceedings for an offence to which this section applies it is proved that the defendant did the relevant act and that any of the circumstances specified in subsection (2) existed, it is to be conclusively presumed —

- (a) that the complainant did not consent to the relevant act; and
- (b) that the defendant did not believe that the complainant consented to the relevant act.

(2) This section applies if —

- (a) the defendant intentionally deceived the complainant as to the nature or purpose of the relevant act;

(b) the defendant intentionally induced the complainant to consent to the relevant act by impersonating a person known personally to the complainant.

[UK Sexual Offences Act 2003 s.76]

295. Sections 293 and 294: Relevant acts

In relation to an offence to which section 293 or 294 applies, references in those sections to the relevant act and to the complainant are to be read as follows —

<i>Offence</i>	<i>Relevant act</i>
An offence under section 204 (Rape)	The defendant intentionally penetrating, with his penis, the vagina, anus or mouth of another person (“the complainant”)
An offence under section 205 (Assault by penetration)	The defendant intentionally penetrating, with a part of his or her body or anything else, the vagina or anus of another person (“the complainant”), if the penetration is sexual
An offence under section 206 (Sexual assault)	The defendant intentionally touching another person (“the complainant”), if the touching is sexual
An offence under section 207 (Causing a person to engage in sexual activity without consent)	The defendant intentionally causing another person (“the complainant”) to engage in an activity, if the activity is sexual

[UK Sexual Offences Act 2003 s.77]

PART 11 – SEXUAL OFFENCE ORDERS

296. Interpretation of Part

(1) In this Part, unless the context otherwise requires —

“absolute discharge” means an absolute discharge granted under section 502(1)(a) of the Criminal Procedure and Evidence Ordinance 2014;

“detained in hospital” means detained in a hospital under Part 8 of the Mental Health Ordinance;

“community order” means an order under section 509 of the Criminal Procedure and Evidence Ordinance 2014;

“conditional discharge” means a conditional discharge granted under section 502(1)(b) of the Criminal Procedure and Evidence Ordinance 2014;

“detained in a hospital” means detained for treatment in a hospital under Part I of the Mental Health Ordinance;

“foreign travel order” means an order made under section 114 of the Sexual Offences Act 2003;

“harm” from a defendant means physical or psychological harm caused by the defendant;

“home address” means, in relation to any person —

(a) the address of the person's sole or main residence in the Falkland Islands; or

(b) if the person has no such residence - the address or location of a place in the Falkland Islands where the person can regularly be found and, if there is more than one such place, such one of those places as the person selects;

“interim notification order” means an order made under section 320;

“interim SHPO” means an order made under section 327;

“interim SRO” means an order made under section 336;

“notification order” means an order made under section 317;

“notification period” has the meaning given by section 298;

“notification requirements of this Part” means the requirement to give notification of certain matters under any of sections 299 to 302;

“passport” means —

(a) a document establishing a person's identity, nationality and citizenship for purposes of immigration laws, issued by or on behalf of the authorities of a country or territory, or by or on behalf of an international organisation;

(b) a document that can be used (in some or all circumstances) instead of a passport;

“qualifying offender” has the meaning given by section 323;

“relevant finding”, in relation to an offence, means a finding that a person —

(a) is not guilty of the offence by reason of mental disorder; or

(b) is under a disability and did the act charged against him or her in respect of the offence;

“relevant offender” means a person for the time being subject to the notification requirements of this Part;

“restriction order” means an order under section 54 of the Mental Health Ordinance in relation to a person detained in a hospital;

“risk of sexual harm order” means an order made under section 123 of the Sexual Offences Act 003;

“RSHO” means a risk of sexual harm order;

“sexual harm” from a person means physical or psychological harm caused —

- (a) by the person committing one or more offences listed in Schedule 3; or
- (b) (in the context of harm outside the Falkland Islands) by the person doing outside the Falkland Islands anything which would constitute an offence listed in Schedule 3 if done in any part of the Falkland Islands;

“sexual harm prevention order” means an order made under section 322;

“Sexual Offences Act 2003” means the UK Act of that name as applied to the Falkland Islands by the Sexual Offences Ordinance 2005 and as modified by the Schedule to that Ordinance;

“sexual offences prevention order” means an order made under section 104 of the Sexual Offences Act 2003;

“sexual risk order” means an order made under section 333;

“SHPO” means a sexual harm prevention order;

“SOPO” means a sexual offences prevention order;

“SRO” means a sexual risk order;

“the public” means the public in the Falkland Islands;

“vulnerable adult” means a person aged 18 or over whose ability to protect himself or herself from physical or psychological harm is significantly impaired through physical or mental disability, illness, old age, or otherwise.

(2) Any time-limit for the making of complaints in the Magistrate’s Court under any other enactment does not apply to an application for an order on a complaint under this Part.

(3) If the defendant on an application for an order under this Part, or for the variation, renewal or discharge of an order, is a youth, a reference in this Part to the Magistrate’s Court is a reference to that court sitting as the Youth Court.

(4) For the purposes of this Part, acts, behaviour, convictions and findings include those occurring before the commencement of this Part.

(5) In construing any reference to an offence listed in Schedule 3, any condition subject to which an offence is so listed that relates —

- (a) to the way in which the defendant is dealt with in respect of an offence so listed or a relevant finding; or

(b) to the age of any person,

is to be disregarded.

(6) This Part applies to a sentence of detention for a specified period imposed on a youth under sections 725 and 726 of the Criminal Procedure and Evidence Ordinance 2014 as it applies to an equivalent sentence of imprisonment, and references in this Part to imprisonment are to be interpreted accordingly.

(7) This Part applies to an order for detention during Her Majesty's pleasure imposed on a youth under section 727 of the Criminal Procedure and Evidence Ordinance 2014 as it applies to a sentence of life imprisonment, and references in this Part to imprisonment are to be interpreted accordingly.

(8) In this Part —

(a) a reference to a conviction includes a reference to a finding of a court under section 762 of the Criminal Proceedings and Evidence Ordinance 2014 that the defendant did the act charged;

(b) a reference to a person being or having been found to be under a disability and to have done the act charged against him or her in respect of an offence means a finding under Part 34 of that Ordinance that the person is —

(i) unfit to be tried for the offence;

(ii) mentally disordered so that the trial for the offence cannot or could not proceed; or

(iii) unfit to be tried and to have done the act charged against him or her in respect of the offence.

[UK Sexual Offences Act 2003 ss.22, 113, 131, 135 and passim]

Notification requirements

297. Persons subject to notification requirements – Schedule 3

(1) A person is subject to the notification requirements of this Part for the period set out in section 298 (“the notification period”) if, in respect of an offence listed in Schedule 3, the person has been since 10 June 2005 (the date of commencement of the Sexual Offences Ordinance 2005) —

(a) convicted of the offence;

(b) found not guilty of the offence by reason of mental disorder;

(c) found to be under a disability and to have done the act charged in respect of the offence;
or

(d) cautioned in respect of the offence.

(2) For purposes of this section, an absolute discharge in respect of an offence does not count as a conviction.

(3) A person to whom subsection (1) applies is a relevant offender for purposes of this Part.
[UK Sexual Offences Act 2003 s.80]

297. The notification period

(1) The notification period for a relevant offender is the period in the second column of the following Table opposite the description that applies to the person.

<i>TABLE</i>	
<i>Description of relevant offender</i>	<i>Notification period</i>
A person who, in respect of the offence, is or has been sentenced to imprisonment for life, or to imprisonment for 30 months or more	An indefinite period beginning with the relevant date
A person who, in respect of the offence or finding, is or has been detained in a hospital subject to a restriction order	An indefinite period beginning with that date
A person who, in respect of the offence, is or has been sentenced to imprisonment for more than 6 months but less than 30 months	10 years beginning with that date
A person who, in respect of the offence, is or has been sentenced to imprisonment for 6 months or less	7 years beginning with that date
A person who, in respect of the offence or finding, is or has been detained in a hospital without being subject to a restriction order	7 years beginning with that date
A person who, in respect of the offence, is cautioned	2 years beginning with that date
A person in whose case an order for conditional discharge is made in respect of the offence	The period of conditional discharge
A person of any other description	5 years beginning with the relevant date

(2) If a person is or was under 18 on the relevant date, subsection (1) has effect as if for any reference a period of years specified in subsection (1) there were substituted a reference to one-half of that period.

(3) If a relevant offender is or has been sentenced in respect of 2 or more offences listed in Schedule 3 —

(a) to consecutive terms of imprisonment; or

(b) to terms of imprisonment which are partly concurrent,

the notification period is calculated as if the relevant offender was or had been sentenced, in respect of each of the offences, to a term of imprisonment which —

(i) in the case of consecutive terms - is equal to the aggregate of those terms;

(ii) in the case of partly concurrent terms (X and Y, which overlap for a period Z) - is equal to X plus Y minus Z.

(4) If a relevant offender who is the subject of a finding within section 297(1)(c) is or has been subsequently tried for the offence, the notification period relating to the finding ends at the conclusion of the trial.

(5) In this section and section 299, “relevant date” means —

(a) in the case of a person within section 297(1)(a) - the date of the conviction;

(b) in the case of a person within section 297(1)(b) or (c) - the date of the finding;

(c) in the case of a person within section 297(1)(d) - the date of the caution.

[UK Sexual Offences Act 2003 s.82 am. by Violent Crime Reduction Act 2006]

299. Notification requirements: Initial notification

(1) A relevant offender must, within 3 days after the relevant date (or, if later, the commencement of this Part), give to the police the information set out in subsection (4).

(2) Subsection (1) does not apply to a relevant offender in respect of a conviction, finding or caution within section 297(1) if the offender —

(a) immediately before the conviction, finding or caution was subject to the notification requirements of this Part as a result of another conviction, finding or caution or an order of a court (“the earlier event”);

(b) at that time had made a notification under subsection (1) in respect of the earlier event; and

(c) throughout the period referred to in subsection (1) remains subject to the notification requirements as a result of the earlier event.

(3) Subsection (1) does not apply to a relevant offender in respect of a conviction, finding or caution within section 297(1) if the offender complied with section 83(1) of the Sexual Offences Act 2003 in respect of the conviction, finding, caution or order.

(4) If a notification order is or has been made in respect of a conviction, finding or caution, subsection (1) does not apply to the relevant offender in respect of the conviction, finding or caution if the offender —

(a) immediately before the order was made was subject to the notification requirements of this Part as a result of another conviction, finding or caution or an order of a court (“the earlier event”);

(b) at that time had made a notification under subsection (1) in respect of the earlier event; and

(c) throughout the period referred to in subsection (1) remains subject to the notification requirements as a result of the earlier event.

(5) The information to be given in relation to the relevant offender is —

(a) the date of birth;

(b) the Tax Identification Number or, in the case of a person who does not have Falkland Islands status, the work permit or immigration permit number;

(c) the name on the relevant date and, if more or other names were used on that date, each of those names;

(d) the home address on the relevant date;

(e) the name on the date on which notification is given and, if one or more other names are used on that date, each of those names;

(f) the home address on the date on which notification is given;

(g) the address of any other premises in the Falkland Islands at which, at the time the notification is given, the person regularly resides or stays;

(h) whether the person has any passport and the details set out in subsection (6) in relation to each passport.

(6) The details required in relation to each passport are —

(a) the issuing authority;

(b) the number;

(c) the dates of issue and expiry;

(d) the name and date of birth given as being those of the passport holder.

(7) When determining the period for the purpose of subsection (1), there is to be disregarded any time when the relevant offender is —

- (a) remanded in or committed to custody by an order of a court;
- (b) serving a sentence of imprisonment;
- (c) detained in a hospital; or
- (d) outside the Falkland Islands.

[UK Sexual Offences Act 2003 s.83 am. by Criminal Justice & Immigration Act 2008]

300. Notification requirements: Changes

(1) A relevant offender must, within 3 days after —

- (a) using a name which has not been notified to the police under section 299(1);
- (b) changing his or her home address;
- (c) residing or staying for a qualifying period at any premises in the Falkland Islands the address of which has not been notified to the police under section 299(1);
- (d) being released from custody pursuant to an order of a court or from imprisonment or detention in a hospital;
- (e) losing or ceasing to have a passport notified to the police under section 299(1) and (6); or
- (f) receiving a passport which has not been notified to the police under section 299(1) and (6),

notify to the police that name, new home address, address of those premises, date of release, details of losing or ceasing to have the passport (as set out in subsection (6) of section 299) and other information set out in that section.

(2) A notification under subsection (1) may be given before the name is used, the change of home address occurs or the qualifying period ends, but in that case the relevant offender must also specify the date when the event is expected to occur.

(3) If a notification is given in accordance with subsection (2) and the event to which it relates occurs more than 2 days before the date specified, the notification does not affect the duty imposed by subsection (1).

(4) If a notification is given in accordance with subsection (2) and the event to which it relates has not occurred by the end of the period of 3 days beginning with the date specified —

- (a) the notification does not affect the duty imposed by subsection (1); and

(b) the relevant offender must, within the period of 6 days beginning with the date specified, notify to the police the fact that the event did not occur within the period of 3 days beginning with the date specified.

(5) Section 299(7) applies to the determination of the period of 3 days mentioned in subsection (1) and the period of 6 days mentioned in subsection (4)(b), as it applies to the determination of the period mentioned in section 299(1).

(6) In this section, “qualifying period” means —

(a) a period of 7 days; or

(b) 2 or more periods, in any period of 12 months, which taken together amount to 7 days.

[UK Sexual Offences Act 2003 s.84 am. by Criminal Justice & Immigration Act 2008]

301. Notification requirements: Periodic notification

(1) A relevant offender must, within the prescribed period after each event within subsection (2), notify to the police the information set out in section 299(5), unless within that period he or she has given a notification under section 300(1).

(2) The events are —

(a) the commencement of this Part (including persons who became relevant offenders before that commencement);

(b) any notification given by the relevant offender under section 299(1) or 300(1); and

(c) any notification given under subsection (1).

(3) The prescribed period is one year, except that if the home address of the relevant offender given under section 299(1), 300(1) or subsection (1) of this section is not the person’s sole or main residence in the Falkland Islands, the prescribed period is 7 days.

(4) If the period referred to in subsection (1) would (apart from this subsection) end while subsection (5) applies to the relevant offender, that period is to be treated as continuing until the end of the period of 3 days beginning when subsection (5) first ceases to apply.

(5) This subsection applies to a relevant offender who is —

(a) remanded in or committed to custody by an order of a court;

(b) serving a sentence of imprisonment;

(c) detained in a hospital; or

(d) outside the Falkland Islands.

[UK Sexual Offences Act 2003 s.85 am. by Criminal Justice & Immigration Act 2008]

302. Notification requirements: Travel outside the Falkland Islands

(1) A relevant offender who leaves the Falkland Islands must —

(a) at least 7 days before he or she leaves the Falkland Islands, notify the Chief Police Officer in accordance with this section;

(b) if he or she returns to the Falkland Islands, notify the Chief Police Officer at least 7 days before arriving, in accordance with this section.

(2) A notification under this section must disclose —

(a) the date on which the offender will leave or return to the Falkland Islands;

(b) the countries or territories to which he or she will travel and the point of arrival in those countries or territories;

(c) the identity of any carrier or carriers he or she intends to use to depart from and return to the Falkland Islands, and of travelling to any other place;

(d) details of his or her accommodation arrangements on arrival in a place outside the Falkland Islands;

(e) any other information which the offender has about his or her departure from or return to the Falkland Islands and which the Chief Police Officer reasonably requests.

(3) A notification under this section must include —

(a) the offender's name, address in the Falkland Islands and date of birth; and

(b) any other name the offender is using.

(4) If the information provided under subsection (2) changes before the offender departs from or returns to the Falkland Islands, he or she must notify the Chief Police Officer as soon as practicable.

(5) The Governor in Council, after consulting the Criminal Justice Council, may by regulations amend or add to the requirements of this section and the regulations may make different provision for different categories of person.

[UK Sexual Offences Act 2003 s.86 adapted; S.I 2004/1220]

303. Method of notification and related matters

(1) A person gives a notification under any of sections 299(1), 300(1) or 301(1) by —

(a) attending at a place of lawful custody; and

(b) giving an oral or written notification to the police officer in charge of the station.

(2) A notification under this section must be acknowledged in writing in a form approved by the Chief Police Officer.

(3) If a notification is given under any of sections 299(1), 300(1) or 301(1), the relevant offender must, if requested to do so by the police officer referred to in subsection (1)(b), allow the officer to —

(a) take the offender's fingerprints;

(b) photograph any part of the offender; or

(c) do both those things,

for the purpose of verifying the identity of the offender.

(4) In this section, "photograph" includes any process by means of which an image may be produced.

[UK Sexual Offences Act 2003 ss.87 and 88]

304. Young offenders: Parental directions

(1) If a person within the first column of the following Table ("the young offender") is under 18 when before the court referred to in the second column of the Table, that court may direct that subsection (2) applies in respect of an individual ("the parent") having parental responsibility for the young offender.

<i>TABLE</i>	
<i>Description of person</i>	<i>Court which may make the direction</i>
A relevant offender within section 297(1)(a) to (c)	The court which deals with the offender in respect of the offence or finding
A relevant offender within section 337(1)(a) to (c)	The court which deals with the offender in respect of the offence or finding
A person who is the subject of a notification order, interim notification order, SOPO or interim SOPO	The court which makes the order
A relevant offender who is the defendant to an application under subsection (4)	The court which hears the application

(2) If this subsection applies —

(a) the obligations that would (apart from this subsection) be imposed by or under sections 299 to 302 on the young offender are to be treated instead as obligations on the parent, and

(b) the parent must ensure that the young offender attends at the place of lawful custody with him or her, when a notification is being given.

(3) A direction under subsection (1) takes immediate effect and applies —

- (a) until the young offender attains the age of 18; or
- (b) for any shorter period that the court declares when giving the direction.

(4) The Attorney General may apply to the Youth Court for a direction under subsection (1) in respect of a relevant offender (“the defendant”) who —

- (a) resides in the Falkland Islands or whom the Attorney General believes is intending to come to the Falkland Islands; and
- (b) is under 18.

[UK Sexual Offences Act 2003 s.89 adapted]

305. Parental directions: Variation, renewal and discharge

(1) A person within subsection (2) may apply to the appropriate court for an order varying, renewing or discharging a direction under section 304(1).

(2) The persons are —

- (a) the young offender;
- (b) the parent;
- (c) the Attorney General.

(3) An application under subsection (1) may be made —

- (a) if the appropriate court is the Supreme Court - in accordance with the practice of that court;
- (b) in any other case - by complaint.

(4) On an application under this section, the court, after hearing the person making the application and (if they wish to be heard) the other persons mentioned in subsection (2), may make any order, varying, renewing or discharging the direction, that the court considers appropriate.

(5) In this section “the appropriate court” means —

- (a) if the Supreme Court or the Court of Appeal gave the direction - the Supreme Court;
- (b) if the Youth Court gave the direction - that court.

[UK Sexual Offences Act 2003 s.90]

306. Offences relating to notification

(1) A person who —

(a) fails, without reasonable excuse, to comply with any of sections 299(1), 300(1), 301(4)(b), 302(1), 304(3) or 305(2)(b) or any requirement imposed by or under section 302; or

(b) notifies to the police, in purported compliance with section 299(1), 300(1) or 301(1) or any requirement imposed by or under section 302, any information which the person knows to be false,

commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) Subject to subsection (3) —

(a) a person commits an offence under subsection (1)(a) on the day on which the person first fails, without reasonable excuse, to comply with section 299(1), 300(1) or 301(1) or a requirement imposed by or under section 302; and

(b) continues to commit it throughout any period during which the failure continues.

(3) A person must not be prosecuted under subsection (1) more than once in respect of the same failure.

[UK Sexual Offences Act 2003 s.91]

307. Certificates for purposes of this Part

(1) Subsection (2) applies when on any date a person is —

(a) convicted of an offence listed in Schedule 3;

(b) found not guilty of such an offence by reason of mental disorder; or

(c) found to be under a disability and to have done the act charged in respect of such an offence.

(2) If the court by or before which the person is so convicted or found —

(a) states in open court —

(i) that on that date the person has been convicted, found not guilty by reason of insanity or found to be under a disability and to have done the act charged; and

(ii) that the offence in question is an offence listed in Schedule 3; and

(b) certifies those facts, whether at the time or subsequently,

the certificate is, for the purposes of this Part, evidence of those facts.

(3) Subsection (4) applies when on any date a person is cautioned in respect of an offence listed in Schedule 3.

(4) If the police officer who gives the caution —

(a) informs the person that he or she has been cautioned on that date and that the offence in question is an offence listed in Schedule 3; and

(b) certifies those facts, whether at the time or subsequently, in writing in a form approved by the Chief Police Officer,

the certificate is, for the purposes of this Part, evidence of those facts.

[UK Sexual Offences Act 2003 s.92 adapted]

Review of indefinite notification requirements

308. Review of indefinite notification requirements: General

(1) Sections 309 and 310 apply to a person who, at any time after 10 June 2005, became or becomes subject to the notification requirements of this Part for an indefinite period by virtue of section 298(1) (a “relevant sex offender”).

(2) For the purposes of this Part, the date of discharge is —

(a) if the relevant sex offender was aged 18 or over on the relevant date - the date falling 15 years after that date;

(b) if the relevant sex offender was aged under 18 on the relevant date - the date falling 8 years after that date.

(3) In determining the date of discharge under subsection (2), there is to be disregarded any time when the relevant sex offender was —

(a) remanded in or committed to custody by order of a court;

(b) serving a sentence of imprisonment;

(c) detained in hospital; or

(d) outside the Falkland Islands,

before the relevant sex offender first notified information to the police under section 83(1) of the Sexual Offences Act 2003 or section 299(1) of this Part.

(4) If a notification continuation order made under this Part has effect in respect of the relevant sex offender, for the purposes of this Part the further date of discharge is the date of expiry of the fixed period specified in that order.

(5) In this section —

“relevant date” has the same meaning as in section 298(5);

“notification continuation order” means an order made under section 309.

[UK Sexual Offences Act 2003 s.88A and 88B ins. by Sexual Offences (Remedial) Order 2012]

309. Review of indefinite notification requirements: Procedure and grounds

(1) The Chief Police Officer must no later than the date of discharge of a relevant sex offender either —

(a) make a notification continuation order in respect of the offender; or

(b) notify the offender that he or she ceases to be subject to the notification requirements of this Part on the date of discharge.

(2) A notification continuation order is an order making the relevant sex offender subject to the notification requirements of this Part for a fixed period of not more than 15 years from the date which would, but for the order, have been the date of discharge.

(3) The Chief Police Officer may make a notification continuation order only if satisfied, on the balance of probabilities, that the relevant sex offender poses a risk of sexual harm to the public, or any particular members of the public, in the Falkland Islands.

(4) In deciding whether to make a notification continuation order, the Chief Police Officer must take into account —

(a) the seriousness of the offence (or offences) —

(i) of which the relevant sex offender was convicted;

(ii) of which the relevant sex offender was found not guilty by reason of mental disorder;

(iii) in respect of which the relevant sex offender was found to be under a disability and to have done the act charged; or

(iv) in respect of which the relevant sex offender was cautioned,

which made the relevant sex offender subject to the notification requirements of this Part for an indefinite period;

(b) the period of time which has elapsed since the relevant sex offender committed the offence (or offences);

(c) whether the relevant sex offender has committed any offence under section 306;

(d) the age of the relevant sex offender at the time of the decision;

(e) the age of the relevant sex offender at the time the offence (or offences) referred to in paragraph (a) was (or were) committed;

(f) the age of any person who was a victim of any such offence (where applicable) and the difference in age between the victim and the relevant sex offender at the time the offence was committed;

(g) any convictions or findings made by a court in respect of the relevant sex offender for any other offence listed in Schedule 3;

(h) any caution which the relevant sex offender has received for an offence which is listed in Schedule 3;

(i) whether any criminal proceedings for any offences listed in Schedule 3 have been commenced against the relevant sex offender but have not concluded;

(j) any written submission or evidence of the risk of sexual harm posed by the relevant sex offender to the public, or any particular members of the public, in the Falkland Islands;

(k) any submission or evidence presented by or on behalf of the relevant sex offender which demonstrates that he or she does not pose a risk of sexual harm to the public, or any particular members of the public, in the Falkland Islands; and

(l) any other matter which the Chief Police Officer considers to be appropriate.

(5) A notification continuation order must state —

(a) the reasons why the order was made; and

(b) the reasons for the determination of the fixed period in the order.

(6) A notification continuation order must be notified in writing to the relevant sex offender.

(7) In this section, “sexual harm” means physical or psychological harm caused by the relevant sex offender doing anything which would constitute an offence listed in Schedule 3 if done in any part of the Falkland Islands.

[UK Sexual Offences Act 2003 s.88C ins. by Sexual Offences (Remedial) Order 2012]

310. Review of indefinite notification requirements: Further review and appeal

(1) If a notification continuation order has been made, the Chief Police Officer must no later than the further date of discharge —

- (a) make another notification continuation order in respect of the relevant sex offender; or
- (b) notify the relevant sex offender that the offender ceases to be subject to the notification requirements of this Part on the further date of discharge.

(2) Section 309(2) to (7) apply in relation to this section, but a reference to the date of discharge is to be read as a reference to the further date of discharge.

(3) The decision of the Chief Police Officer —

- (a) to make a notification continuation order; and
- (b) setting the fixed period of the notification continuation order,

may be appealed to the Magistrate's Court by the relevant sex offender within 21 days after the offender receives notice of the decision.

(4) On an appeal under this section, the Magistrate's Court may —

- (a) uphold or quash the decision of the Chief Police Officer;
- (b) make a notification continuation order; or
- (c) vary the fixed period in that order.

(5) The relevant sex offender remains subject to the existing notification requirements of this Part until the expiry of 21 days after the offender receives notice of the decision of the Chief Police Officer or an appeal is decided or abandoned, as the case may be.

[UK Sexual Offences Act 2003 ss.88E and G ins. by Sexual Offences (Remedial) Order 2012 and adapted]

Ending notification requirements for homosexual offences

311. Homosexual offences: Ending of notification requirement

(1) This section and section 312 apply if a relevant offender is subject to the notification requirements of this Part as a result of a conviction, finding or caution in respect of an offence under —

- (a) section 12 or 13 of the Sexual Offences Act 1956 (buggery or indecency between men); or
- (b) section 61 of the Offences against the Person Act 1861.

(2) The relevant offender may apply to the Governor for a decision as to whether it appears that, at the time of the offence, the other party to the act of buggery or gross indecency —

- (a) if subsection (1)(a) applies - was aged 16 or over;
- (b) if subsection (1)(b) applies - was aged 17 or over,

and consented to the act.

(3) An application must be in writing and state —

- (a) the name, address and date of birth of the relevant offender;
- (b) the offender's name and address at the time of the conviction, finding or caution;
- (c) so far as known to the offender, the time when and the place where the conviction or finding was made or the caution given and, for a conviction or finding, the case number;
- (d) any other information the Governor may reasonably require.

(4) An application may include representations by the relevant offender about the matters mentioned in subsection (2).

(5) In making the decision applied for, the Governor must consider —

- (a) any representations included in the application; and
- (b) any available record of the investigation of the offence and of any proceedings relating to it that appears to the Governor to be relevant,

but must not seek evidence from any witness.

(6) On making the decision the Governor must —

- (a) record it in writing; and
- (b) give notice in writing to the relevant offender.

(7) If the Governor decides that it appears as mentioned in subsection (2), the relevant offender ceases, from the beginning of the day on which the decision is recorded under subsection (6), to be subject to the notification requirements of this Part as a result of the conviction, finding or caution in respect of the offence.

(8) Subsection (7) does not affect the operation of this Part as a result of any other conviction, finding or caution or any court order.

(9) In this section a reference to an offence includes —

- (a) a reference to an attempt, conspiracy or incitement to commit that offence; and
- (b) a reference to aiding, abetting, counselling or procuring the commission of that offence.

(10) In the case of an attempt, conspiracy or incitement, references in subsection (1) to the act of buggery or gross indecency are references to the act of buggery or gross indecency to which the attempt, conspiracy or incitement related (whether or not that act occurred).

[UK Sexual Offences Act 2003 s.93 and Schedule 4, part]

312. Homosexual offences: Right of appeal

(1) If the Governor decides that it does not appear as mentioned in section 311(2), and if the Supreme Court gives permission, the relevant offender may appeal to that court.

(2) On an appeal under this section the court may not receive oral evidence.

(3) The court —

- (a) if it decides that it appears as mentioned in subsection 311(2), must make an order to that effect;
- (b) otherwise, must dismiss the appeal.

(4) An order under subsection (3)(a) has the same effect as a decision of the Governor recorded under subsection (6) of section 311 has under subsection (7) of that section.

(5) There is no appeal from the decision of the Supreme Court under this section.

[UK Sexual Offences Act 2003 s.93 and Schedule 4, part]

Information relating to notification

313. Supply of information to Governor, etc. for verification

(1) This section applies to information notified to the police under section 297, 298 or 299.

(2) The Chief Police Officer may, for the purposes of the prevention, detection, investigation or prosecution of offences under this Part, supply information to which this section applies to —

- (a) the Governor; or
- (b) a person providing services to the Governor in connection with a relevant function,

for use for the purpose of verifying the information.

(3) In relation to information supplied under subsection (2) to any person, the reference to verifying the information is a reference to —

(a) checking its accuracy by comparing it with information held by a person within subsection (2)(b) in connection with the provision of the services; and

(b) compiling a report of that comparison.

(4) Subject to subsection (5), the supply of information under this section does not breach any restriction on the disclosure of information (however arising or imposed).

(5) This section does not affect any power existing apart from this section to supply information.

(6) In this section, “relevant function” means —

(a) a function relating to social security, child support, employment or training;

(b) a function relating to passports;

(c) a function relating to the licensing of vehicles.

[UK Sexual Offences Act 2003 s.94]

314. Supply of information by Governor, etc.

(1) A report compiled under section 313 may be supplied to the Chief Police Officer by —

(a) the Governor; or

(b) a person within section 313(2)(b).

(2) Such a report may contain any information held —

(a) by the Governor in connection with the exercise of a relevant function; or

(b) by a person within section 313(2)(b) in connection with the provision of services referred to there.

(3) If a report compiled under section 313 contains information within subsection (2), the Chief Police Officer may —

(a) retain the information, whether or not used for the purposes of the prevention, detection, investigation or prosecution of an offence under this Ordinance; and

(b) use the information for any purpose related to the prevention, detection, investigation or prosecution of offences (whether or not under this Ordinance), but for no other purpose.

(4) Subsections (4) to (6) of section 313 apply in relation to this section as they apply in relation to that section.

[UK Sexual Offences Act 2003 s.95]

315. Information about release or transfer

(1) This section applies to a relevant offender who is serving a sentence of imprisonment, or is detained in a hospital.

(2) The person who is responsible for an offender must notify the Chief Police Officer, in the prescribed manner, of any occasion when the offender is released or a different person becomes responsible for the offender.

(3) The person who is responsible for an offender must, in giving notice, provide —

- (a) any prescribed information about the offender; and
- (b) a photograph of the offender.

(4) In this section, “photograph” includes any process by means of which an image may be produced.

(5) The Governor in Council, on the advice of the criminal Justice Council, may make regulations to implement this section and in this section “prescribed” means prescribed by the regulations.

(6) The regulations may —

- (a) make provision for determining who is to be treated for the purposes of this section as responsible for an offender;
- (b) make different provision for different purposes;
- (c) prescribe penalties for failure to comply with the requirements of this section or the regulations.

[UK Sexual Offences Act 2003 s.96 adapted]

316. Power of entry and search for offender’s home address

(1) If on an application made by or on behalf of the Chief Police Officer, a justice of the peace is satisfied that the requirements in subsection (2) are met in relation to any premises, the justice of the peace may issue a warrant authorising a police officer —

- (a) to enter the premises for the purpose of assessing the risks posed by the relevant offender to which the warrant relates; and
- (b) to search the premises for that purpose.

(2) The requirements are that —

- (a) the address of each set of premises specified in the application is an address falling within subsection (3);

- (b) the relevant offender is not one to whom subsection (4) applies;
 - (c) it is necessary for a police officer to enter and search the premises for the purpose mentioned in subsection (1)(a); and
 - (d) on at least 2 occasions a police officer has sought entry to the premises in order to search them for that purpose and has been unable to obtain entry for that purpose.
- (3) An address falls within this subsection if —
- (a) it is the address which was last notified in accordance with this Part by a relevant offender to the police as his or her home address; or
 - (b) there are reasonable grounds to believe that a relevant offender resides there or may regularly be found there.
- (4) This subsection applies to a relevant offender who is —
- (a) remanded in or committed to custody by order of a court;
 - (b) serving a sentence of imprisonment;
 - (c) detained in a hospital; or
 - (d) outside the Falkland Islands.
- (5) A warrant issued under this section —
- (a) must specify each of the premises to which it relates;
 - (b) may authorise the police officer executing it to use reasonable force if necessary to enter and search the premises;
 - (c) may authorise entry to and search of premises on more than one occasion if, on the application, the justice of the peace is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose mentioned in subsection (1)(a).
- (6) If a warrant issued under this section authorises multiple entries, the number of entries authorised may be unlimited or limited to a maximum.
- (7) In this section a reference to the relevant offender to whom the warrant relates is a reference to a relevant offender —
- (a) who has in accordance with this Part notified the police that the premises specified in the warrant are his or her home address; or

- (b) in respect of whom there are reasonable grounds to believe that he or she resides there or may regularly be found there.

[UK Sexual Offences Act 2003 s.96B ins. by Violent Crime Reduction Act 2006]

Notification orders

317. Notification orders: Applications and grounds

(1) The Attorney General may by complaint to the Magistrate's Court or, in the case of a defendant under 18, the Magistrates Court sitting as the Youth Court, apply for an order under this section (a "notification order") in respect of a person ("the defendant") if —

- (a) it appears that the following conditions are met with respect to the defendant; and
- (b) the defendant resides in the Falkland Islands or the Attorney General believes that the defendant is in, or is intending to come to, the Falkland Islands.

(2) The first condition is that under the law in force in a place outside the Falkland Islands —

- (a) the defendant has been convicted of a relevant offence (whether or not he or she has been punished for it);
- (b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that the defendant is not guilty by reason of mental disorder;
- (c) such a court has made in respect of a relevant offence a finding equivalent to a finding that the defendant is under a disability and did the act charged in respect of the offence; or
- (d) the defendant has been cautioned in respect of a relevant offence.

(3) The second condition is that the notification period set out in section 297(1) (as modified by subsections (2) and (3) of that section) in respect of the relevant offence) has not expired.

(4) If on the application it is proved that the conditions in subsections (2) and (3) are met, the court must make a notification order.

(5) In this section and section 318 "relevant offence" has the meaning given by section 319.

[UK Sexual Offences Act 2003 s.97]

318. Notification orders: Effect

(1) If a notification order is made —

- (a) the application of this Part to the defendant in respect of the conviction, finding or caution to which the order relates is subject to the modifications set out below; and

(b) subject to those modifications, the defendant becomes or (as the case may be) remains subject to the notification requirements of this Part for the notification period set out in section 298.

(2) The “relevant date” means —

(a) in the case of a person within section 317(2)(a) - the date of the conviction;

(b) in the case of a person within section 317(2)(b) or (c) - the date of the finding;

(c) in the case of a person within section 317(2)(d) - the date of the caution.

(3) In section 297, the reference to offences listed in Schedule 3 is to be read as a reference to relevant offences.

(4) In sections 299 and 300, references to the commencement of this Part are to be read as references to the date of service of the notification order.

[UK Sexual Offences Act 2003 s.98]

319. Sections 317 and 318: Relevant offences

(1) In sections 317 and 318 the term “relevant offence” means an act which —

(a) constituted an offence under the law in force in the place concerned; and

(b) would have constituted an offence listed in Schedule 3 if it had been done in the Falkland Islands.

(2) An act punishable under the law in force in a place outside the Falkland Islands constitutes an offence under that law for the purposes of subsection (1) however it is described in that law.

(3) Subject to subsection (4), on an application for a notification order the condition in subsection (1)(b) is to be taken as met unless, within 28 days of receiving notice of the application, the defendant serves on the applicant a notice —

(a) stating that, on the facts as alleged with respect to the act concerned, the condition is not in the defendant’s opinion met;

(b) showing the grounds for that opinion; and

(c) requiring the applicant to prove that the condition is met.

(4) The court, if it thinks fit, may permit the defendant to require the applicant to prove that the condition is met without service of a notice under subsection (3).

[UK Sexual Offences Act 2003 s.99]

320. Interim notification orders

- (1) This section applies when an application for a notification order (“the main application”) has not been determined.
 - (2) An application for an order under this section (“an interim notification order”) —
 - (a) may be made in the main application; or
 - (b) if the main application has been made, may be made by supplementary application to the court to which that application has been made.
 - (3) The court may, if it considers it just to do so, make an interim notification order.
 - (4) An interim notification order —
 - (a) has effect only for a fixed period, specified in the order;
 - (b) ceases to have effect, if it has not already done so, on the determination of the main application.
 - (5) While such an order has effect —
 - (a) the defendant is subject to the notification requirements of this Part;
 - (b) this Part applies to the defendant, subject to the modification set out in subsection (6).
 - (6) For purposes of this section, “relevant date” means the date of service of the order.
 - (7) The applicant or the defendant may apply to the court that made the interim notification order for the order to be varied, renewed or discharged.
- [UK Sexual Offences Act 2003 s.100]*

321. Notification orders: Appeals

A defendant may appeal to the Supreme Court against the making of a notification order or interim notification order.

[UK Sexual Offences Act 2003 s.101]

Sexual harm prevention orders (SHPOs)

322. Sexual harm prevention orders: Applications and grounds – Schedules 3 and 4

- (1) A court may make an order under this section (a “sexual harm prevention order” or “SHPO”) in respect of a person (“the defendant”) if subsection (2) or (3) applies to the defendant.
- (2) This subsection applies to the defendant if —
 - (a) the court deals with the defendant in respect of —

- (i) an offence listed in Schedule 3 or Schedule 4;
 - (ii) a finding that the defendant is not guilty of such an offence by reason of mental disorder; or
 - (iii) a finding that the defendant is under a disability and has done the act charged against the defendant in respect of such an offence; and
 - (b) the court is satisfied that it is necessary to make a SHPO for the purpose of —
 - (i) protecting the public or any particular members of the public from sexual harm from the defendant; or
 - (ii) protecting youths or vulnerable adults generally, or any particular youths or vulnerable adults, from sexual harm from the defendant outside the Falkland Islands.
- (3) This subsection applies to the defendant if —
- (a) an application under subsection (4) has been made in respect of the defendant and it is proved on the application that the defendant is a qualifying offender; and
 - (b) the court is satisfied that the defendant's behaviour since the appropriate date makes it necessary to make a SHPO, for the purpose of —
 - (i) protecting the public or any particular members of the public from sexual harm from the defendant; or
 - (ii) protecting youths or vulnerable adults generally, or any particular youths or vulnerable adults, from sexual harm from the defendant outside the Falkland Islands.
- (4) The Attorney General may by complaint to the Magistrate's Court, or, in the case of a defendant under 18, the Magistrates Court sitting as the Youth Court, apply for a SHPO in respect of a person if it appears to the Attorney General that —
- (a) the person is a qualifying offender; and
 - (b) the person has since the appropriate date acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made.
- (5) The Attorney General may make an application under subsection (4) only in respect of a person —
- (a) who resides in the Falkland Islands; or
 - (b) whom the Attorney General believes is intending to come to the Falkland Islands.

[UK Sexual Offences Act 2003 s.103A ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]

323. Section 322: Supplementary provisions

(1) In section 322 —

“appropriate date”, in relation to a qualifying offender, means the date or (as the case may be) the first date on which the offender was convicted, found or cautioned as mentioned in subsection (2) or (3) below;

“qualifying offender” means a person within subsection (2) or (3) below.

(2) A person is within this subsection if, whether before or after the commencement of this Part, the person —

- (a) has been convicted of an offence listed in Schedule 3 or Schedule 4;
- (b) has been found not guilty of such an offence by reason of mental disorder;
- (c) has been found to be under a disability and to have done the act charged against him or her in respect of such an offence; or
- (d) has been cautioned in respect of such an offence.

(3) A person is within this subsection if, under the law in force in a place outside the Falkland Islands, whether before or after the commencement of this Part —

- (a) the person has been convicted of a relevant offence (whether or not the person has been punished for it);
- (b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that the person is not guilty by reason of mental disorder;
- (c) such a court has made in respect of a relevant offence a finding equivalent to a finding that the person is under a disability and did the act charged against the person in respect of the offence; or
- (d) the person has been cautioned in respect of a relevant offence.

(4) In subsection (3), “relevant offence” means an act which —

- (a) constituted an offence under the law in force in the country concerned; and
- (b) would have constituted an offence listed in Schedule 3 or Schedule 4 if it had been done in the Falkland Islands.

For this purpose an act punishable under the law in force in a place outside the Falkland Islands constitutes an offence under that law, however it is described in that law.

(5) Subject to subsection (6), on an application under section 322(4) the condition in subsection (3)(b) above (where relevant) is to be taken as met unless, not later than criminal procedure rules may provide, the defendant serves on the applicant a notice —

(a) stating that, on the facts as alleged with respect to the act concerned, the condition is not in the defendant's opinion met;

(b) showing the grounds for that opinion; and

(c) requiring the applicant to prove that the condition is met.

(6) The court, if it thinks fit, may permit the defendant to require the applicant to prove that the condition is met without service of a notice under subsection (6).

[UK Sexual Offences Act 2003 s.103B ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]

324. Effect of a SHPO

(1) A SHPO prohibits the defendant from doing anything described in the order.

(2) Subject to section 325(1), a prohibition contained in a SHPO has effect —

(a) for a fixed period, specified in the order, of at least 5 years; or

(b) until further order.

(3) A SHPO may specify —

(a) that some of its prohibitions have effect until further order and some for a fixed period;

(b) different periods for different prohibitions.

(4) The only prohibitions that may be included in a SHPO are those necessary for the purpose of —

(a) protecting the public or any particular members of the public from sexual harm from the defendant; or

(b) protecting youths or vulnerable adults generally, or any particular youths or vulnerable adults, from sexual harm from the defendant outside the Falkland Islands.

(5) If a court makes a SHPO in relation to a person who is already subject to such an order (whether made by that court or another), the earlier order ceases to have effect.

[UK Sexual Offences Act 2003 s.103C ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]

325. SHPOs: Prohibition on foreign travel

(1) A prohibition on foreign travel contained in a SHPO prevention order must be for a fixed period of not more than 5 years.

(2) A “prohibition on foreign travel” means —

(a) a prohibition on travelling to any country outside the Falkland Islands named or described in the order;

(b) a prohibition on travelling to any country outside the Falkland Islands other than a country named or described in the order; or

(c) a prohibition on travelling to any country outside the Falkland Islands.

(3) Subsection (1) does not prevent a prohibition on foreign travel from being extended for a further period (of no more than 5 years each time) under section 326.

(4) A SHPO that contains a prohibition within subsection (2)(c) must require the defendant to surrender all of the defendant’s passports at a place of lawful custody specified in the order —

(a) on or before the date when the prohibition takes effect; or

(b) within a period specified in the order.

(5) Any passports surrendered must be returned as soon as reasonably practicable after the person ceases to be subject to a SHPO order containing a prohibition within subsection (2)(c) (unless the person is subject to an equivalent prohibition under another order).

(6) Subsection (5) does not apply in relation to —

(a) a passport issued by or on behalf of the authorities of a place outside the Falkland Islands if the passport has been returned to those authorities;

(b) a passport issued by or on behalf of an international organisation if the passport has been returned to that organisation.

[UK Sexual Offences Act 2003 s.103D ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]

326. SHPOs: Variation, renewal and discharge

(1) The defendant or the Attorney General may apply to the appropriate court by complaint for an order varying, renewing or discharging a SHPO.

(2) Subject to subsections (3) and (5), on the application the court, after hearing the person making the application and (if that person wishes to be heard) the other person mentioned in subsection (1), may make any order varying, renewing or discharging the SHPO that the court considers appropriate.

(3) An order may be renewed, or varied so as to impose additional prohibitions on the defendant, only if it is necessary to do so for the purpose of —

(a) protecting the public or any particular members of the public from sexual harm from the defendant; or

(b) protecting youths or vulnerable adults generally, or any particular youth or vulnerable adults, from sexual harm from the defendant outside the Falkland Islands.

Any renewed or varied order may contain only such prohibitions as are necessary for this purpose and is subject to section 325(1).

(4) The court must not discharge an order before the end of 5 years beginning with the day on which the order was made, without the consent of the defendant, and the Attorney General.

(5) Subsection (4) does not apply to an order containing a prohibition on foreign travel and no other prohibitions.

(6) In this section “the appropriate court” means the court that made the original order, except that if the Youth Court made the order and the defendant is aged 18 or over, it means the Magistrate’s Court (subject to section 332 and any rules made under it.)

[UK Sexual Offences Act 2003 s.103E ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]

327. Interim SHPOs

(1) This section applies if an application under section 322(4) (“the main application”) has not been determined.

(2) An application for an order under this section (“an interim sexual harm prevention order”) —

(a) may be made by the complaint by which the main application is made; or

(b) if the main application has been made, may be made by the person who has made that application, by complaint to the court to which that application has been made.

(3) The court may, if it considers it just to do so, make an interim SHPO, prohibiting the defendant from doing anything described in the order.

(4) Such an order —

(a) has effect only for a fixed period, specified in the order;

(b) ceases to have effect, if it has not already done so, on the determination of the main application.

(5) The applicant or the defendant may by complaint apply to the court that made the interim SHPO for the order to be varied, renewed, or discharged.

[UK Sexual Offences Act 2003 s.103F ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]

328. SHPOs and interim SHPOs: Notification requirements

(1) If —

(a) a SHPO is made in respect of a defendant who was a relevant offender immediately before the making of the order; and

(b) the defendant would (apart from this subsection) cease to be subject to the notification requirements of this Part while the order (as renewed from time to time) has effect,

the defendant remains subject to the notification requirements.

(2) If a SHPO is made in respect of a defendant who was not a relevant offender immediately before the making of the order —

(a) the order causes the defendant to become subject to the notification requirements of this Part from the making of the order until the order (as renewed from time to time) ceases to have effect; and

(b) this Part applies to the defendant, except that the relevant date is the date of service of the order.

(3) Subsections (1) to (3) apply to an interim SHPO as if references to a SHPO were references to an interim SHPO, and with the omission of “(as renewed from time to time)” in both places.

(4) If —

(a) a SHPO is in effect in relation to a relevant offender ; and

(b) by virtue of sections 311 and 312 the relevant offender ceases to be subject to the notification requirements of this Part,

the SHPO ceases to have effect.

(5) On an application for a SHPO made by the Attorney General, the court must make a notification order in respect of the defendant (either in addition to or instead of a SHPO) if —

(a) the applicant invites the court to do so; and

(b) it is proved that the conditions in section 317(2) to (4) are met.

(6) On an application for an interim SHPO made by the Attorney General, the court may, if it considers it just to do so, make an interim notification order (either in addition to or instead of an interim SHPO).

[UK Sexual Offences Act 2003 s.103G ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]

329. SHPOs and interim SHPOs: Appeals

(1) A defendant may appeal against the making of a SHPO prevention order —

(a) if the order was made by virtue of section 322(2)(a)(i) - as if the order were a sentence passed on the defendant for the offence;

(b) if the order was made by virtue of section 322(2)(a)(ii) or (iii) - as if the defendant had been convicted of the offence and the order were a sentence passed on the defendant for that offence;

(c) if the order was made on an application under section 322(4) - to the Supreme Court.

(2) A defendant may appeal to the Supreme Court against the making of an interim SHPO.

(3) A defendant may appeal against the making of an order under section 326, or the refusal to make such an order —

(a) if the application for such an order was made to the Supreme Court - to the Court of Appeal;

(b) in any other case - to the Supreme Court.

(4) On an appeal under subsection (1)(c), (2) or (3)(b), the Supreme Court may make —

(a) any order necessary to give effect to its determination of the appeal; and

(b) any incidental or consequential order as appear to the court to be just.

(5) Any order made by the Supreme Court on an appeal under subsection (1)(c) or (2) (other than an order directing that an application be reheard by the Magistrate's Court) is for the purposes of section 326(1) or 327(5) to be treated as if it were an order of the court from which the appeal was brought, and not an order of the Supreme Court.

[UK Sexual Offences Act 2003 s.103H ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]

330. Offence: Breach of SHPO or interim SHPO, etc.

(1) A person who, without reasonable excuse, does anything that the person is prohibited from doing by —

- (a) a SHPO;
- (b) an interim SHPO;
- (c) a Sexual Offences Prevention Order (“SOPO”);
- (d) an interim SOPO; or
- (e) a foreign travel order,

commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) A person who, without reasonable excuse, fails to comply with a requirement imposed under section 325(4) commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

(3) If a person is convicted of an offence under this section, it is not open to the court by or before which the person is convicted to make, in respect of the offence, an order for conditional discharge.

[UK Sexual Offences Act 2003 s.103I ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]

331. SHPOs and interim SHPOs: Guidance

(1) The Governor, after consulting the Criminal Justice Council, must issue written guidance to police officers in relation to the exercise by them of their powers with regard to SHPOs and interim SHPOs.

(2) The Governor, after so consulting, may from time to time revise the guidance issued under subsection (1).

(3) The Governor must arrange for any guidance issued or revised under this section to be published in a manner the Governor considers appropriate.

[UK Sexual Offences Act 2003 s.103J ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]

332. SHPOs and interim SHPOs: Supplementary

(1) The Youth Court may give permission for an application under section 322(4) against an adult to be made to the Youth Court if —

- (a) an application to the Youth Court has been made, or is to be made, under that section against a youth; and
- (b) the Youth Court thinks that it would be in the interests of justice for the applications to be heard together.

(2) The Chief Justice may by criminal procedure rules make provision in relation to a person attaining the age of 18 after proceedings against that person by virtue of section 322, 326, 327 or 328(5) or (6) have begun —

(a) prescribe circumstances in which the proceedings may or must remain in the Youth Court;

(b) make provision for the transfer of the proceedings from the Youth Court to the Magistrate's Court sitting other than as the Youth Court (including provision applying section 327 with modifications).

[UK Sexual Offences Act 2003 s.103K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]

Sexual risk orders (SROs)

333. Sexual risk orders: Applications, grounds and effect

(1) The Attorney General may by complaint to the Magistrate's Court, or in the case of a defendant under 18 the Magistrates Court sitting as the Youth Court, apply for an order under this section (a "sexual risk order" or "SRO") in respect of a person ("the defendant") if it appears to the Attorney General that the condition in subsection (2) is met.

(2) The condition is that the defendant has, whether before or after the commencement of this Part, done an act of a sexual nature as a result of which there is reasonable cause to believe that it is necessary for a SRO to be made.

(3) The Attorney General may make an application under subsection (1) only in respect of a person —

(a) who resides in the Falkland Islands; or

(b) whom the Attorney General believes is in the Falkland Islands or is intending to come to the Falkland Islands.

(4) On an application under subsection (1), the court may make a SRO if satisfied that the defendant has, whether before or after the commencement of this Part, done an act of a sexual nature as a result of which it is necessary to make such an order for the purpose of —

(a) protecting the public or any particular members of the public from harm from the defendant; or

(b) protecting youths or vulnerable adults generally, or any particular youths or vulnerable adults, from harm from the defendant outside the Falkland Islands.

(5) A SRO —

(a) prohibits the defendant from doing anything described in the order;

(b) has effect for a fixed period (not less than 2 years) specified in the order or until further order.

(6) A SRO may specify different periods for different prohibitions.

(7) The only prohibitions that may be imposed are those necessary for the purpose of —

(a) protecting the public or any particular members of the public from harm from the defendant; or

(b) protecting youths or vulnerable adults generally, or any particular youths or vulnerable adults, from harm from the defendant outside the Falkland Islands.

(8) If a court makes a SRO in relation to a person who is already subject to such an order (whether made by that court or another), the earlier order ceases to have effect.

[UK Sexual Offences Act 2003 s.122A and B ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]

334. SROs: Prohibition on foreign travel

(1) A prohibition on foreign travel contained in a SRO must not be for a period of more than 5 years.

(2) A “prohibition on foreign travel” has the same meaning as in relation to a SHPO in section 325.

(3) Subsection (1) does not prevent a prohibition on foreign travel from being extended for a further period (of no more than 5 years each time) under section 335.

(4) Section 325(4) to (6) apply with necessary modifications in relation to a prohibition on foreign travel imposed as a condition of a SRO.

[UK Sexual Offences Act 2003 s.122C ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]

335. SRO: Variation, renewal and discharge

(1) The defendant or the Attorney General may by complaint to the appropriate court apply for an order varying, renewing or discharging a SRO.

(2) Subject to subsections (3) and (4), on the application the court, after hearing the person making the application and (if he or she wishes to be heard) the other person mentioned in subsection (1), may make any order, varying, renewing or discharging the SRO, that the court considers appropriate.

(3) An SRO may be renewed, or varied so as to impose additional prohibitions on the defendant, only if it is necessary to do so for the purpose of —

(a) protecting the public or any particular members of the public from harm from the defendant; or

(b) protecting youths or vulnerable adults generally, or any particular youths or vulnerable adults, from harm from the defendant outside the Falkland Islands.

Any renewed or varied order may contain only such prohibitions as are necessary for this purpose and is subject to section 334(1).

(4) The court must not discharge an order before the end of 2 years beginning with the day on which the order was made, without the consent of the defendant and the Attorney General.

(5) In this section “the appropriate court” means the court that made the original order, except that if the Youth Court made the order and the defendant is aged 18 or over, it means the Magistrate’s Court (subject to section 342 and any rules made under it.)

[UK Sexual Offences Act 2003 s.122D ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]

336. Interim SROs

(1) This section applies if an application for a SRO (“the main application”) has not been determined.

(2) An application for an order under this section (“an interim sexual risk order”) —

(a) may be made by the complaint by which the main application is made; or

(b) if the main application has been made, may be made by the person who has made that application, by complaint to the court to which that application has been made.

(3) The court may, if it considers it just to do so, make an interim SRO, prohibiting the defendant from doing anything described in the order.

(4) An interim SRO —

(a) has effect only for a fixed period, specified in the order; and

(b) ceases to have effect, if it has not already done so, on the determination of the main application.

(5) The applicant or the defendant may by complaint apply to the court that made the interim SRO for the order to be varied, renewed or discharged.

[UK Sexual Offences Act 2003 s.122E ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]

337. SROs and interim SROs: Notification requirements

(1) A person in respect of whom a court makes —

- (a) a SRO (other than one that replaces an interim SRO); or
- (b) an interim SRO,

must, within the period of 3 days beginning with the date of service of the order, notify to the police the information set out in subsection (2) (unless the person is subject to the notification requirements of this Part on that date).

(2) The information is —

- (a) the person's name and, if the person uses one or more other names, each of those names;
- (b) the person's home address.

(3) A person who —

- (a) is subject to a SRO or an interim SRO (but is not subject to other notification requirements of this Part); and
- (b) uses a name which has not been notified under this section (or under any other provision of this Part), or changes his or her home address,

must, within 3 days after the date of the use or change, notify to the police that name or (as the case may be) the new home address.

(4) Sections 303 (Method of notification) and 306 (Offences relating to notification) apply for the purposes of this section —

- (a) with references to section 299(1) being read as references to subsection (1) above; and
- (b) with references to section 300(1) being read as references to subsection (3) above.

[UK Sexual Offences Act 2003 s.122F ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]

338. SROs and interim SROs: Appeals

(1) A defendant may appeal to the Supreme Court —

- (a) against the making of a SRO;
- (b) against the making of an interim SRO;
- (c) against the refusal to vary or discharge a SRO.

(2) On any such appeal, the Supreme Court may make any order that is necessary to give effect to its determination of the appeal, and any incidental or consequential order that appears to the court to be just.

(3) Any order made by the Supreme Court on an appeal under subsection (1)(a) or (b) (other than an order directing that an application be reheard by the Magistrate's Court is for the purposes of section 335 or 336(5) to be treated as if it were an order of the court from which the appeal was brought (and not an order of the Supreme Court).

[UK Sexual Offences Act 2003 s.122G ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]

339. Offence: Breach of SRO or interim SRO, etc.

(1) A person who, without reasonable excuse, does anything that the person is prohibited from doing by —

- (a) a SRO;
- (b) an interim SRO;
- (c) a Risk of Sexual Harm Order ("RSHO"); or
- (d) an interim RSHO,

commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) A person who, without reasonable excuse, fails to comply with a requirement imposed under section 325(4) in relation to a SRO commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

(3) If a person is convicted of an offence under this section, it is not open to the court by or before which the person is convicted to make, in respect of the offence, an order for conditional discharge.

[UK Sexual Offences Act 2003 s.122H ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]

340. Effect of conviction, etc. of an offence under section 339

(1) This section applies to a person ("the defendant") who is —

- (a) convicted of an offence under section 339 of this Ordinance, or section 128 of the Sexual offences Act;
- (b) found not guilty of such an offence by reason of mental disorder;
- (c) found to be under a disability and to have done the act charged against him or her in respect of such an offence; or

(d) cautioned in respect of such an offence.

(2) If a defendant —

(a) was a relevant offender immediately before this section applied to the defendant; and

(b) would (apart from this subsection) cease to be subject to the notification requirements of this Part (other than those imposed by section 328 or section 337) while the relevant order (as renewed from time to time) has effect,

the defendant remains subject to those notification requirements.

(3) If a defendant was not a relevant offender immediately before this section applied to the defendant —

(a) this section causes the defendant to become subject to the notification requirements of this Part (other than those imposed by section 328 or section 337) from the time the section first applies to the defendant until the relevant order (as renewed from time to time) ceases to have effect; and

(b) this Part applies to the defendant, except that the relevant date is the date on which this section first applies to the defendant.

(6) In this section “relevant order” means —

(a) if the conviction, finding or caution within subsection (1) is in respect of a breach of a SRO or a RSHO - that order;

(b) if the conviction, finding or caution within subsection (1) is in respect of a breach of an interim SRO or an interim RSHO - any SRO or RSHO made on the hearing of the application to which the interim order relates; or

(c) if no such order is made - the interim order.

[UK Sexual Offences Act 2003 s.122I ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]

341. SROs and interim SROs: Guidance

(1) The Governor, after consulting the Criminal Justice Council, must issue guidance to police officers in relation to the exercise by them of their powers with regard to SROs and interim SROs.

(2) The Governor, after so consulting, may from time to time revise the guidance issued under subsection (1).

(3) The Governor must arrange for any guidance issued or revised under this section to be published in a manner the Governor considers appropriate.

[UK Sexual Offences Act 2003 s.122J ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]

342. SROs and interim SROs: Supplementary

(1) The Youth Court may give permission for an application under section 333 against an adult to be made to the Youth Court if —

(a) an application to the Youth Court has been made, or is to be made, under that section against a youth; and

(b) the Youth Court thinks that it would be in the interests of justice for the applications to be heard together.

(2) The Chief Justice may by criminal procedure rules make provision in relation to a person attaining the age of 18 after proceedings against that person by virtue of section 333, 335 or 336 have begun —

(a) prescribe circumstances in which the proceedings may or must remain in the Youth Court;

(b) make provision for the transfer of the proceedings from the Youth Court to the Magistrate's Court sitting other than as the Youth Court (including provision applying section 336 with modifications).

[UK Sexual Offences Act 2003 s.122K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]

Miscellaneous provisions

343. Power to amend Schedules 3 and 4

(1) The Governor in Council, after consulting the Criminal Justice Council, may by order amend Schedule 3 or Schedule 4.

(2) Subject to subsection (3), an amendment within subsection (4) does not apply to convictions, findings and cautions before the amendment takes effect.

(3) For the purposes of this Part, an amendment within subsection (4) applies to convictions, findings and cautions before as well as after the amendment takes effect.

(4) An amendment is within this subsection if it —

(a) adds an offence;

(b) removes a threshold relating to an offence; or

- (c) changes a threshold in such a way as to cause an offence committed by or against a person of a particular age or in certain circumstances, or resulting in a particular disposal, to be within a Schedule when it would not otherwise be.

[UK Sexual Offences Act 2003 s.130]

344. Schedules: Interpretation

(1) A reference in Schedule 3 or 4 to an offence includes a reference to —

- (a) an attempt or conspiracy to commit that offence;
- (b) encouraging the commission of that offence; and
- (c) aiding and abetting the commission of that offence.

(2) A reference in either Schedule to a person's age is —

- (a) a reference to the person's age at the time of the offence;
- (b) in the case of an indecent photograph - a reference to the person's age when the photograph was taken;
- (c) in any other case - a reference to the person's age at the time of the offence.

[UK Sexual Offences Act 2003 Sched.3]

345. Schedules: Offences with thresholds

(1) This section applies to an offence which is listed in Schedule 3 or 4 subject to a condition relating to the way in which the defendant is dealt with in respect of the offence or (if a relevant finding has been made in respect of the defendant) in respect of the finding (a "sentencing condition").

(2) If an offence is listed subject to a sentencing condition or a condition of another description, this section applies only to the offence as listed subject to that condition.

(3) For the purposes of this Part (including in particular section 298(4)) —

- (a) a person is to be regarded as convicted of an offence to which this section applies; or
- (b) (as the case may be) a relevant finding in relation to such an offence is to be regarded as made,

at the time when the sentencing condition is met.

(4) In the following subsections, references to a foreign offence are references to an act which—

- (a) constituted an offence under the law in force in a place outside the Falkland Islands ("the relevant foreign law"); and

(b) would have constituted an offence to which this section applies if it had been done in the Falkland Islands.

(5) In relation to a foreign offence, references to the corresponding the Falkland Islands offence are references to the offence (or any offence) to which subsection (4)(b) applies in the case of that foreign offence.

(6) For the purposes of this Part, a person is to be regarded as convicted under the relevant foreign law of a foreign offence at the time when the person is, in respect of the offence, dealt with under that law in a way equivalent to that mentioned in Schedule 3 as it applies to the corresponding the Falkland Islands offence.

(7) If in the case of any person a court exercising jurisdiction under the relevant foreign law makes in respect of a foreign offence a finding equivalent to a relevant finding, the court's finding is, for the purposes of this Part, to be regarded as made at the time when the person is, in respect of the finding, dealt with under that law in a way equivalent to that mentioned in Schedule 3 as it applies to the corresponding the Falkland Islands offence.

[UK Sexual Offences Act 2003 s.132]

346. Saving for orders, etc. under the Sexual Offences Ordinance

(1) Notwithstanding the repeal by this Ordinance of the Sexual Offences Ordinance 2005, any notification given, and any order or direction made in respect of such notification, under Part 2 of the UK Sexual Offences Act 2003 as applied to the Falkland Islands by the Schedule to that Ordinance continues in effect as if made under the equivalent provisions of this Part.

(2) If a court has before the commencement of this Part made in respect of a person a RSHO, a SOPO or a foreign travel order under the Sexual Offences Act 2003 as applied to the Falkland Islands by the Sexual Offences Ordinance 2005, the order continues to have effect in accordance with its terms and that Act, notwithstanding the repeal of that Ordinance, but subject to subsection (3).

(3) If a court makes a SHPO or a SRO on a person in respect of whom a RSHO, SOPO or foreign travel order under the Sexual Offences Act 2003 is in force, the earlier order ceases to have effect unless the court orders otherwise.

[UK Sexual Offences Act 2003 s.136ZB ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5 adapted]

PART 12 - THEFT AND FRAUD

347. Interpretation of Part

(1) In this Part, unless the context otherwise requires —

“gain” and “loss” are to be construed as extending only to gain or loss in money or other property, but as extending to any such gain or loss whether temporary or permanent;

“gain” includes a gain by keeping what one has, as well as a gain by getting what one has not;

“loss” includes a loss by not getting what one might get, as well as a loss by parting with what one has;

“goods”, unless the context otherwise requires, includes money and every other description of property except land, and includes things severed from the land by stealing;

“trustee” means a trustee on an express trust created by a deed, will or instrument in writing and includes —

(a) the heir or personal representative of any such trustee and any other person on or to whom the duty of such trust has devolved or come; and

(b) an executor and administrator and an official receiver, trustee, assignee, liquidator or similar officer acting under any written law relating to joint stock companies or bankruptcy;

(2) Sections 352(1) and 353(1) apply generally for the purposes of this Part as they apply for the purposes of section 348.

[UK Theft Act 1968 s.34]

Offence of theft

348. Offence of theft

(1) A person who dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it commits theft; and “thief” and “steal” are to be construed accordingly.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) It is immaterial whether the appropriation is made with a view to gain, or is made for the thief's own benefit.

(3) Sections 349 to 353 have effect as regards the interpretation and operation of this section (and, except as otherwise provided by this Part, apply only for purposes of this section).

[UK Theft Act 1968 ss.1 and 7]

349. “Dishonestly”

(1) A person's appropriation of property belonging to another is not to be regarded as dishonest if the person who appropriates the property —

(a) believes that that person has in law the right to deprive the other of it, on behalf of the person who appropriates or of a third person;

(b) believes that that person would have the other's consent if the other knew of the appropriation and the circumstances of it; or

(c) (unless the property came to that person as trustee or personal representative) believes that the person to whom the property belongs cannot be discovered by taking reasonable steps.

(2) A person's appropriation of property belonging to another may be dishonest even if the person who appropriates is willing to pay for the property.

[UK Theft Act 1968 s.2]

350. "Appropriates"

(1) Any assumption by a person of the rights of an owner amounts to an appropriation, and this includes, if the person has come by the property (innocently or not) without stealing it, any later assumption of a right to it by keeping or dealing with it as owner.

(2) If property or a right or interest in property is or purports to be transferred for value to a person acting in good faith, no later assumption by that person of rights which that person believed that person was acquiring amounts, by reason of any defect in the transferor's title, to theft of the property.

[UK Theft Act 1968 s.3]

351. "Property"

(1) In this Part, "property" includes money and all other property, real or personal, including things in action and other intangible property.

(2) A person cannot steal land, or things forming part of land and severed from it by that person or by that person's directions, except when that person —

(a) is a trustee or personal representative, or is authorised by power of attorney, or as liquidator of a company, or otherwise, to sell or dispose of land belonging to another, and appropriates the land or anything forming part of it by dealing with it in breach of the confidence reposed in that person; or

(b) is not in possession of the land and appropriates anything forming part of the land by severing it or causing it to be severed, or after it has been severed; or

(c) being in possession of the land under a tenancy, appropriates the whole or part of any fixture or structure let to be used with the land.

(3) For the purposes of subsection (2) —

(a) "land" does not include incorporeal hereditaments;

(b) "tenancy" means a tenancy for years or any less period and includes an agreement for such a tenancy, but a person who after the end of a tenancy remains in possession as statutory tenant or otherwise is to be treated as having possession under the tenancy;

(c) "let" is to be construed accordingly.

(4) A person who picks mushrooms growing wild on any land, or who picks flowers, fruit or foliage from a plant growing wild on any land, does not (although not in possession of the land) steal what is picked, unless the person does it for reward or for sale or other commercial purpose.

(5) For purposes of subsection (4) “mushroom” includes any fungus, and “plant” includes any shrub or tree.

(6) Wild creatures, tamed or untamed, are to be regarded as property; but a person cannot steal a wild creature not tamed nor ordinarily kept in captivity, or the carcase of any such creature, unless either it has been reduced into possession by or on behalf of another person and possession of it has not since been lost or abandoned, or another person is in course of reducing it into possession.

[UK Theft Act 1968 s.4]

352. “Belonging to another”

(1) Property is to be regarded as belonging to any person having possession or control of it, or having in it any proprietary right or interest (not being an equitable interest arising only from an agreement to transfer or grant an interest).

(2) If property is subject to a trust, the persons to whom it belongs are to be regarded as including any person having a right to enforce the trust, and an intention to defeat the trust is to be regarded accordingly as an intention to deprive of the property any person having that right.

(3) If a person receives property from or on account of another person, and is under an obligation to the other to retain and deal with that property or its proceeds in a particular way, the property or proceeds is to be regarded (as against that person) as belonging to the other.

(4) If a person gets property by another person’s mistake, and is under an obligation to make restoration (in whole or in part) of the property or its proceeds or of the value thereof, then to the extent of that obligation the property or proceeds are to be regarded (as against the person who gets the property) as belonging to the person entitled to restoration, and an intention not to make restoration is to be regarded accordingly as an intention to deprive that person of the property or proceeds.

(5) Property of a corporation sole is to be regarded as belonging to the corporation notwithstanding a vacancy in the corporation.

[UK Theft Act 1968 s.5]

353. “With the intention of permanently depriving the other of it”

(1) If a person (‘A’) appropriates property belonging to another person (‘B’) without meaning B permanently to lose the thing itself —

(a) A is to be regarded as having the intention of permanently depriving B of it if A’s intention is to treat the thing as A’s own to dispose of regardless of B’s rights; and

(b) a borrowing or lending of it may amount to so treating it if, but only if, the borrowing or lending is for a period and in circumstances making it equivalent to an outright taking or disposal.

(2) Without limiting subsection (1), if A, having possession or control (lawfully or not) of property belonging to B, parts with the property under a condition as to its return which A may not be able to perform, this (if done for purposes of A's own and without B's authority) amounts to treating the property as A's own to dispose of regardless of B's rights.

[UK Theft Act 1968 s.6]

Robbery, burglary, etc.

354. Robbery

(1) A person who —

(a) steals; and

(b) immediately before or at the time of doing so, and in order to do so, uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force,

commits robbery.

Penalty: Imprisonment for 18 years or a fine, or both.

(2) A person who assaults another person with intent to rob that person commits an offence.

Penalty: Imprisonment for 18 years or a fine, or both.

[UK Theft Act 1968 s.8]

355. Burglary

(1) A person who —

(a) enters any building or part of a building as a trespasser and with intent to commit an offence mentioned in subsection (2); or

(b) having entered any building or part of a building as a trespasser —

(i) steals or attempts to steal anything in the building or that part of it; or

(ii) inflicts or attempts to inflict on any person in the building any grievous bodily harm,

commits burglary.

Penalty: As provided in subsection (4).

(2) The offences referred to in subsection (1)(a) are —

(a) stealing anything in the building or part of a building in question;

(b) inflicting on any person in the building any grievous bodily harm;

(c) doing unlawful damage to the building or anything in it.

(3) References in subsections (1) and (2) to a building, and the reference in subsection (3) to a building which is a dwelling, apply also to an inhabited vehicle or vessel, and apply to any such vehicle or vessel at times when the person having a habitation in it is not there as well as at times when the person is there.

4) The maximum penalty on conviction for burglary is —

(a) imprisonment for 10 years or a fine, or both; or

(b) if the burglary was in a dwelling-house - imprisonment for 14 years or a fine, or both.

[UK Theft Act 1968 s.9]

356. Aggravated burglary

(1) A person who commits any burglary and has with him or her at the time any firearm or imitation firearm, any weapon of offence, or any explosive, commits aggravated burglary.

Penalty: Imprisonment for 18 years or a fine, or both.

(2) For the purpose of subsection (1) —

“firearm” includes an airgun or air pistol;

“imitation firearm” means anything which has the appearance of being a firearm, whether capable of being discharged or not;

“weapon of offence” means any article made or adapted for use for causing injury to or incapacitating a person, or intended by the person who has it with him or her for such use; and

“explosive” means any article manufactured for the purpose of producing a practical effect by explosion, or intended by the person who has it with him or her for that purpose.

[UK Theft Act 1968 s.10]

357. Going equipped for stealing etc.

(1) A person who, when not at his or her place of abode, has with him or her any article for use in the course of or in connection with any burglary or theft commits an offence.

Penalty: Imprisonment for 3 years or a fine, or both.

(2) If a person is charged with an offence under this section, proof that the person had with him or her any article made or adapted for use in committing a burglary or theft is evidence that the person had it with him or her for such use.

(3) For purposes of this section an offence under section 363 of taking a conveyance is to be treated as theft.

[UK Theft Act 1968 s.25 as am. by Fraud Act 2006]

358. Theft of or from mails outside the Falkland Islands, and robbery, etc. on such a theft

(1) If a person —

(a) steals or attempts to steal any mail bag or postal packet in the course of transmission to or from the Falkland Islands, or any of the contents of such a mail bag or postal packet; or

(b) in stealing or with intent to steal any such mail bag or postal packet or any of its contents, commits any robbery, attempted robbery or assault with intent to rob,

then, even though the act is done outside the Falkland Islands, the person is guilty of committing or attempting to commit the offence against the relevant provision of this Part as if it were done in the Falkland Islands, and is liable to be prosecuted, tried and punished in the Falkland Islands without proof that the offence was committed there.

(2) For the purposes of this section a postal packet is deemed to be in course of transmission by post from the time of its being delivered to a post office to the time of its being delivered to the person to whom it is addressed.

(3) In this section —

“mail bag” includes any form of container or covering in which postal packets in the course of transmission by post are enclosed by a postal operator in the Falkland Islands or elsewhere for the purpose of conveyance by post;

“postal packet” means a letter, parcel, packet or other article transmissible by post.

[UK Theft Act 1968 s.14; Postal Services Act 2000 s.125]

Offences relating to stolen goods

359. Scope of offences relating to stolen goods

(1) The provisions of this Part relating to goods which have been stolen apply whether the stealing occurred in the Falkland Islands or elsewhere, if the stealing (not being an offence under this Part) amounted to an offence where the goods were stolen; and references to stolen goods are to be construed accordingly.

(2) For the purposes of those provisions, references to stolen goods include, in addition to the goods originally stolen and parts of them (whether in their original state or not) —

(a) any other goods which directly or indirectly represent or have at any time represented the stolen goods in the hands of the thief as being the proceeds of any disposal or realisation of the whole or part of the goods stolen or of goods so representing the stolen goods; and

(b) any other goods which directly or indirectly represent or have at any time represented the stolen goods in the hands of a handler of the stolen goods or any part of them as being the proceeds of any disposal or realisation of the whole or part of the stolen goods handled by the handler or of goods so representing them.

(3) No goods are to be regarded as having continued to be stolen goods after they have been restored to the person from whom they were stolen or to other lawful possession or custody, or after that person and any other person claiming through that person have otherwise ceased as regards those goods to have any right to restitution in respect of the theft.

(4) For purposes of the provisions of this Part relating to goods which have been stolen (including subsections (1) to (3) of this section), goods obtained in the Falkland Islands or elsewhere either by blackmail or, subject to subsection (5), by fraud (within the meaning of section 369) are to be regarded as stolen; and “steal”, “theft” and “thief” are to be construed accordingly.

(5) Subsection (1) applies in relation to goods obtained by fraud.

[UK Theft Act 1968 s.24 as am. by Fraud Act 2006]

360. Handling stolen goods

A person who, otherwise than in the course of stealing, knowing or believing goods to be stolen—

(a) dishonestly receives the goods;

(b) dishonestly undertakes or assists in their retention, removal, disposal or realisation by or for the benefit of another person; or

(c) arranges to do (a) or (b),

commits the offence of handling stolen goods.

Penalty: Imprisonment for 14 years or a fine, or both.

[UK Theft Act 1968 s.22 as am. by Fraud Act 2006]

361. Advertising rewards for return of goods stolen or lost

If any public advertisement of a reward for the return of any goods which have been stolen or lost uses any words to the effect that —

(a) no questions will be asked;

(b) the person producing the goods will be safe from arrest or inquiry; or

(c) money paid for the purchase of the goods or advanced by way of loan on them will be repaid,

the person advertising the reward and any person who prints or publishes the advertisement each commits an offence.

Penalty: A fine at level 3 on the standard scale.

[UK Theft Act 1978 s.23]

362. Search for stolen goods

(1) Subject to subsection (2), if it is made to appear by information on oath before a justice of the peace that there is reasonable cause to believe that any person has in the person's custody or possession or on the person's premises any stolen goods, the justice may grant a warrant to search for and seize the same.

(2) No warrant to search for stolen goods may be addressed to a person other than a police officer except under the authority of an enactment expressly so providing.

(3) A person who under this section is authorised to search premises for stolen goods may —

(a) enter and search the premises; and

(b) seize any goods the person believes to be stolen goods.

(4) This section is to be construed in accordance with section 398.

[UK Theft Act 1968 s.26]

Offences similar to theft

363. Taking a conveyance without authority

(1) Subject to subsections (4) and (7), a person ('A') who, without having the consent of the owner or other lawful authority —

(a) takes a conveyance for the use of A or another person; or

(b) knowing that a conveyance has been taken without such authority, drives it or allows himself or herself to be carried in or on it,

commits an offence.

Penalty: Imprisonment for 3 months or a fine at level 4 on the standard scale, or both.

(2) If on the trial for theft the court is not satisfied that the defendant committed theft, but is satisfied beyond reasonable doubt that the defendant committed an offence under subsection (1)—

(a) the court may convict the defendant of the offence under subsection (1); and

(b) the maximum penalty on conviction is as provided in subsection (1).

(3) Subsection (1) does not apply in relation to pedal cycles.

(4) Subject to subsection (7), a person ('A') who, without having the consent of the owner or other lawful authority —

(a) takes a pedal cycle for the use of A or another person; or

(b) rides a pedal cycle knowing it to have been taken without such authority,

commits an offence.

Penalty: A fine at level 2 on the standard scale.

(5) A person does not commit an offence under this section if the person believes that he or she—

(a) has lawful authority to do the thing; or

(b) would have the owner's consent to do it if the owner knew of the person's doing it and the circumstances.

(6) The court, upon convicting a person of an offence under subsection (1), must order that the person's driver's licence be endorsed with particulars of the conviction and may disqualify the person from holding or obtaining a driver's licence for a period the court thinks fit.

(7) A police officer may arrest without warrant any person whom the officer reasonably suspects of having committed, being in the course of committing, having attempted or being in the course of attempting to commit an offence under this section.

(8) For purposes of this section —

“conveyance” —

(a) means any conveyance constructed or adapted for the carriage of a person or persons by land, water or air; but

(b) does not include a conveyance constructed or adapted for use only under the control of a person not carried in or on it;

“drive” is to be construed accordingly; and

“owner”, in relation to a conveyance which is the subject of a hiring agreement or hire-purchase agreement, means the person in possession of the conveyance under that agreement.

[Road Traffic Ordinance s.30, replacing UK Theft Act 1968 s.12]

364. Aggravated vehicle-taking

(1) Subject to subsection (3), a person ('A') commits aggravated taking of a vehicle if —

(a) A commits an offence under section 363 (in this section referred to as a "basic offence") in relation to a mechanically propelled vehicle; and

(b) it is proved that, at any time after the vehicle was unlawfully taken (whether by A or another person) and before it was recovered, the vehicle was driven, or injury or damage was caused, in one or more of the circumstances set out in paragraphs (a) to (d) of subsection (2).

Penalty: As provided in subsection (4).

(2) The circumstances referred to in subsection (1)(b) are that —

(a) the vehicle was driven dangerously on a road or other public place;

(b) owing to the driving of the vehicle, an accident occurred by which injury was caused to any person;

(c) owing to the driving of the vehicle, an accident occurred by which damage was caused to any property, other than the vehicle;

(d) damage was caused to the vehicle.

(3) A is not guilty of an offence under this section if A proves that, as regards any proven driving, injury or damage as referred to in subsection (1)(b), either —

(a) the driving, accident or damage referred to in subsection (2) occurred before A committed the basic offence; or

(b) A was neither in nor on nor in the immediate vicinity of the vehicle when that driving, accident or damage occurred.

(4) The maximum penalty on conviction for an offence under this section is —

(a) imprisonment for 2 years or a fine, or both; or

(b) if it is proved that, in circumstances falling within subsection (2)(b), the accident caused the death of a person - imprisonment for 14 years or a fine, or both.

(5) If a person who is charged with an offence under this section is found not guilty of that offence but it is proved that the person committed a basic offence, the person may be convicted of the basic offence.

(6) If by virtue of subsection (5) a person is convicted of a basic offence before the Supreme Court, the court has the same powers and duties as the Magistrate's Court or Summary Court would have on convicting the person of such an offence.

(7) For the purposes of this section a vehicle is driven dangerously if —

(a) it is driven in a way which falls far below what would be expected of a competent and careful driver; and

(b) it would be obvious to a competent and careful driver that driving the vehicle in that way would be dangerous.

(8) For the purposes of this section a vehicle is recovered when it is restored to its owner or to other lawful possession or custody.

[UK Theft Act 1968 s.12A ins. by Aggravated Vehicle Taking Act 1992]

365. Removing articles from places open to the public

(1) Subject to subsections (2) to (4), if the public have access to a building in order to view the building or part of it, or a collection or part of a collection housed in it, any person who without lawful authority removes from the building or its grounds the whole or part of any article displayed or kept for display to the public in the building or that part of it or in its grounds commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) For the purpose of subsection (1) —

(a) “collection” includes a collection got together for a temporary purpose; but

(b) references in this section to a collection do not apply to a collection made or exhibited for the purpose of effecting sales or other commercial dealings.

(3) For purposes of subsection (1) —

(a) it is immaterial that the public’s access to a building is limited to a particular period or particular occasion; but

(b) if anything removed from a building or its grounds is there otherwise than as forming part of, or being on loan for exhibition with, a collection intended for permanent exhibition to the public, the person removing it does not thereby commit an offence under this section unless the person removes it on a day when the public have access to the building as mentioned in that subsection.

(4) A person does not commit an offence under this section if the person believes that he or she—

(a) has lawful authority for the removal of the thing in question; or

(b) would have such authority if the person entitled to give it knew of the removal and the circumstances of it.

[UK Theft Act 1968 s.11]

366. Making off without payment

(1) Subject to subsection (3), a person who, knowing that immediate payment for any goods supplied or service done is required or expected from the person, dishonestly makes off without having paid as required or expected and with intent to avoid payment of the amount due commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) For purposes of this section “immediate payment” includes payment at the time of collecting goods on which work has been done or in respect of which service has been provided.

(3) Subsection (1) does not apply in cases in which the supply of the goods or the doing of the service is contrary to law, or in which the service done is such that payment is not legally enforceable.

[UK Theft Act 1978 s.3]

367. Abstracting of electricity

A person who dishonestly —

(a) uses without due authority; or

(b) causes to be wasted or diverted,

any electricity, commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

[UK Theft Act 1968 s.13]

Blackmail

368. Blackmail

(1) A person who —

(a) with a view to gain for that person or another person; or

(b) with intent to cause loss to another person,

makes any unwarranted demand with menaces, commits the offence of blackmail.

Penalty: Imprisonment for 14 years or a fine, or both.

(2) For the purpose of this section, a demand with menaces is unwarranted unless the person making it does so in the belief that —

(a) the person has reasonable grounds for making the demand; and

(b) the use of the menaces is a proper means of reinforcing the demand.

(3) The nature of the act or omission demanded is immaterial, and it is also immaterial whether the menaces relate to action to be taken by the person making the demand.

[UK Theft Act 1968 s.21]

Fraud

369. Offence of fraud

A person who contravenes any of sections 370 to 373 (which provide for different ways of committing the offence) commits the offence of fraud.

Penalty: Imprisonment for 10 years or a fine, or both.

[UK Fraud Act 2006 s.1]

370. Fraud by false representation

(1) A person ('A') is in breach of this section if A —

- (a) dishonestly makes a false representation; and
- (b) intends, by making the representation to —
 - (i) make a gain for A or another person; or
 - (ii) cause loss to another person or to expose another person to a risk of loss.

(2) A representation is false if —

- (a) it is untrue or misleading; and
- (b) the person making it knows that it is, or might be, untrue or misleading.

(3) In this section, "representation" means any representation as to fact or law, including a representation as to the state of mind of —

- (a) the person making the representation; or
- (b) any other person.

(4) For the purposes of this section a representation may be —

- (a) express or implied;
- (b) regarded as made if it (or anything implying it) is submitted in any form to any system or device designed to receive, convey or respond to communications (with or without human intervention).

[UK Fraud Act 2006 s.2]

371. Fraud by failing to disclose information

A person ('A') is in breach of this section if A —

- (a) dishonestly fails to disclose to another person information which A is under a legal duty to disclose; and
- (b) intends, by failing to disclose the information —
 - (i) to make a gain for A or another person; or
 - (ii) to cause loss to another person or to expose another person to a risk of loss.

[UK Fraud Act 2006 s.3]

372. Fraud by abuse of position

(1) A person ('A') is in breach of this section if A —

- (a) occupies a position in which A is expected to safeguard, or not to act against, the financial interests of another person;
- (b) dishonestly abuses that position; and
- (c) intends, by means of the abuse of that position —
 - (i) to make a gain for A or another person; or
 - (ii) to cause loss to another person or to expose another person to a risk of loss.

(2) A may be regarded as having abused A's position even though A's conduct consisted of an omission rather than an act.

[UK Fraud Act 2006 s.4]

373. Possession etc. of articles for use in frauds

A person ('A') who has in the possession or under the control of A any article for use in the course of or in connection with any fraud commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

[UK Fraud Act 2006 s.6]

374. Making or supplying articles for use in frauds

A person who makes, adapts, supplies or offers to supply any article —

- (a) knowing that it is designed or adapted for use in the course of or in connection with fraud; or
- (b) intending it to be used to commit, or assist in the commission of, fraud,

commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.
[UK Fraud Act 2006 s.7]

375. Participating in fraudulent business carried on by sole trader, etc.

(1) A person who is knowingly a party to the carrying on of a business to which this section applies commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) This section applies to a business which is —

(a) not governed by the UK Companies Act 1948 as applied to the Falkland Islands; and

(b) carried on with intent to defraud creditors of any person or for any other fraudulent purpose.

(3) This section is in addition to and does not derogate from any powers of investigation of fraudulent conduct under the UK Companies Act 1948 as applied to the Falkland Islands by section 2 of the Companies and Private Partnership Ordinance and by the Companies (Auditors) Ordinance.

[UK Fraud Act 2006 s.9 adapted]

376. Obtaining services dishonestly

(1) A person ('A') who obtains services for A or another person —

(a) by a dishonest act; and

(b) in breach of subsection (2),

commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) A obtains services in breach of this subsection if —

(a) they are made available on the basis that payment has been, is being or will be made for or in respect of them;

(b) A obtains them without any payment having been made for or in respect of them or without payment having been made in full; and

(c) when A obtains them, A knows that they —

(i) are being made available on the basis described in paragraph (a), or

(ii) might be so made available,

but intends that payment will not be made, or will not be made in full.

[UK Fraud Act 2006 s.11]

377. Fraud: Definitions

(1) For the purposes of sections 369 to 372, “gain” and “loss” —

- (a) extend only to gain or loss in money or other property;
- (b) include any such gain or loss whether temporary or permanent;

and in this context, “property” means any property whether real or personal (including things in action and other intangible property).

(2) For the purposes of —

- (a) sections 373 and 374; and
- (b) the meaning of “prohibited articles” for the purposes of stop and search powers in the Criminal Procedure and Evidence Ordinance 2014,

so far as they relate to articles for use in the course of or in connection with fraud, “article” includes any programme or data held in electronic form.

[UK Fraud Act 2006 s.8 adapted]

378. Fraud: Evidence

(1) A person (‘A’) is not to be excused from —

- (a) answering any question put to A in proceedings relating to property; or
- (b) complying with any order made in proceedings relating to property,

on the ground that doing so may incriminate A or A’s spouse of an offence under any of sections 369 to 376 or a related offence.

(2) In proceedings against a person for an offence under any of sections 369 to 376 or a related offence, a statement or admission made by the person in —

- (a) answering such a question; or
- (b) complying with such an order,

is not admissible in evidence against the person or (unless they married after the making of the statement or admission) the person’s spouse.

(3) In this section —

“proceedings relating to property” means any proceedings for —

- (a) the recovery or administration of any property;
- (b) the execution of a trust; or
- (c) an account of any property or dealings with property,

“property” means money or other property whether real or personal (including things in action and other intangible property);

“related offence” means —

- (a) conspiracy to defraud;
- (b) any other offence involving any form of fraudulent conduct or purpose.

[UK Fraud Act 2006 s.13]

Offences similar to fraud

379. False accounting

(1) A person (‘A’) who dishonestly, with a view to gain for A or another person or with intent to cause loss to another person —

- (a) destroys, defaces, conceals or falsifies any account or any record or document made or required for any accounting purpose; or
- (b) in furnishing information for any purpose produces or makes use of any account, or any such record or document as aforesaid, which to A’s knowledge is or may be misleading, false or deceptive in a material particular,

commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) For purposes of this section a person who —

- (a) makes or concurs in making in an account or other document an entry which is or may be misleading, false or deceptive in a material particular; or
- (b) omits or concurs in omitting a material particular from an account or other document,

is to be treated as falsifying the account or document.

[UK Theft Act 1968 s.17]

380. False statements by company directors, etc.

(1) An officer of a corporate body or unincorporated association (or person purporting to act as such) who, with intent to deceive members or creditors of the corporate body or association about its affairs, publishes or concurs in publishing a written statement or account which to the

officer's knowledge is or may be misleading, false or deceptive in a material particular, commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) For the purposes of this section a person who has entered into a security for the benefit of a corporate body or association is to be treated as a creditor of it.

(3) If the affairs of a corporate body or association are managed by its members, this section applies to any statement which a member publishes or concurs in publishing in connection with the member's or her functions of management as if the member were an officer of the corporate body or association.

[UK Theft Act 1968 s.19]

381. Suppression etc. of documents

(1) A person ('A') who dishonestly, with a view to gain for A or another person, or with intent to cause loss to another person, destroys, defaces or conceals —

(a) any valuable security;

(b) any will or other testamentary document; or

(c) any original document of or belonging to, or filed or deposited in, any court of justice or any government department,

commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) In this section, "valuable security" means any document —

(a) creating, transferring, surrendering or releasing any right to, in or over property;

(b) authorising the payment of money or delivery of any property; or

(c) evidencing the creation, transfer, surrender or release of any such right, or the payment of money or delivery of any property, or the satisfaction of any obligation.

[UK Theft Act 1968 s.20]

382. Dishonestly retaining a wrongful credit

(1) A person commits an offence if —

(a) a wrongful credit has been made to an account kept by the person or in respect of which the person has any right or interest;

(b) the person knows or believes that the credit is wrongful; and

- (c) the person dishonestly fails to take such steps as are reasonable in the circumstances to secure that the credit is cancelled.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) A credit to an account is wrongful to the extent that it derives from —

- (a) theft;
- (b) blackmail;
- (c) fraud (contrary to section 369); or
- (d) stolen goods.

(3) In determining whether a credit to an account is wrongful, it is immaterial whether the account is overdrawn before or after the credit is made.

(4) In this section —

“account” means an account kept with —

- (a) a bank;
- (b) a person carrying on a business which falls within subsection (5); or
- (c) an issuer of electronic money (as defined in Part 2 of the UK Financial Services and Markets Act 2000 as applied to the Falkland Islands);

“credit” means a credit of an amount of money;

“stolen goods” include money which is dishonestly withdrawn from an account to which a wrongful credit has been made, but only to the extent that the money derives from the credit.

(5) A business falls within this subsection if —

- (a) in the course of the business money received by way of deposit is lent to others; or
- (b) any other activity of the business is financed, wholly or to any material extent, out of the capital of or the interest on money received by way of deposit.

(6) For the purpose of subsection (5) —

- (a) references to a deposit must be read with Part 2 of the UK Financial Services and Markets Act 2000 as applied to the Falkland Islands;

(b) any restriction on the meaning of “deposit” which arises from the identity of the person making it is to be disregarded;

(c) all the activities which a person carries on by way of business are to be regarded as a single business carried on by that person; and

(d) “money” includes money expressed in a currency other than sterling.

[UK Theft Act 1968 s.24A inserted by Theft (Am.) Act 1996]

383. Cheating the public revenue

It is an offence for a person to —

(a) make a false statement relating to tax, whether in writing or not, with intent to defraud the public revenue;

(b) deliver or cause to be delivered a false document relating to tax, with similar intent;

(c) fail to register for tax or to make the requisite returns and payments when due; or

(d) otherwise engage in fraudulent conduct (whether similar to the conduct mentioned in paragraphs (a) to (c) or not) which diverts taxation money from the public revenue or deprives it of taxation money to which it is entitled.

Penalty: Imprisonment for 14 years or a fine, or both.

[Common law]

Miscellaneous provisions

384. Prohibition on interception

(1) A person (‘A’) who intentionally intercepts a communication in the course of its transmission by post or by means of a public telecommunications system commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) It is a defence for A to prove —

(a) that at the time of the alleged offence A had reasonable grounds for believing that the person to whom, or the person by whom, the communication was sent has consented to the interception;

(b) the communication was intercepted for purposes connected with the provision of postal or public telecommunication services or with the enforcement of any enactment relating to the use of those services; or

(c) the communication was being transmitted by wireless telegraphy and was intercepted with lawful authority for purposes connected with the issue of licences under the Telecommunications Ordinance or detection of interference with wireless telegraphy.

(3) No proceedings for an offence under subsection (1) may be brought except by or with the consent of the Attorney General.

[Crimes Ord. s.30; UK Regulation of Investigatory Powers Act 2000, s.1]

385. Procedure and evidence on charge of theft or handling stolen goods

(1) Any number of persons may be charged in one indictment, with reference to the same theft, with having at different times or at the same time handled all or any of the stolen goods, and the persons so charged may be tried together.

(2) On the trial of 2 or more persons charged for jointly handling any stolen goods, the court may find any of the defendants guilty if the court is satisfied that the person handled all or any of the stolen goods, whether or not the person did so jointly with the other defendant or any of them.

(3) If a person is being proceeded against for handling stolen goods (but not for any offence other than handling stolen goods), then at any stage of the proceedings, if evidence has been given of that person's having or arranging to have in that person's possession the goods the subject of the charge, or of that person's undertaking or assisting in, or arranging to undertake or assist in, their retention, removal, disposal or realisation, the following evidence is admissible for the purpose of proving that the person knew or believed the goods to be stolen goods —

(a) evidence that the person has had in that person's possession, or has undertaken or assisted in the retention, removal, disposal or realisation of, stolen goods from any theft taking place not earlier than 12 months before the offence charged; and

(b) if 7 days' notice in writing has been given to the person of the intention to prove the conviction - evidence that the person has within the 5 years preceding the date of the offence charged been convicted of theft or of handling stolen goods.

(4) In any proceedings for the theft of anything in the course of transmission (whether by post or otherwise), or for handling stolen goods from such a theft, a statutory declaration made by any person that that person despatched or received or failed to receive any goods or postal packet, or that any goods or postal packet when despatched or received by that person were in a particular state or condition, is admissible as evidence of the facts stated in the declaration, subject to the following conditions —

(a) a statutory declaration is only admissible if and to the extent to which oral evidence to the like effect would have been admissible in the proceedings; and

(b) a statutory declaration is only admissible if at least 7 days before the hearing or trial a copy of it has been given to the person charged, and that person has not, at least 3 days before the hearing or trial or within any further time the court in special circumstances allows, given the prosecutor written notice requiring the attendance at the hearing or trial of the person making the declaration.

(5) This section is to be construed in accordance with section 359.

[UK Theft Act 1968 s.27]

386. Effect on civil proceedings and rights

(1) A person is not to be excused from —

(a) answering any question put to the person in proceedings for the recovery or administration of any property, for the execution of any trust or for an account of any property or dealings with property; or

(b) complying with any order made in any such proceedings,

on the ground that do so may incriminate the person or the person's spouse or civil partner of an offence under this Part.

(2) No statement or admission made by a person in answering a question put or complying with an order made pursuant to subsection (1) is, in proceedings for an offence under this Part, admissible in evidence against the person or (unless they married or became civil partners after the making of the statement or admission) against the person's spouse or civil partner.

(3) Regardless of any enactment to the contrary, if property has been stolen or obtained by fraud or other wrongful means, the title to that or any other property is not affected by reason only of the conviction of the offender.

[UK Theft Act 1968 s.31]

PART 13 - FORGERY AND COUNTERFEITING

387. Interpretation of Part

In this Part, unless the context otherwise requires —

“currency note” means any note —

(a) which —

(i) has been issued by the relevant authority in the Falkland Islands or the United Kingdom;

(ii) is or has been customarily used as money in the Falkland Islands; and

(iii) is payable on demand; or

(b) which —

(i) has been issued by the relevant authority in some country other than the Falkland Islands; and

(ii) is customarily used as money in that or another country;

“protected coin” means any coin which —

- (a) is customarily used as money in any country; or
- (b) is specified in an order made by the relevant authority for the purposes of this Part;

“Register” means the register kept at the Central Registry pursuant to the Registration Ordinance;

“relevant authority”, in relation to a coin or a currency note of any particular description, means the authority empowered by law to issue those coins, or notes of that description, as the case may be;

“revenue stamp” means a stamp for denoting any duty or fee, whether an adhesive stamp or a stamp impressed by means of a die;

“share certificate” means an instrument entitling or evidencing the title of a person to a share or interest —

- (a) in any public stock, annuity, fund or debt of any government or territory, including a territory which forms part of a state; or
- (b) in any stock, fund or debt of a body (whether corporate or unincorporated) established in the Falkland Islands or elsewhere.

[UK Forgery & Counterfeiting Act 1981 passim; Stamp Duties Act 1981 s.127]

Forgery and kindred offences

388. Meaning of “instrument”

(1) Subject to subsection (2), in this Part “instrument” means —

- (a) any document, whether of a formal or informal character;
- (b) any stamp issued or sold by a postal operator;
- (c) any revenue stamp; and
- (d) any disc, tape, sound track or other device on or in which information is recorded or stored by mechanical, electronic or other means.

(2) A currency note as defined in section 387 is not an instrument for the purposes of this Part.

(3) A mark denoting payment of postage which the postal operator authorises to be used instead of an adhesive stamp is to be treated for the purposes of this Part as if it were a stamp issued by the postal operator concerned.

[UK Forgery & Counterfeiting Act 1981 s.8]

389. Meaning of “false” and “making”

(1) An instrument is false for the purposes of this Part if it purports to have been —

- (a) made in the form in which it is made by a person who did not in fact make it in that form;
- (b) made in the form in which it is made on the authority of a person who did not in fact authorise its making in that form;
- (c) made in the terms in which it is made by a person who did not in fact make it in those terms;
- (d) made in the terms in which it is made on the authority of a person who did not in fact authorise its making in those terms;
- (e) altered in any respect by a person who did not in fact alter it in that respect;
- (f) altered in any respect on the authority of a person who did not in fact authorise the alteration in that respect;
- (g) made or altered on a date on which, or at a place at which, or otherwise in circumstances in which, it was not in fact made or altered; or
- (h) made or altered by an existing person who did not in fact exist.

(2) A person is to be treated for the purposes of this Part as making a false instrument if the person alters an instrument so as to make it false in any respect (whether or not it is false in some other respect apart from that alteration).

[UK Forgery & Counterfeiting Act 1981 s.9]

390. Meaning of “prejudice” and “induce”

(1) Subject to subsections (2) and (4), for the purposes of this Part an act or omission intended to be induced is to a person’s prejudice if, and only if, it is one which, if it occurs, will —

- (a) result in the person —
 - (i) losing the property temporarily or permanently;
 - (ii) being deprived of an opportunity to earn remuneration or greater remuneration; or
 - (iii) being deprived of an opportunity to gain a financial advantage otherwise than by way of remuneration; or
- (b) result in somebody being given an opportunity to —
 - (i) earn remuneration or greater remuneration from the person; or

- (ii) gain a financial advantage from the person otherwise than by way of remuneration; or
- (c) be the result of the person having accepted a false instrument as genuine, or a copy of a false instrument as a copy of a genuine one, in connection with the person's performance of any duty.
- (2) Doing something that a person has an enforceable duty to do and omitting to do something that a person is not entitled to do are to be disregarded for the purposes of this Part.
- (3) In this Part references to inducing somebody to accept a false instrument as genuine, or a copy of a false instrument as a copy of a genuine one, include references to inducing a machine to respond to the instrument or copy as if it were a genuine instrument or, as the case may be, a copy of a genuine one.
- (4) If subsection (3) applies, the act or omission intended to be induced by the machine responding to the instrument or copy is to be treated as an act or omission to a person's prejudice.
- (5) In this section, "loss" includes not getting what one might get as well as parting with what one has.

[UK Forgery & Counterfeiting Act 1981 s.10]

391. Forgery

A person ('A') who makes a false instrument, with the intention that A or another person will use it to induce somebody ('B') to accept it as genuine, and by reason of so accepting it to do or not to do some act to the prejudice of B or any other person, commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

[UK Forgery & Counterfeiting Act 1981 ss.1 and 6]

392. Copying a false instrument

A person ('A') who makes a copy of an instrument which is, and which A knows or believes to be, a false instrument, with the intention that A or another will use it to induce somebody ('B') to accept it as a copy of a genuine instrument, and by reason of so accepting it to do or not to do some act to the prejudice of B or any other person, commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

[UK Forgery & Counterfeiting Act 1981 ss.2 and 6]

393. Using a false instrument

A person ('A') who uses an instrument which is, and which A knows or believes to be, false, with the intention of inducing somebody ('B') to accept it as genuine, and by reason of so accepting it to do or not to do some act to the prejudice of B or any other person, commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

[UK Forgery & Counterfeiting Act 1981 ss.3 and 6]

394. Using a copy of a false instrument

A person ('A') who uses a copy of an instrument which is, and which A knows or believes to be, a false instrument, with the intention of inducing somebody ('B') to accept it as a copy of a genuine instrument, and by reason of so accepting it to do or not to do some act to the prejudice of B any other person, commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

[UK Forgery & Counterfeiting Act 1981 ss.4 and 6]

395. Offences relating to money orders, share certificates, passports, etc.

(1) A person ('A') who has in A's custody or under A's control an instrument to which this section applies which is, and which A knows or believes to be, false, with the intention that A or another person will use it to induce somebody ('B') to accept it as genuine, and by reason of so accepting it to do or not to do some act to the prejudice of B or any other person, commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) A person ('A') who has in A's custody or under A's control, without lawful authority or excuse, an instrument to which this section applies which is, and which A knows or believes to be, false, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(3) A person ('A') who makes or has in A's custody or under A's control a machine or implement, or paper or any other material, which to A's knowledge is or has been specially designed or adapted for the making of an instrument to which this section applies, with the intention —

(a) that A or another person will make an instrument to which this section applies which is false; and

(b) that A or another person will use the instrument to induce somebody ('B') to accept it as genuine, and by reason of so accepting it to do or not to do some act to the prejudice of B or any other person,

commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

(4) A person ('A') who makes or has in A's custody or under A's control any machine, implement, paper or material as described in subsection (3), without lawful authority or excuse, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(5) The instruments to which this section applies are —

(a) money orders;

(b) postal orders;

- (c) Falkland Islands postage stamps;
- (d) revenue stamps;
- (e) share certificates;
- (f) passports and documents which can be used instead of passports;
- (g) cheques;
- (h) travellers' cheques;
- (i) cheque cards;
- (j) credit cards;
- (k) certified copies relating to an entry in the Register; and
- (l) certificates relating to entries in the Register.

[UK Forgery & Counterfeiting Act 1981 ss.5 and 6 adapted]

396. Abolition of offence of forgery at common law

The offence of forgery at common law is abolished for all purposes except in relation to offences committed before the commencement of this Part.

[UK Forgery & Counterfeiting Act 1981 s.13]

Counterfeiting and kindred offences

397. Counterfeiting notes and coins

(1) A person ('A') who makes a counterfeit of a currency note or of a protected coin, intending that A or another person will pass or tender it as genuine, commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) A person who, without lawful authority or excuse, makes a counterfeit of a currency note or of a protected coin commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

[UK Forgery & Counterfeiting Act 1981 ss.14 and 22]

398. Passing, etc. counterfeit notes and coins

(1) A person ('A') who —

- (a) passes or tenders as genuine anything which is, and which A knows or believes to be, a counterfeit of a currency note or of a protected coin; or

(b) delivers to another anything which is, and which A knows or believes to be, such a counterfeit, intending that the person to whom it is delivered or another will pass or tender it as genuine,

commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) A person ('A') who, without lawful authority or excuse, delivers to another person anything which is, and which A knows or believes to be, a counterfeit of a currency note or of a protected coin, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

[UK Forgery & Counterfeiting Act 1981 ss.15 and 22]

399. Custody or control of counterfeit notes and coins

(1) A person ('A') who has in A's custody or under A's control anything which is, and which A knows or believes to be, a counterfeit of a currency note or of a protected coin, intending either to pass or tender it as genuine or to deliver it to another person ('B') with the intention that A or B will pass or tender it as genuine, commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) A person ('A') who, without lawful authority or excuse, has in A's custody or under A's control anything which is, and which A knows or believes to be, a counterfeit of a currency note or of a protected coin, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(3) It is immaterial for the purposes of subsections (1) and (2) that —

(a) that a coin or note is not in a fit state to be passed or tendered; or

(b) that the making or counterfeiting of a coin or note has not been finished or perfected.

[UK Forgery & Counterfeiting Act 1981 ss.16 and 22]

400. Making, etc. of counterfeiting materials and implements

(1) A person ('A') who —

(a) makes; or

(b) has in A's custody or under A's control,

anything which A intends to use, or to permit any other person to use, for the purpose of making a counterfeit of a currency note or of a protected coin with the intention that it be passed or tendered as genuine, commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) A person ('A') who, without lawful authority or excuse —

(a) makes; or

(b) has in A's custody or under A's control,

anything which, to A's knowledge, is or has been specially designed or adapted for the making of a counterfeit of a currency note, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(3) Subject to subsection (4), a person ('A') who —

(a) makes; or

(b) has in A's custody or under A's control,

any implement which, to A's knowledge, is capable of imparting to anything a resemblance —

(i) to the whole or part of either side of a protected coin; or

(ii) to the whole or part of the reverse of the image on either side of a protected coin,

commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(4) It is a defence for a person ('A') charged with an offence under subsection (3) to show that A—

(a) made the implement or, as the case may be, had it in A's custody or under A's control, with the written consent of the relevant authority; or

(b) had lawful authority otherwise than by virtue of paragraph (a), or a lawful excuse, for making it or having it in A's custody or under A's control.

[UK Forgery & Counterfeiting Act 1981 ss.17 and 22]

401. Meaning of “counterfeit”

(1) For the purposes of this Part a thing is a counterfeit of a currency note or of a protected coin if —

(a) it is not a currency note or a protected coin but resembles a currency note or protected coin (whether on one side only or on both) to such an extent that it is reasonably capable of passing for a currency note or protected coin of that description; or

(b) it is a currency note or protected coin which has been so altered that it is reasonably capable of passing for a currency note or protected coin of some other description.

(2) For the purpose of this Part —

(a) a thing consisting of one side only of a currency note, with or without the addition of other material is a counterfeit of such a note;

(b) a thing consisting —

(i) of parts of 2 or more currency notes; or

(ii) of parts of a currency note, or of parts of 2 or more currency notes, with the addition of other material,

is capable of being a counterfeit of a currency note.

(3) References in this Part to passing or tendering a counterfeit of a currency note or a protected coin are not to be construed as confined to passing or tendering it as legal tender.

[UK Forgery & Counterfeiting Act 1981 s.28]

402. Reproducing currency notes

(1) A person who reproduces any currency note or any part of a currency note, without the previous consent in writing of the relevant authority, commits an offence.

Penalty: A fine.

(2) Subsection (1) applies to reproduction on any substance whatsoever, and whether or not on the correct scale.

[UK Forgery & Counterfeiting Act 1981 ss.18 and 22 adapted]

403. Making, etc. imitation protected coins

(1) A person ('A') who —

(a) makes an imitation protected coin in connection with a scheme intended to promote the sale of any product or the making of contracts for the supply of any service; or

(b) sells or distributes imitation protected coins in connection with any such scheme, or has imitation coins in A's custody or under A's control with a view to such sale or distribution,

commits an offence, unless the relevant authority has previously consented in writing to the sale or distribution of such imitation coins in connection with that scheme.

Penalty: A fine.

(2) In this section "imitation protected coin" means anything which resembles a protected coin in shape, size and the substance of which it is made.

[UK Forgery & Counterfeiting Act 1981 ss.19 and 22]

404. Prohibition of importation or exportation of counterfeit notes and coins

(1) A person who imports, lands, loads or unloads a counterfeit of a currency note or of a protected coin without the consent of the relevant authority commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) A person who exports a currency note or protected coin without the consent of the relevant authority commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(3) Without affecting subsection (1) or (2), the importation or exportation of a counterfeit of a currency note or of a protected coin without the consent of the relevant authority is prohibited as if such counterfeit were prohibited by an order of the Governor made under section 143 of the Customs Ordinance and the penalty were as specified in subsection (1) above.

[UK Forgery & Counterfeiting Act 1981 ss.20 to 22 adapted]

Identity documents offences

405. Possession of false identity documents, etc.

(1) It is an offence for a person ('A') with an improper intention to have in A's possession or under A's control —

(a) an identity document that is false and that A knows or believes to be false;

(b) an identity document that was improperly obtained and that A knows or believes to have been improperly obtained; or

(c) an identity document that relates to another person.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) Each of the following is an improper intention for the purpose of subsection (1) —

(a) the intention of using the document for establishing personal information about A;

(b) the intention of allowing or inducing another to use it for establishing, ascertaining or verifying personal information about A or anyone else.

(3) In subsection (2)(b) the reference to A or anyone else does not include, in the case of a document within subsection (1)(c), the individual to whom it relates.

[UK Identity Documents Act 2010 s.4]

406. Apparatus for the making of false identity documents

(1) It is an offence for a person ('A') with the prohibited intention to make, or to have in A's possession or under A's control —

(a) any apparatus which, to A's knowledge, is or has been specially designed or adapted for the making of false identity documents; or

(b) any article or material which, to A's knowledge, is or has been specially designed or adapted to be used in the making of false identity documents.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) The prohibited intention for the purpose of subsection (1) is the intention —

(a) that A or another person will make a false identity document; and

(b) that the document will be used by some person for establishing, ascertaining or verifying personal information about any person.

[UK Identity Documents Act 2010 s.5]

407. Possession of false identity documents etc without reasonable excuse

It is an offence for a person ('A') to have in A's possession or under A's control, without reasonable excuse —

(a) an identity document that is false;

(b) an identity document that was improperly obtained;

(c) an identity document that relates to another person;

(d) any apparatus which, to A's knowledge, is or has been specially designed or adapted for the making of false identity documents or to be used in the making of such documents; or

(e) any article or material which, to A's knowledge, is or has been specially designed or adapted to be used in the making of such documents.

Penalty: Imprisonment for 2 years or a fine, or both.

[UK Identity Documents Act 2010 s.6]

408. False identity documents: Supplementary

(1) In sections 405 to 407 "identity document" means any document that is, or purports to be —

(a) an immigration document;

(b) a United Kingdom passport;

(c) a passport issued by or on behalf of the authorities of a country or territory outside the United Kingdom or by or on behalf of an international organisation;

(d) a document that can be used (in some or all circumstances) instead of a passport;

(e) a Falkland Islands or United Kingdom driving licence; or

(f) a driving licence issued by or on behalf of the authorities of a country or territory outside the United Kingdom.

(2) The Governor may by order amend the list of documents in subsection (1).

(3) In subsection (1), "immigration document" means —

(a) a document used for confirming the right of a person under the EU Treaties in respect of entry or residence in the United Kingdom or the Falkland Islands;

(b) a document that is given in exercise of immigration functions and records information about leave granted to a person to enter or to remain in the United Kingdom or the Falkland Islands.

(4) In subsection (1) “residential status” of a person means —

(a) the person’s nationality;

(b) the person’s entitlement to remain in the Falkland Islands; and

(c) if that entitlement derives from a grant of leave to enter or remain in the Falkland Islands, the terms and conditions of that leave.

(5) In sections 405 and 406, “personal information” in relation to a person means —

(a) the person’s full name;

(b) other names by which the person is or has previously been known;

(c) the person’s gender;

(d) the person’s date and place of birth;

(e) external characteristics of the person that are capable of being used for identifying the person;

(f) the address of the person’s principal place of residence in the Falkland Islands;

(g) the address of every other place in the Falkland Islands or elsewhere where the person has a place of residence;

(h) where in the Falkland Islands and elsewhere the person has previously been resident;

(i) the times at which the person was resident at different places in the Falkland Islands or elsewhere;

(j) the person’s current residential status;

(k) residential statuses previously held by the person;

(l) information about any numbers allocated to the person for identification purposes and about the documents (including stamps or labels) to which they relate.

(6) For the purposes of sections 405 to 407 and this section —

- (a) the term “apparatus” includes any equipment, machinery or device and any wire or cable, together with any software used with it;
- (b) an identity document is “false” only if it is false within the meaning of section 389;
- (c) the term “false” information includes information containing any inaccuracy or omission that results in a tendency to mislead;
- (d) an identity document was “improperly obtained” if —
 - (i) false information was provided in, or in connection with, the application for its issue to the person who issued it, or
 - (ii) false information was provided in, or in connection with, an application for its modification to a person entitled to modify it;
- (e) “information” includes documents (including stamps and labels) and records;
- (f) the “issue” of a document includes its renewal, replacement or re-issue (with or without modifications);
- (g) references to the making of a false identity document include the modification of an identity document so that it becomes false.

[UK Identity Documents Act 2010 ss.7 to 9]

PART 14 - COMPUTER MISUSE

409. Interpretation of Part

(1) In this Part, unless the context otherwise requires —

“act” includes a series of acts;

“computer data” means a representation of facts, information or concepts in a form suitable for processing in a computer system, including a program suitable to cause a computer system to perform a function;

“computer system” means a device or a group of interconnected or related devices, one or more of which, pursuant to a program, performs automatic processing of data;

“service provider” means —

- (a) any public or private entity that provides to users of its service the ability to communicate by means of a computer system, and

(b) any other entity that processes or stores computer data on behalf of such communication service or users of such a service;

“traffic data” means any computer data relating to a communication by means of a computer system, generated by a computer system that formed a part in the chain of communication, indicating the communication’s origin, destination, route, time, date, size, duration, or type of underlying service.

(2) For the purposes of this Part, a person secures access to any program or data held in a computer if by causing a computer to perform any function the person —

(a) alters or erases the program or data;

(b) copies or moves it to any storage medium other than that in which it is held or to a different location in the storage medium in which it is held;

(c) uses it; or

(d) has it output from the computer in which it is held (whether by having it displayed or in any other manner),

and references to access to a program or data (and to an intent to secure such access or to enable such access to be secured) are to be read accordingly.

(3) For the purposes of subsection (2)(c) a person uses a program if the function the person causes the computer to perform —

(a) causes the program to be executed; or

(b) is itself a function of the program.

(4) For the purposes of subsection (2)(d) —

(a) a program is output if the instructions of which it consists are output; and

(b) the form in which any such instructions or any other data is output (and in particular whether or not it represents a form in which, in the case of instructions, they are capable of being executed or, in the case of data, it is capable of being processed by a computer) is immaterial.

(5) For purposes of this Part, but subject to subsection (7), access of any kind by any person to any program or data held in a computer is unauthorised if —

(a) the person is not himself or herself entitled to control access of the kind in question to the program or data; and

(b) the person does not have consent to access by him or her of the kind in question to the program or data from any person who is so entitled.

(6) In this Part —

(a) references to any program or data held in a computer include references to any program or data held in any removable storage medium which is for the time being in the computer; and a computer is to be regarded as containing any program or data held in any such medium.

(b) an act done in relation to a computer is unauthorised if the person doing the act (or causing it to be done) —

(i) is not himself or herself a person who has responsibility for the computer and who is entitled to determine whether the act may be done; and

(ii) does not have consent to the act from any such person;

(c) a reference to doing an act includes a reference to causing an act to be done;

(d) references to a program include references to part of a program.

(7) For the purposes of this Part, a person intercepts a communication in the course of its transmission by means of a telecommunication system only if the person —

(a) so modifies or interferes with the system, or its operation;

(b) so monitors transmissions made by means of the system; or

(c) so monitors transmissions made by wireless telegraphy to or from apparatus comprised in the system,

as to make some or all of the contents of the communication available, while being transmitted, to a person other than the sender or intended recipient of the communication.

(8) For the purposes of this Part —

(a) the times while a communication is being transmitted by means of a telecommunication system are to be taken to include any time when the system by means of which the communication is being, or has been, transmitted is used for storing it in a manner that enables the intended recipient to collect it or otherwise to have access to it;

(b) the cases in which any contents of a communication are to be taken to be made available to a person while being transmitted include any case in which any of the contents of the communication, while being transmitted, are diverted or recorded so as to be available to a person subsequently.

[UK Computer Misuse Act 1990 s.17; Regulation of Investigatory Powers Act 2000 s.2; EU Convention Art.1]

Computer misuse offences

410. Unauthorised access to computer material

(1) A person commits an offence if —

- (a) the person causes a computer to perform any function with intent to secure access to any program or data held in any computer or to enable any such access to be secured;
- (b) the access the person intends to secure or to enable to be secured is unauthorised; and
- (c) the person knows at the time when he or she causes the computer to perform the function that that is the case.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) The intent a person has to have to commit an offence under this section need not be directed at —

- (a) any particular program or data;
- (b) a program or data of any particular kind; or
- (c) a program or data held in any particular computer.

[UK Computer Misuse Act 1990 s.1 am. by Police & Justice Act 2006 s.35]

411. Unauthorised access with intent to commit or facilitate commission of further offences

(1) A person commits an offence under this section if the person commits an offence under section 410 with intent to —

- (a) commit an offence to which this section applies (“the further offence”); or
- (b) facilitate the commission of such an offence (whether by himself or herself or any other person).

Penalty: Imprisonment for 5 years or a fine, or both.

(2) This section applies to offences for which —

- (a) the sentence is fixed by law; or
- (b) a person of or over the age of 18 years may be sentenced to imprisonment for 5 years or more.

(3) It is immaterial for the purposes of this section whether the further offence is to be committed on the same occasion as the offence under section 410 or on any future occasion.

(4) A person may be guilty of an offence under this section even though the facts are such that the commission of the further offence is impossible.

[UK Computer Misuse Act 1990 s.2]

412. Unauthorised acts with intent to impair, or with recklessness as to impairing, operation of computer, etc.

(1) A person commits an offence if —

(a) the person does any unauthorised act in relation to a computer;

(b) at the time when the person does the act he or she knows that it is unauthorised; and

(c) either subsection (2) or (3) applies.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) This subsection applies if the person intends by doing the act to —

(a) impair the operation of any computer;

(b) prevent or hinder access to any program or data held in any computer;

(c) impair the operation of any such program;

(d) impair the reliability of any such data or the authenticity of any such data resulting in it being considered or acted upon for legal purposes as authentic;

(e) cause a loss of property to any other person or to derive an economic benefit for himself or herself or any other person; or

(f) enable any of the things mentioned in paragraphs (a) to (e) to be done.

(3) This subsection applies if the person is reckless as to whether the act will do any of the things mentioned in subsection (2)(a) to (f).

(4) The intention referred to in subsection (2), or the recklessness referred to in subsection (3), need not relate to —

(a) any particular computer;

(b) any particular program or data; or

(c) a program or data of any particular kind.

(5) In this section —

(a) “impair” includes damaging a computer; deleting, deteriorating, altering or suppressing data; inputting data to cause damage, deterioration, alteration or suppression; and introducing contaminants to cause the cessation of a computer’s functions; and

(b) a reference to impairing, preventing or hindering something includes a reference to doing so temporarily.

[UK Computer Misuse Act 1990 s.3 replaced by Police & Justice Act 2006 s.36]

413. Unauthorised interception of computer service

(1) A person commits an offence if —

(a) the person does any unauthorised act in relation to a computer;

(b) at the time the person does the act he or she knows that it is unauthorised; and

(c) the person intends by doing the act to intercept or cause to be intercepted, directly or indirectly, any non-public electronic transmission or electro-magnetic emission of computer data to, from or within a computer, by any electro-magnetic, acoustic, mechanical or other technical means.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) The intention referred to in subsection (1)(c) need not relate to —

(a) any particular computer;

(b) any particular transmission or emission;

(c) any particular data; or

(d) a transmission or emission of any particular kind.

[EU Convention Art. 3]

414. Making, supplying or obtaining articles for use in relevant offences

(1) This section applies to an offence under any of sections 410, 412 or 413 (a “relevant offence”).

(2) A person commits an offence if the person makes, adapts, supplies or offers to supply any article intending it to be used to commit, or to assist in the commission of, a relevant offence

Penalty: Imprisonment for 2 years or a fine, or both.

(3) A person commits an offence if the person supplies or offers to supply any article believing that it is likely to be used to commit, or to assist in the commission of, a relevant offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(4) A person commits an offence if the person obtains or possesses any article with a view to its being supplied for use to commit, or to assist in the commission of, a relevant offence.
Penalty: Imprisonment for 2 years or a fine, or both.

(5) In this section “article” includes any program or data held in electronic form.
[UK Computer Misuse Act 1990 s.3A ins. by Police & Justice Act 2006 s.37]

415. Unauthorised disclosure of access code

(1) A person commits an offence if the person, for any wrongful gain or unlawful purpose, and knowing that the access intended to be secured is unauthorised and is likely to cause wrongful loss to any other person —

(a) discloses any password, access code or any other means of gaining access to any program or data held in a computer; or

(b) possesses any password, access code or any other means of gaining access to any program or data in a computer with a view to its being used or supplied for use to commit, or to assist in the commission of an offence under any of sections 410, 412 or 413.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) The intention referred to in subsection (1) need not relate to —

(a) any particular computer;

(b) any particular program or data; or

(c) a program or data of any particular kind.

[EU Convention Art. 11]

Jurisdiction

416. Territorial scope of offences under this Part

(1) Except as provided in this section, it is immaterial for the purposes of an offence under any of sections 410 to 416 —

(a) whether any act or other event proof of which is required for conviction of the offence occurred in the Falkland Islands; or

(b) whether the defendant was in the Falkland Islands at the time of any such act or event.

(2) Subject to subsection (3), in the case of such an offence at least one significant link with the Falkland Islands must exist in the circumstances of the case for the offence to be committed.

(3) There is no need for any such link to exist for the commission of an offence under section 410 to be established in proof of an allegation to that effect in proceedings for an offence under section 411.

(4) Subject to section 418, if —

- (a) any such link does in fact exist in the case of an offence under section 410; and
- (b) commission of that offence is alleged in proceedings for an offence under section 411,

section 411 applies as if anything the defendant intended to do or facilitate in any place outside the Falkland Islands which would be an offence to which section 411 applies if it took place in the Falkland Islands were the offence in question.

[UK Computer Misuse Act 1990 s.4]

417. Significant links with the Falkland Islands

(1) The following provisions of this section apply for the interpretation of section 416.

(2) In relation to an offence under section 410, either of the following is a significant link with the Falkland Islands —

- (a) that the defendant was in the Falkland Islands at the time when he or she did the act which caused the computer to perform the function; or
- (b) that any computer containing any program or data to which the defendant by doing that act secured or intended to secure unauthorised access, or enabled or intended to enable unauthorised access to be secured, was in the Falkland Islands at that time.

(3) In relation to an offence under section 412 or 413, either of the following is a significant link with the Falkland Islands —

- (a) that the defendant was in the Falkland Islands at the time when he or she did the unauthorised act (or caused it to be done); or
- (b) that the unauthorised act was done in relation to a computer in the Falkland Islands.

[UK Computer Misuse Act 1990 s.5]

418. Territorial scope of ancillary offences related to offences under this Part

(1) On a charge of conspiracy to commit an offence under this Part the following questions are immaterial to the defendant's guilt —

- (a) where any person became a party to the conspiracy; and
- (b) whether any act, omission or other event occurred in the Falkland Islands.

(2) On a charge of attempting to commit an offence under section 412 or 413, the following questions are immaterial to the defendant's guilt —

- (a) where the attempt was made; and

(b) whether it had an effect in the Falkland Islands.

(3) On a charge of encouraging the commission of an offence under any of sections 410 to 415, the question where the encouraging took place is immaterial to the defendant's guilt.
[UK Computer Misuse Act 1990 ss.6 & 7]

419. Relevance of external law

(1) A person commits an offence triable by virtue of section 416(4) only if what the person intended to do or facilitate would involve the commission of an offence under the law in force where the whole or any part of it was intended to take place.

(2) A person commits an offence triable by virtue of section 417 only if what the person had in view would involve the commission of an offence under the law in force where the whole or any part of it was intended to take place.

(3) Conduct punishable under the criminal law in force in any place is an offence under that law for the purposes of this section, however it is described in that law.

(4) Subject to subsection (6), a condition specified in subsection (1) or (2) is to be taken as satisfied unless, not later than criminal procedure rules may provide, the defence serve on the prosecution a notice —

(a) stating that, on the facts as alleged with respect to the relevant conduct, the condition is not in their opinion satisfied;

(b) showing their grounds for that opinion; and

(c) requiring the prosecution to show that it is satisfied.

(5) In subsection (4) “the relevant conduct” means —

(a) if the condition in subsection (1) is in question - what the defendant intended to do or facilitate;

(b) if the condition in subsection (2) is in question - what the defendant had in view.

(6) The court, if it thinks fit, may permit the defence to require the prosecution to show that the condition is satisfied without the prior service of a notice under subsection (4).

(7) In the Supreme Court the question whether the condition is satisfied is to be decided by the judge alone.

[UK Computer Misuse Act 1990 s.8]

420. National status immaterial

(1) In any proceedings brought in respect of any offence to which this section applies it is immaterial to guilt whether or not the defendant had Falkland Islands status at the time of any act, omission or other event proof of which is required for conviction of the offence.

(2) This section applies to the following offences —

(a) any offence under any of sections 410 to 415;

(b) any attempt to commit an offence under section 412 or 413; and

(c) encouraging the commission of an offence under any of sections 410 to 415.

[UK Computer Misuse Act 1990 s.9]

Investigation of offences

421. Search warrants for offences under this Part

(1) If a justice of the peace is satisfied by information on oath given by a police officer that there are reasonable grounds to suspect that —

(a) an offence under this Part has been or is about to be committed in any premises; and

(b) evidence that such an offence has been or is about to be committed is in those premises,

the justice may issue a warrant authorising a police officer to enter and search the premises, using such reasonable force as is necessary.

(2) A warrant under this section —

(a) may authorise persons with appropriate technical knowledge and expertise to accompany and assist, as necessary, the police officer executing the warrant; and

(b) remains in force for as long as is reasonably necessary for the investigation of an offence.

(3) In executing a warrant issued under this section a police officer may seize an article if the officer reasonably believes that —

(a) it is evidence that an offence under this Part has been or is about to be committed; or

(b) the article has been acquired by a person as a result of an offence committed under this Part.

(4) In seizing any article referred to in subsection (3), a police officer must have due regard to the rights and interests of any person affected by such seizure to carry on that person's normal activities.

(5) A person who without lawful excuse obstructs the lawful exercise of the powers granted under this section commits an offence.

(6) In this section —

“premises” includes land, buildings, movable structures, vehicles, vessels, aircraft and hovercraft;

“article” includes a computer or part of a computer, a computer system or part of it, a computer data storage system and a document.

[UK Computer Misuse Act 1990 s.11]

422. Warrant for access to computer and data for investigation of offences

(1) If a justice of the peace is satisfied by information on oath given by a police officer that there are reasonable grounds to suspect that —

- (a) a computer is being or has been used in connection with an offence; and
- (b) evidence that such an offence is being or has been committed is in that computer,

the justice may issue a warrant authorising a police officer to do the things mentioned in subsection (2).

(2) A warrant under subsection (1) may authorise a police officer to enter any premises where the computer is kept, using such reasonable force as is necessary, and to —

- (a) have access to and use the computer and examine the operation of that computer;
- (b) search any data stored or available in the computer or in any computer data storage system forming part of the computer;
- (c) have access to any password or access code or any other means of gaining access to the computer;
- (d) have access to any program having the capability of retransforming or unscrambling encrypted data in the computer into readable and comprehensible format or into plain text;
- (e) make and take any copies or take any samples of any data held in the computer; and
- (f) require any person whom the police officer has reasonable cause to suspect is or has been using the computer, or any person having charge or control of or operating the computer, to provide the officer with any technical and other assistance that the officer reasonably requires for the purposes of carrying out the investigation authorised under this section.

(3) In taking any samples or copies of data or performing any of the actions referred to in subsection (2), a police officer must have due regard to the rights and interests of any person affected by such actions to carry on that person's normal activities.

(4) A warrant under this section —

(a) may authorise persons with appropriate technical knowledge and expertise to accompany and assist, as may be necessary, a police officer executing the warrant; and

(b) remains in force for as long as is reasonably necessary for the investigation of an offence.

(5) A person who without lawful excuse obstructs the lawful exercise of the powers under subsection (2)(a) to (e) or who fails to comply with a requirement under subsection (2)(f) commits an offence.

(6) An information given under subsection (1) may be combined with an information given for the purposes of section 369 and a warrant issued under this section may be combined with a warrant issued under that section.

(7) In this section “premises” has the meaning given by section 421(6).

[EU Convention Arts. 15 &19]

423. Record of seized articles, etc.

(1) If a computer, computer program or data has been removed following a search under section 421, the police officer who carried out the search must, at the time of the search or as soon as practicable after it —

(a) make an official record of the articles seized and removed, of the premises from where they were removed, and the date and time of seizure; and

(b) give a copy of the record to the owner, lessee or occupier of the premises if they are immovable property; to the master, captain or person in charge of a vehicle, vessel, aircraft or other movable structure; or to the person in charge or control of the articles seized and removed.

(2) Subject to subsection (3), if a computer has been used or its operation examined or a program or data has been accessed under section 422, the police officer who carried out the action may authorise a person who had charge or control of the computer to access and copy a program or data in the computer.

(3) The police officer may refuse to permit access to the computer under subsection (2) if the officer has reasonable grounds for believing that giving the access would lead to the commission of a criminal offence or would prejudice —

(a) the investigation in connection with which the search was carried out;

(b) another ongoing investigation; or

(c) any criminal proceedings which are pending or which may be brought in relation to any of those investigations.

[Gibraltar Crimes Act; SH Crimes Bill - Not in EU Convention]

424. Preservation of data

(1) If the Chief Police Officer is satisfied that —

(a) a program or data, including traffic data, stored in a computer is necessary for the purposes of a criminal investigation; and

(b) there is a risk that the program or data may be lost, destroyed or rendered inaccessible or modified,

the Chief Police Officer may by written notice given to a person in charge or in control of the computer require that person to ensure that the program or data specified in the notice be preserved for the period stated in the notice, which must not exceed 30 days.

(2) Before the period stated in the notice issued under subsection (1) has expired, a justice of the peace may, on the application of the Attorney General, order that the period stated in the notice be extended for a maximum of 90 days from the date of first issue.

(3) Traffic data may be ordered to be preserved under subsection (1) irrespective of how many service providers were involved in the transmission of the data.

(4) A person who without lawful excuse fails to comply with a requirement under this section commits an offence.

Penalty: A fine at level 11 on the standard scale.

[EU Convention Art.16]

425. Interception of traffic data

(1) If traffic data associated with a specified communication or general traffic data is reasonably required for the purposes of a criminal investigation, a justice of the peace may, on the application of the Attorney General, issue an order requiring a person in charge or in control of such data or to an internet service provider to —

(a) collect and record traffic data associated with the communication for the period specified in the notice; or

(b) permit and assist any named person with appropriate technical knowledge and expertise to collect and record the data.

(2) A person who without lawful excuse fails to comply with a requirement under this section commits an offence.

Penalty: A fine at level 11 on the standard scale.

426. Order for disclosure of stored traffic

(1) If a justice of the peace is satisfied on an application by the Attorney General that specified data stored in a computer is reasonably required for the purpose of a criminal investigation or criminal proceedings, the justice of the peace may issue an order requiring a person in charge or in control of the computer to preserve and disclose to a police officer an amount of traffic data about specified communication sufficient to identify —

- (a) the internet service providers; and
- (b) the path through which the communication was transmitted.

(2) A person who without lawful excuse fails to comply with a requirement under this section commits an offence.

Penalty: A fine at level 11 on the standard scale.

427. Order for production of data

(1) If a justice of the peace is satisfied on an application by the Attorney General that a specified computer program, data, printout of that data or any other information, is reasonably required for the purpose of a criminal investigation or criminal proceedings, the justice of the peace may issue an order requiring —

- (a) a person in charge or in control of a computer to produce to a police officer any computer program, data or printout of data specified in the order which is stored in the computer or in a computer data storage system in that person's possession or control; and
- (b) an internet service provider with a place of business in the Falkland Islands to produce to a police officer any subscriber information specified in the order relating to a service provided by that service provider.

(2) In this section, "subscriber information" means any information in the form of computer data, or in any other form, which is held by a service provider, which relates to subscribers of its service other than traffic or content data, and by which can be established —

- (a) the subscriber's identity, telephone or access number, postal address and billing and payment information;
- (b) the type of communication service used by the subscriber, the technical provisions relating to it and the period of service; and
- (c) any other information on the site relating to the installation of communication equipment.

(3) A person who without lawful excuse fails to comply with a requirement under this section commits an offence.

Penalty: A fine at level 11 on the standard scale.

[EU Convention Art.18]

428. Order for interception of electronic communication

(1) If a justice of the peace is satisfied on an application by the Attorney General that the contents of electronic communication or any other information connected with such communication are reasonably required for the purpose of a criminal investigation or criminal proceedings, the justice may issue an order requiring an internet service provider with a place of business in the Falkland Islands to —

(a) apply such technical means as are necessary to collect and record; or

(b) permit or assist any named person with appropriate technical knowledge and expertise to collect and record,

content data associated with specified communications transmitted by means of a computer.

(2) A person who without lawful excuse fails to comply with a requirement under this section commits an offence.

Penalty: A fine at level 11 on the standard scale.

[EU Convention Art.21]

Miscellaneous provisions

429. Rights and duties of internet service providers

(1) An internet service provider is not liable under civil or criminal law for the disclosure of any data or other information that the provider discloses under any of sections 426 to 428.

(2) An internet service provider who without lawful authority discloses —

(a) the fact that a notice has been given under section 424 or that an order has been issued under any of sections 425 to 428;

(b) anything done under the notice or order; or

(c) any data collected or recorded under the notice or order,

commits an offence.

Penalty: A fine at level 11 on the standard scale.

[EU Convention Art.20.3, 21.3]

430. Saving for certain law enforcement powers

(1) Nothing in this Part affects the operation of other provisions of this Ordinance, the Criminal Procedure and Evidence Ordinance 2014 or any other enactment relating to powers of inspection, search or seizure.

(2) Nothing designed to indicate a withholding of consent to access to any program or data from persons as enforcement officers makes access unauthorised for the purposes of section 410(1).

(3) In subsection (2) —

(a) “enforcement officer” means a police officer or other person charged with the duty of investigating offences; and

(b) withholding consent from a person “as” an enforcement officer of any description includes the operation, by the person entitled to control access, of rules whereby enforcement officers of that description are, as such, disqualified from membership of a class of persons who are authorised to have access.

[UK Computer Misuse Act 1990 s.10]

431. Offences by and for the benefit of corporate bodies

If an offence under any of sections 410 to 415 which was committed by any person is proved to have been committed for the benefit of a corporate body, irrespective of whether that person acted individually or as the holder of a position in or as the agent of the corporate body, the corporate body commits a similar offence.

Penalty: The statutory maximum fine.

[EU Convention Art.12]

432. Forfeiture

(1) A court before which a person is convicted of an offence under any of sections 410 to 413 may, in addition to imposing any other penalty, make an order for the forfeiture of any computer, computer program or data, computer data storage system, or other apparatus, article or thing which is the subject matter of the offence or which was used in connection with the commission of the offence.

(2) Section 90 of the Interpretation and General Clauses Ordinance applies to the proceeds of any forfeiture under this Part.

[Gibraltar Crimes Bill - Not in EU Convention]

433. Compensation

(1) The court before which a person is convicted of an offence under any of sections 410 to 413 may order the person to pay a sum fixed by the court by way of compensation to any other person for damage caused to that person’s computer, computer data storage system, program or data by the offence for which the person is convicted.

(2) A claim by a person for damage caused by an offence under any of sections 410 to 413 is deemed to have been satisfied to the extent of any amount ordered to be paid to the person by

way of compensation under subsection (1), but the order does not affect any right to a civil remedy for the recovery of damages beyond the amount of such compensation.

(3) Compensation awarded by an order under subsection (1) is recoverable as a civil debt.

[Gibraltar Crimes Act; SH Crimes Bill - Not in EU Convention]

434. Breach of confidentiality

(1) Except for the purpose of a prosecution for an offence under this Part, for other purposes of this Part, or pursuant to an order of a court, a person who has had access to —

(a) any computer, computer data storage system, program or data during the course of an investigation under this Part;

(b) any record, book, register, correspondence, information, document or any other material during the course of an investigation under this Part;

(c) any confidential information which may have been received from the competent authorities of another place for the purpose of an investigation under this Part,

must not disclose to any other person, or use for any purpose other than that for which the person obtained access or received information, the contents of the material mentioned in paragraphs (a) to (c).

(2) A person who contravenes subsection (1) commits an offence.

Penalty: A fine at level 11 on the standard scale.

[EU Convention Art 28]

435. Codes of practice

(1) The Governor may issue one or more codes of practice relating to the exercise and performance of the powers and duties under this Part.

(2) Without limiting subsection (1), a code of practice made under this section may make provision limiting —

(a) the class of criminal offences in respect of which warrants and orders under this Part may be applied for;

(b) the class of criminal offences in respect of which notices under this Part may be issued;

(c) the class of person in respect of whom a notice under section 424 or an order under any of sections 425 to 428 may be issued;

(d) the duration of notices under section 424 and of orders under any of sections 425 to 428;

(e) the number of persons to whom any of the material or data obtained by virtue of this Part may be disclosed or otherwise made available;

(f) the extent to which any of the material or data may be disclosed or otherwise made available;

(g) the extent to which any of the material or data may be copied;

(h) the number of copies that may be made; and

(i) the use that can be made of the material or data.

(3) The Governor may by order prescribe the circumstances under which and the time within which material or data obtained under this Part must be destroyed, and the penalties for failure to comply with the order.

(4) In issuing a code of practice or an order under this section the Governor must have due regard to the fundamental rights and freedoms under the Constitution of the Falkland Islands and in particular to the right of privacy and the requirement of proportionality in the investigation and prevention of crime.

(5) The Governor must lay before the Legislative Assembly every code of practice and order issued or amended under this section.

(6) A person exercising or performing any power or duty in relation to which provision may be made by a code of practice under this section must, in doing so, have regard to the provisions (so far as they are applicable) of every code of practice for the time being in force under this section.

(7) A failure on the part of any person to comply with any provision of a code of practice issued under this section does not of itself render the person liable to any criminal or civil proceedings but may be taken into account in deciding on the admissibility and weight of any evidence obtained in contravention of the provision.

(8) A code of practice issued under this section is admissible in evidence in any criminal or civil proceedings.

[Gibraltar Crimes Act; SH Crimes Bill – Not in EU Convention but required by FCO]

PART 15 - COMMERCIAL TRANSACTIONS

Auction sales

436. Auction bidding offences

(1) A dealer who —

(a) agrees to give;

(b) gives; or

(c) offers,

any gift or consideration to any other person as an inducement or reward for abstaining, or for having abstained, from bidding at a sale by auction either generally or for any particular lot, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) A person who —

- (a) agrees to accept;
- (b) accepts; or
- (c) attempts to obtain,

from any dealer any such gift or consideration as aforesaid, commits an offence.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(3) If it is proved that a dealer has —

- (a) previously to an auction entered into an agreement in writing with one or more persons to purchase goods at the auction in good faith on a joint account; and
- (b) has before the goods were purchased at the auction deposited a copy of the agreement with the auctioneer,

such an agreement is not to be treated as an agreement made in contravention of this section.

(4) For the purposes of this Part, “dealer” means a person who in the normal course of reselling them.

(5) No proceedings for an offence under this section may be commenced except by, or with the consent of, the Attorney General.

[UK Auctions (Bidding Agreements) Act 1927 s.1 amended]

437. Auction bidding offences: Prohibition orders

(1) On conviction of a person under section 436, the court may order that —

- (a) the person so convicted; or
- (b) that person and any person appointed to bid on behalf of that person,

must not (without leave of the court) enter upon any premises where goods intended for sale by auction are on display or attend or participate in any way in any sale by auction.

(2) An order under subsection (1) must specify the period for which it lasts, which must be not more than 3 years from the date of the conviction.

(3) A person who contravenes an order under this section made in respect of the person commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(4) In proceedings against a person for contravention of an order under this section consisting in the entry upon premises where goods intended for sale by auction were on display, it is a defence for the person to prove that he or she did not know, and had no reason to suspect, that goods so intended were on display on the premises.

(5) In proceedings against a person for contravention of an order under this section consisting in the person having done something as the representative of another, it is a defence for the person to prove that he or she did not know, and had no reason to suspect, that that other person was the subject of such an order.

(6) A person does not commit an offence under this section only by selling property by auction or causing it to be so sold.

[Auctions (Bidding Agreements) Act 1969 s.2]

438. Rights of seller of goods by auction

(1) If —

(a) a person ('A') purchases goods at an auction and has entered into an agreement with another person ('B') or other persons that B or those others (or some of them) will abstain from bidding for the goods (not being an agreement to purchase the goods in good faith on a joint account); and

(b) A or B, or one of the other parties to the agreement is a dealer,

the seller may avoid the contract under which the goods are purchased.

(2) If a contract is avoided by virtue of subsection (1), and if the purchaser has obtained possession of the goods and restitution of them is not made, the persons who were parties to the agreement that one or some of them should abstain from bidding for the goods the subject of the contract are jointly and severally liable to make good to the seller any loss the seller sustained by reason of the operation of the agreement.

[Auctions (Bidding Agreements) Act 1969 s.3]

439. Notices to be exhibited at sale

(1) Every auctioneer, before beginning any auction, must display a notice containing the auctioneer's full name and place of residence and a copy of sections 436 to 438 of this Ordinance—

(a) in large letters publicly visible and legible; and

(b) in some conspicuous part of the room or place where the auction is held,

so that all persons present may easily read it.

(2) An auctioneer who fails to keep a notice as described in subsection (1) displayed as there described during the whole time that the auction is held commits an offence.

Penalty: A fine at level 1 on the standard scale for every day that the offence continues.

[UK Auctioneers Act 1845 s.7 applied by Auctions (Bidding Agreements) Acts 1927 and 1969]

440. Penalties for promoting or conducting mock auctions.

(1) A person who —

- (a) promotes;
- (b) conducts; or
- (c) assists in the conduct of,

a mock auction at which one or more lots to which this Part applies are offered for sale commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) For the purposes of this Part a sale of goods by way of competitive bidding is taken to be a mock auction if, but only if, during the course of the sale —

- (a) any lot to which this Part applies is sold to a person bidding for it, and either it is sold to that person at a price lower than the amount of that person's highest bid for that lot, or part of the price at which it is sold to the person is repaid or credited to the person or is stated to be so repaid or credited;
- (b) the right to bid for any lot to which this Part applies is restricted, or is stated to be restricted, to persons who have bought or agreed to buy one or more articles; or
- (c) any articles are given away or offered as gifts.

(3) A sale of goods shall not be taken to be a mock auction by virtue of subsection (2)(a) if it is proved that the reduction in price, or the repayment or credit, as the case may be —

(a) was on account of a defect discovered after the highest bid in question had been made, being a defect of which the person conducting the sale was unaware when that bid was made; or

(b) was on account of damage sustained after that bid was made.

[UK Mock Auctions Act 1961 s.1]

441. Mock auctions: Interpretation

(1) In section 440 —

“sale of goods by way of competitive bidding” means any sale of goods at which the persons present, or some of them, are invited to buy articles by way of competitive bidding;

“competitive bidding” includes any mode of sale whereby prospective purchasers may be enabled to compete for the purchase of articles, whether by way of increasing bids or by the offer of articles to be bid for at successively decreasing prices or otherwise;

“lot to which this section applies” means a lot consisting of or including one or more prescribed articles;

“prescribed articles” means any plate, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery, articles of household or personal use or ornament or any musical or scientific instrument or apparatus;

“stated”, in relation to a sale of goods by way of competitive bidding, means stated by or on behalf of the person conducting the sale, by an announcement made to the persons for the time being present at the sale.

(2) For the purposes of section 440 and this section, any bid stated to have been made at a sale of goods by way of competitive bidding is conclusively presumed to have been made, and to have been a bid of the amount stated; and any reference in that section to the sale of a lot to a person who has made a bid for it includes a reference to a purported sale of it to a person stated to have bid for it, whether that person exists or not.

(3) For the purposes of section 440 and this section, anything done in or about the place where a sale of goods by way of competitive bidding is held, if done in connection with the sale, is taken to be done during the course of the sale, whether it is done at the time when any articles are being sold or offered for sale by way of competitive bidding or before or after any such time.

(4) Subject to section 6(6) of the Constitution (which relates to being tried twice for the same offence) nothing in this Part limits any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this Part.

[UK Mock Auctions Act 1961 s.3]

Unsolicited goods

442. Demands and threats regarding payment

(1) A person (‘A’) who, not having reasonable cause to believe there is a right to payment, in the course of any trade or business —

(a) makes a demand for payment; or

(b) asserts a present or prospective right to payment,

for what A knows are unsolicited goods sent to another person (‘B’) with a view to that B acquiring them for the purposes of B’s trade or business, commits an offence.

Penalty: A fine at level 4 on the standard scale.

(2) A person who, not having reasonable cause to believe there is a right to payment, in the course of any trade or business and with a view to obtaining any payment for what the person knows are unsolicited goods sent as aforesaid —

- (a) threatens to bring any legal proceedings; or
- (b) places or causes to be placed the name of any person on a list of defaulters or debtors or threatens to do so; or
- (c) invokes or causes to be invoked any other collection procedure or threatens to do so,

commits an offence.

Penalty: A fine at level 5 on the standard scale.

(3) In this section and section 443, “unsolicited” means, in relation to goods sent to any person, that they are sent without any prior request made by the person or on the person’s behalf.

[UK Unsolicited Goods and Services Act 1971 s1]

443. Directory entries

(1) A purchaser (‘P’) is not liable to make any payment, and is entitled to recover any payment made by P, by way of charge for including or arranging for the inclusion in a directory of an entry relating to P or P’s trade or business, unless —

- (a) there has been signed by P or on P’s behalf an order complying with this section;
- (b) there has been signed by P or on P’s behalf a note complying with this section of P’s agreement to the charge and before the note was signed, a copy of it was supplied, for retention by P, to P or a person acting on P’s behalf; or
- (c) there has been transmitted by P or a person acting on P’s behalf an electronic communication which includes a statement that P agrees to the charge and the relevant condition is satisfied in relation to that communication.

(2) If, when a payment in respect of a charge would, in the absence of an order or note of agreement to the charge complying with this section and in the absence of an electronic communication in relation to which the relevant condition is satisfied, be recoverable from a person in accordance with subsection (1), a person (‘A’) demands payment, or asserts a present or prospective right to payment, of the charge or any part of it, without knowing or having reasonable cause to believe that —

- (a) the entry to which the charge relates was ordered in accordance with this section;
- (b) a proper note of the agreement has been duly signed; or

(c) the requirement of subsection (1)(c) have been met,

A commits an offence.

Penalty: A fine at level 4 on the standard scale.

(3) For the purposes of subsection (1), an order for an entry in a directory must be made by means of an order form or other stationery belonging to P and bearing, in print, P's name and address (or one or more of P's addresses) and a note complying with subsection (4).

(4) The note required by subsections (1) and (3) is a note of P's agreement to the charge which—

(a) states the amount of the charge immediately above the place for signature; and

(b) identifies the directory or proposed directory, giving the following particulars of it —

(i) the proposed date of publication of the directory or of the issue in which the entry is to be included and the name and address of the person producing it;

(ii) if the directory or that issue is to be put on sale - the price at which it is to be offered for sale and the minimum number of copies which are to be available for sale;

(iii) if the directory or that issue is to be distributed free of charge (whether or not it is also to be put on sale) - the minimum number of copies which are to be so distributed; and

(c) sets out or gives reasonable particulars of the entry in respect of which the charge would be payable.

(5) In relation to an electronic communication which includes a statement that P agrees to a charge for including or arranging the inclusion in a directory of any entry, the relevant condition is that —

(a) before the electronic communication was transmitted the information referred to in subsection (6) was communicated to P; and

(b) the electronic communication can readily be produced and retained in a visible and legible form.

(6) The information to be communicated to P is —

(a) the following particulars —

(i) the amount of the charge;

(ii) the name of the directory or proposed directory;

- (iii) the name of the person producing the directory;
- (iv) the geographic address at which that person is established;
- (v) if the directory is or is to be available in printed form - the proposed date of publication of the directory or of the issue in which the entry is to be included;
- (vi) if the directory or the issue in which the entry is to be included is to be put on sale - the price at which it is to be offered for sale and the minimum number of copies which are to be available for sale;
- (vii) if the directory or the issue in which the entry is to be included is to be distributed free of charge (whether or not it is also to be put on sale) - the minimum number of copies which are to be so distributed;
- (viii) if the directory is or is to be available in a form other than in printed form - adequate details of how it may be accessed; and

(b) reasonable particulars of the entry in respect of which the charge would be payable.

(7) In this section “electronic communication” means a communication by electronic means.
[UK Unsolicited Goods and Services Act 1971 s.2]

CHAPTER 3 - CRIMES AGAINST THE GENERAL PUBLIC

PART 16 – TREASON

444. Treason

(1) A person who, owing allegiance to Her Majesty —

- (a) kills, wounds or causes bodily harm to Her Majesty;
- (b) imprisons or restrains Her Majesty;
- (c) forms an intention to do (a) or (b) and manifests such intention by an overt act;
- (d) levies war against Her Majesty in the Falkland Islands or elsewhere —
 - (i) with the intent to depose Her Majesty from the style, honour and royal name of the Crown of the United Kingdom or of any other of Her Majesty’s dominions;
 - (ii) in order by force or constraint to compel Her Majesty to change Her measures or counsels; or

(iii) in order to put any force or constraint upon, or to intimidate or overawe, the Legislative Assembly, the United Kingdom Parliament, or the legislature of any other British overseas territory or of a Crown dependency;

(e) instigates any foreigner with force to invade the United Kingdom or the Falkland Islands or any other British overseas territory or a Crown dependency;

(f) assists by any means whatever any public enemy at war with Her Majesty; or

(g) conspires with any other person to do anything mentioned in paragraph (a), (b) or (d),

commits the offence of treason.

Penalty: As provided in subsection (3)

(2) A person who murders —

(a) the Lord Chancellor;

(b) the First Lord of the Treasury; or

(c) any judge of the Crown Court, the Court of Appeal, or the Supreme Court,

while any of them is performing the duties of the office, commits the offence of treason.

Penalty: As provided in subsection (3).

(3) A person convicted of the offence of treason must be sentenced to life imprisonment, but subject to section 728 of the Criminal Procedure and Evidence Ordinance 2014 if the person convicted is aged under 21.

(4) In subsection (1)(a), (b) and (c), “Her Majesty” means Her Majesty Queen Elizabeth II, Her lawful heirs and successors, Her spouse, Her eldest son, the spouse of Her eldest son, and Her eldest daughter, if unmarried.

(5) An offence under this section is triable on indictment only.

[*Treason Act 1351; Treason Act 1702, s.3*]

445. Treasonable offences

(1) A person who forms an intention to —

(a) depose Her Majesty from the style, honour and royal name of the Crown of the United Kingdom or of any other of Her Majesty’s dominions;

(b) levy war against Her Majesty within the United Kingdom or the Falkland Island or any other British overseas territory or any Crown dependency in order —

(i) by force or constraint to compel Her Majesty to change Her measures or counsels; or

(ii) to put any force or constraint upon, or to intimidate or overawe, the Legislative Assembly or the United Kingdom Parliament or the legislature of any other British overseas territory or of a crown dependency; or

(c) instigate any foreigner with force to invade the United Kingdom or the Falkland Islands or any other British overseas territory or a crown dependency,

and manifests such intention by an overt act in the Falkland islands or elsewhere or by publishing any printing or writing, commits an offence.

Penalty: Imprisonment for life.

(2) It is not a defence to a charge under this section that any act proved against the defendant amounts to treason under section 444; but a person convicted or acquitted of an offence under this section may not afterwards be prosecuted for treason under section 444 upon the same facts.

(3) An offence under subsection (1) is triable on indictment only.

[Treason Felony Act 1848, ss.3, 7]

446. Limitation and procedure

(1) A person may not be prosecuted for an offence under section 444 or 445 unless the prosecution is commenced within 3 years after the offence is committed.

(2) This section does not apply to cases in which the overt act alleged is the killing of Her Majesty, or a direct attempt to endanger the life of Her Majesty.

(3) The procedure on a trial for treason or any treasonable offence is the same as the procedure on a trial for murder.

[Treason Act 1695 ss.5, 6]

447. Assaults on the Queen

(1) A person who wilfully —

(a) produces or has near Her Majesty any arms or destructive or dangerous thing with intent to use the same to injure Her Majesty;

(b) with intent to alarm or to injure Her Majesty, or to provoke a breach of the peace or whereby a breach of the peace is likely to be caused —

(i) discharges, or points, aims or presents any arms at or near Her Majesty;

(ii) causes any explosive substance to explode near Her Majesty;

(iii) assaults Her Majesty; or

(iv) throws anything at or upon Her Majesty,

commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) In this section, “arms” includes imitation and toy arms.

[*Treason Act 1842 ss.2, 3*]

PART 17 – SECURITY

The armed forces

448. Inciting disaffection

(1) A person who maliciously and wilfully endeavours to seduce any member of the armed forces of the Crown from his or her duty or allegiance to Her Majesty commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) A person who, with intent to commit or to aid, abet, counsel, or procure the commission of an offence under subsection (1), has in his or her possession or under his or her control a document of such a nature that the dissemination of copies of it among members of the armed forces of the Crown would constitute such an offence, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

[*UK Incitement to Disaffection Act 1934 ss.1 and 2 adapted*]

449. Assisting, etc. desertion

It is an offence for a person who is not serving in the armed forces of the Crown —

(a) to assist or procure any person who is serving in the armed forces of the Crown to desert or improperly absent himself or herself from duty; or

(b) to conceal, employ or continue to employ any such person who is a deserter or so improperly absent from duty, knowing the person to be a deserter or so improperly absent.

Penalty: Imprisonment for 3 months or a fine at level 4 on the standard scale, or both.

[*UK Armed Forces Act 2006 ss.8 and 10 adapted*]

450. Uniforms not to be worn without authority

(1) It is an offence for a person who is not serving in the armed forces of the Crown to wear without the permission of the Governor —

(a) the uniform of any of those forces; or

(b) any dress having the appearance or bearing any of the regimental or other distinctive marks of any such uniform.

Penalty: Imprisonment for 1 month or a fine at level 3 on the standard scale, or both.

(2) Subsection (1) does not prevent any person from wearing any uniform or dress in the course of a stage play performed in a place duly licensed or authorised for the public performance of stage plays, or in the course of a music hall or circus performance or in the course of any *bona fide* military representation.

[UK Uniforms Act 1894 s.2]

451. Bringing contempt on uniform

It is an offence for a person who is not serving in the armed forces of the Crown —

(a) to wear without the permission of the Governor —

(i) the uniform of any of those forces; or a

(ii) any dress having the appearance or bearing any of the regimental or other distinctive marks of any such uniform,

in such a manner or under such circumstances as to be likely to bring contempt upon that uniform; or

(b) to employ any other person so to wear that uniform or dress.

Penalty: Imprisonment for 1 month or a fine at level 3 on the standard scale, or both.

[UK Uniforms Act 1894 s.3]

452. Unlawful drilling

(1) Any meeting or assembly of persons for the purpose of —

(a) training or drilling persons to the use of arms;

(b) being trained or drilled to the use of arms; or

(c) practising military exercises, movements, or evolutions,

without the written authority of the Governor, or of a public officer authorised by the Governor for the purpose, is prohibited.

(2) A person present at a prohibited meeting or assembly for the purpose mentioned in subsection (1)(a) commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

(3) A person who at a prohibited meeting or assembly aids or assists a person for the purpose mentioned in subsection (1)(a) commits an offence.

Penalty: Imprisonment for 7 years.

(4) A person present at a prohibited meeting for a purpose mentioned in subsection (1)(b) or (c) commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(5) A police officer may disperse any prohibited meeting or assembly and arrest without warrant any person present at or aiding and abetting any such meeting or assembly.

(6) A prosecution for an offence under this section —

(a) must be brought within 6 months after the date of the offence;

(b) may not be brought except by, or with the consent of, the Attorney General.

(7) In this section, “prohibited meeting or assembly” has the meaning given to that term by subsection (1).

[UK Unlawful Drilling Act 1819 ss.1, 2 and 7]

The police

453. Causing disaffection among police officers

It is an offence for a person —

(a) to cause, or attempt to cause, or do any act calculated to cause, disaffection amongst members of the police force; or

(b) to induce or attempt to induce or do any act calculated to induce any police officer to withhold his or her services or to commit a breach of discipline.

Penalty: Imprisonment for 2 years or a fine, or both.

[Crimes Ord. s.31; Police Ord. s.57; UK Police Act 1996 s.91]

454. Duty to aid police officers

(1) It is the duty of every person in the Falkland Islands to aid and assist any police officer who calls upon the person to do so in the performance of that officer’s duty.

(2) The duty under subsection (1) is proved to have arisen if it is proved that —

(a) the police officer saw a breach of the peace committed;

(b) the police officer called upon the person concerned to aid and assist him or her;

(c) there was a reasonable necessity for calling upon that person for aid and assistance; and

(d) that person, without any physical impossibility or lawful excuse, refused to aid and assist the police officer.

(3) A person who is under a duty to aid and assist a police officer and who refuses without physical impossibility or lawful excuse to do so, commits an offence.

Penalty: A fine at level 4 on the standard scale.

[Crimes Ord. s.32]

455. Obstructing police officer in the performance of duty

A person who resists or wilfully obstructs —

(a) a police officer in the performance of the police officer’s duty; or

(b) a person assisting the police officer in the performance of that duty,

commits an offence.

Penalty: Imprisonment for 1 month or a fine at level 3 on the standard scale, or both.

[Crimes Ord. s.34 modified; UK Police Act 1996 s.89]

456. Impersonating a police officer, etc.

(1) A person who, with intent to deceive —

(a) pretends to be a police officer, customs officer or immigration officer; or

(b) makes any statement or does any act calculated falsely to suggest that he or she is such an officer,

commits an offence.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) A person who pretends to be a police officer, customs officer or immigration officer with a view to obtaining —

(a) admission to premises;

(b) information; or

(c) any other benefit,

commits an offence.

Penalty: Imprisonment for 12 months or a fine at level 6 on the standard scale, or both.

(3) A person who, not being a police officer, customs officer or immigration officer, wears any article of police uniform in circumstances where the article gives the person an appearance so nearly resembling that of such an officer as to be likely to deceive commits an offence.

Penalty: A fine at level 3 on the standard scale.

(4) A person who, not being a police officer, customs officer or immigration officer, has in his or her possession any article of the uniform of any such officer commits an offence, unless the person can prove that he or she obtained possession of the article in question lawfully and that his or her possession of it is for a legal purpose.

Penalty: A fine at level 3 on the standard scale.

(5) In this section —

“article of police uniform” means any article of uniform or any distinctive badge or mark or document of identification issued to police, customs or immigration officers or which has the appearance of any such article, badge, mark or document.

“customs officer” has the meaning given to that term by the Customs Ordinance;

“immigration officer means a person appointed as such under section 3 of the Immigration Ordinance.

[UK Police Act 1996 s.90; Commissioners for Revenue and Customs Act 2005 s.30] *Escaping, etc.*

457. Offences of escaping

(1) A person who is —

- (a) lawfully in the custody of a police officer or other public officer;
- (b) lawfully detained in any place; or
- (c) serving any sentence of imprisonment or other custodial sentence,

and who escapes, commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) If a person is —

- (a) lawfully in the custody of a police officer or other public officer;
- (b) lawfully detained in any place; or
- (c) serving any sentence of imprisonment or other custodial sentence,

any police officer or other public officer who negligently allows that person to escape commits an offence.

Penalty: Imprisonment for 3 months or a fine at level 5 on the standard scale, or both.

(3) An offence under subsection (1) is committed —

- (a) whether the escape was effected by artifice or as a result of the negligence of the person or persons who had custody of the escapee; and
- (b) whether the escape was made from a place of lawful custody or prison or elsewhere.

[Crimes Ord. ss.35 and 36]

458. Escaping: Ancillary offences

(1) A person who —

- (a) encourages;
- (b) aids and abets; or
- (c) assists,

an offence under section 457(1) commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) A person who, with intent to facilitate the escape of any prisoner —

(a) conveys anything into a prison or to a prisoner; or

(b) places anything anywhere with a view to it coming into the possession of a prisoner,

commits an offence, whether or not escape is effected.

Penalty: Imprisonment for 5 years or a fine, or both

(3) A person must not be —

(a) prosecuted for an offence under both subsection (1) and subsection (2) in respect of the same facts; nor

(b) prosecuted for an offence under subsection (1) and under Part 4 for an ancillary offence in relation to the same escape.

[Crimes Ord. s.38 modified]

459. Escaping: Supplementary

(1) If a person, in committing an offence under section 457(1) uses —

(a) violence, explosives or any offensive weapon; or

(b) a threat of the use of anything mentioned in paragraph (a),

to assist in effecting his or her own escape, the maximum penalty for the offence under that section is imprisonment for 10 years or a fine, or both.

(2) If a person, in committing an offence under section 458(1) uses —

(a) violence, explosives or any offensive weapon; or

(b) a threat of the use of anything mentioned in paragraph (a),

to encourage, aid and abet or assist the escape of another person, the maximum penalty for the offence under that section is imprisonment for 10 years or a fine, or both.

(3) For the purposes of sections 457 and 458, a person is deemed to be lawfully in custody —

(a) while confined in or being taken to or from any prison or place of lawful custody;

(b) while for any other reason outside a prison or place of lawful custody, in the custody or under the control of a police officer;

(c) while being taken to any place to which the person is required or authorised to be taken in custody; and

(d) while kept in custody in pursuance of any lawful requirement or authorisation.

[Crimes Ord. ss.37 and 39 modified]

460. Harboursing

(1) This section applies in relation to a person ('A') who —

(a) has escaped from a prison; or

(b) having been sentenced to imprisonment or detention, is otherwise unlawfully at large.

(2) A person who knowingly harbours A, or gives to A any assistance, with intent to prevent, hinder or interfere with A's being taken into custody, commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

[UK Criminal Justice Act 1961 s.22]

False alarms, etc.

461. False alarms, etc.

(1) A person who knowingly gives or causes to be given a false alarm of fire to the police force or to the fire service commits an offence.

Penalty: Imprisonment for 3 months or a fine at level 4 on the standard scale, or both.

(2) A person ('A') who causes any wasteful employment of any police officer by knowingly making to any other person a false report —

(a) likely to give rise to apprehension for the safety of any persons or property;

(b) saying or implying that an offence has been committed; or

(c) saying or implying that A has information material to any police inquiry,

commits an offence.

Penalty: Imprisonment for 3 months or a fine at level 4 on the standard scale, or both.

(3) A person who, knowing that there is no sufficient reason to do so, summons or causes an ambulance or a medical practitioner to be summoned to attend at any place, commits an offence.

Penalty: Imprisonment for 3 months or a fine at level 4 on the standard scale, or both.

PART 18 - JUDICIAL PROCEEDINGS

462. Restriction on reports of divorce and similar proceedings

(1) It is an offence for a person to print or publish, or cause or procure to be printed or published in relation to any judicial proceedings for dissolution of marriage, for nullity of marriage or for judicial separation, any particulars other than —

- (a) the names and occupations of the parties and witnesses;
 - (b) a concise statement of the charges, defences and countercharges in support of which evidence has been given
 - (c) submissions on any point of law arising in the course of the proceedings, and the decision of the court on them;
 - (d) the judgment of the court and observations made by the judge in giving judgment.
- Penalty: Imprisonment for 3 months or a fine at level 3 on the standard scale.

(2) No proceedings for an offence under this section may be commenced except by, or with the consent of, the Attorney General.

(3) Nothing in this section applies to —

- (a) the printing of any pleading, transcript of evidence or other document for use in connection with any judicial proceedings or the communication of them to persons concerned in the proceedings;
- (b) the printing or publishing of any notice or report in pursuance of the directions of a court; or
- (c) the printing or publishing of any matter —
 - (i) in a separate volume or part of a *bona fide* series of law reports which does not form part of any other publication and consists solely of reports of proceedings in courts of law; or
 - (ii) in a publication of a technical character *bona fide* intended for circulation among members of the legal or medical profession.

[UK Criminal Justice Act 1925 s.1 (repealed)]

463. Publication of information relating to proceedings in private

(1) Subject to subsection (3), the publication of information relating to proceedings before any court sitting in private is a contempt of court if —

- (a) the proceedings —
 - (i) relate to the exercise of the inherent jurisdiction of the Supreme Court with respect to youths;
 - (ii) are brought under the Children Ordinance 2014; or
 - (iii) otherwise relate wholly or mainly to the maintenance or upbringing of a youth;

(b) the proceedings are brought in relation to the property of a person suffering from mental disorder;

(c) the court sits in private for reasons of national security during that part of the proceedings about which the information in question is published;

(d) the information relates to a secret process, discovery or invention which is in issue in the proceedings;

(e) the court (if it has power to do so) expressly prohibits the publication of all information relating to the proceedings or of information of the description which is published.

(2) Without limiting subsection (1), the publication of the text or a summary of the whole or part of an order made by a court sitting in private is not of itself contempt of court unless the court (having power to do so) expressly prohibits the publication.

(3) The court may in its discretion give leave for the publication of any information the publication of which under subsection (1) would otherwise be a contempt of court.

(4) In this section references to a court include references to a judge and to a tribunal and to any person exercising the functions of a court, a judge or a tribunal; and references to a court sitting in private include references to a court sitting *in camera* or in chambers.

(5) Nothing in this section is to be construed as implying that any publication is punishable as contempt of court which would not be so punishable apart from this section.

[UK Administration of Justice Act 1960 s.12 adapted]

464. Restriction on reports of other judicial proceedings

(1) This Part is in addition to and does not limit the following provisions of the Criminal Procedure and Evidence Ordinance 2014 which restrict the reporting of publication of proceedings in criminal proceedings, namely —

(a) sections 200 to 206 in relation to the reporting of sending proceedings;

(b) section 251 to 253 in relation to preliminary rulings;

(c) section 387 and 388 in relation to derogatory assertions;

(d) sections 461 to 470 in relation to the reporting of judicial proceedings which involve vulnerable witnesses;

(e) section 753 in relation to judicial proceedings which involve young offenders.

(2) An offence under any of the provisions mentioned in subsection (1) committed in the face of the court may, instead of being prosecuted under those provisions, be treated as a contempt of court under the provisions of this Part.

(3) This Part applies to a breach of the restriction on reporting in section 691 of the Criminal Procedure and Evidence Ordinance 2014 (which relates to reporting of retrials) as provided by that section.

[UK Magistrates' Courts Act 1980 s.8; UK Crime & Disorder Act 1998 Sched. 3 expanded]

465. Taking photographs, etc. in court

(1) It is an offence for a person —

(a) to take or attempt to take in any court any photograph of the proceedings of the court;

(b) with a view to publication, to make or attempt to make in any court any portrait or sketch of the judge of the court, or a juror or witness in or a party to any proceedings before the court, whether civil or criminal; or

(c) to publish any photograph, portrait, or sketch taken or made in contravention of paragraph (a) or (b), or any reproduction of such a photograph, portrait or sketch.

Penalty: A fine at level 3 on the standard scale.

(2) For the purposes of this section —

(a) “court” means any court of justice, including a coroner’s court;

(b) “judge” includes the Registrar, a justice of the peace and the coroner;

(c) a photograph, portrait or sketch of a person is deemed to be taken or made in court if it is taken or made in the courtroom or in the building or in the precincts of the building in which the court is held, or if it is taken or made of the person while the person is entering or leaving the courtroom or any such building or precincts.

[UK Criminal Justice Act 1925 s.41 adapted]

Perverting the course of justice, etc.

466. Perverting the course of justice, etc.

(1) A person who, with intent to pervert the course of public justice, does an act or a series of acts which have a tendency to pervert the course of public justice commits an offence.

Penalty: Imprisonment for 14 years or a fine, or both.

(2) If a person has committed an imprisonable offence, any other person who, knowing or believing that the offence or some other imprisonable offence has been committed, and that he or she has information which might be of material assistance in securing the prosecution or conviction of an offender for it, accepts or agrees to accept for not disclosing that information any consideration other than the making good of loss or injury, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(3) No proceedings may be commenced for an offence under this section except by or with the consent of the Attorney General.

[UK Criminal Law Act 1967 s.5 and common law]

467. Intimidation, etc of witnesses, jurors and others

(1) A person commits an offence if the person —

(a) does an act which intimidates, and is intended to intimidate, another person (“the victim”);

(b) does the act knowing or believing that the victim is assisting in the investigation of an offence or is a witness or potential witness or a juror or potential juror in proceedings for an offence; and

(c) does it intending thereby to cause the investigation or the course of justice to be obstructed, perverted or interfered with.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) A person commits an offence if the person —

(a) does an act which harms, and is intended to harm, another person or, intending to cause another person to fear harm, threatens to do an act which would harm that other person;

(b) does or threatens to do the act knowing or believing that the person harmed or threatened to be harmed, or some other person, has assisted in an investigation into an offence or has given evidence or particular evidence in proceedings for an offence, or has acted as a juror or concurred in a particular verdict in proceedings for an offence; and

(c) does or threatens to do it because of that knowledge or belief.

Penalty: Imprisonment for 5 years or a fine, or both.

(3) For the purposes of subsections (1) and (2) it is immaterial that the act is or would be done, or that the threat is made —

(a) otherwise than in the presence of the victim; or

(b) to a person other than the victim.

(4) The harm that may be done or threatened may be financial as well as physical (whether to the person or a person’s property) and similarly as respects an intimidatory act which consists of threats.

(5) The intention required by subsection (1)(c) and the motive required by subsection (2)(c) need not be the only or the predominating intention or motive with which the act is done or, in the case of subsection (2), threatened.

(6) If, in proceedings against a person for an offence under subsection (1), it is proved that the person did an act falling within subsection (1)(a) with the knowledge or belief required by

subsection (1)(b), the person is presumed, unless the contrary is proved, to have done the act with the intention required by subsection (1)(c).

(7) If, in proceedings against a person ('A') for an offence under subsection (2), it is proved that within the relevant period —

(a) A did an act which harmed, and was intended to harm, another person ('B'); or

(b) intending to cause B fear of harm, A threatened to do an act which would harm B,

and that A did the act, or (as the case may be) threatened to do the act, with the knowledge or belief required by subsection (2)(b), A is presumed, unless the contrary is proved, to have done the act or (as the case may be) threatened to do the act with the motive required by subsection (2)(c).

(8) In this section —

“investigation into an offence” means such an investigation by the police or other person charged with the duty of investigating offences or charging offenders;

“offence” includes an alleged or suspected offence;

“potential”, in relation to a juror, means a person who has been summoned for jury service at the court at which proceedings for the offence are pending; and

“the relevant period” means —

(a) in relation to a witness or juror in any proceedings for an offence - the period beginning with the commencement of the proceedings and ending a year after the conclusion of the trial or, if there is an appeal, the conclusion of the appeal;

(b) in relation to a person who has, or is believed by the defendant to have, assisted in an investigation into an offence, but who was not also a witness in proceedings for an offence - the period of one year beginning with any act of the person, or any act believed by the defendant to be an act of the person, assisting in the investigation; and

(c) in relation to a person who both has, or is believed by the defendant to have, assisted in the investigation into an offence and was a witness in proceedings for the offence - the period beginning with any act of the person, or any act believed by the defendant to be an act of the person, assisting in the investigation and ending as stated in (a) above.

(9) For the purposes of the definition of the relevant period in subsection (8) —

(a) proceedings for an offence are commenced at the earliest of the following times —

(i) when a justice of the peace issues a summons or warrant under section 258 of the Criminal Procedure and Evidence Ordinance 2014 (Issue of summons or warrant for arrest) in respect of the offence;

(ii) when a person is charged with the offence after being taken into custody without a warrant;

(iii) when a bill of indictment is preferred by virtue of section 290 of the Criminal Procedure and Evidence Ordinance 2014 (Bills of indictment);

(b) proceedings at a trial of an offence are concluded with the discontinuance of the prosecution, the discharge of the jury without a finding, the acquittal of the defendant or the sentencing of or other dealing with the defendant for the offence of which the defendant was convicted; and

(c) proceedings on an appeal are concluded on the determination of the appeal or the abandonment of the appeal.

(10) This section is in addition to, and does not derogate from, any offence subsisting at common law relating to witnesses and jurors.

[Crimes Ord. s.50; UK Criminal Justice & Public Order Act 1994 s.51]

Contempt of court

468. Contempt of the Supreme Court or Court of Appeal

(1) Conduct, whether in the face of the court or otherwise, which constituted contempt of the Court of Appeal or the Supreme Court before the commencement of this Part —

(a) constitutes contempt of the respective court after that commencement, subject to section 469; and

(b) may be dealt with by the Court of Appeal or the Supreme Court respectively by imprisonment or a fine or both, after hearing representations both as to liability and as to penalty from or on behalf of the defendant, and subject to section 473.

(2) Nothing in this Part —

(a) prejudices any defence available at common law to a charge of contempt of court under the strict liability rule;

(b) implies that any publication is punishable as contempt of court under that rule which would not be so punishable apart from those provisions;

(c) restricts liability for contempt of court in respect of conduct intended to impede or prejudice the administration of justice.

[Common law; UK Contempt of Court Act 1981 s.6]

469. Strict liability rule

(1) In this Part “the strict liability rule” means the rule of law whereby conduct may be treated as a contempt of court as tending to interfere with the course of justice in particular legal proceedings regardless of intent to do so.

(2) The strict liability rule applies —

(a) only in relation to publications, and for this purpose “publication” includes any speech, writing, programme included in a cable programme service or other communication in whatever form, which is addressed to the public at large or any section of the public;

(b) only to a publication which creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced;

(c) to a publication only if the proceedings in question are active within the meaning of this section at the time of the publication.

(3) Section 474 applies for determining the times at which proceedings are to be treated as active within the meaning of this section.

(4) A person is not guilty of contempt of court under the strict liability rule as the publisher of any matter to which that rule applies if at the time of publication (having taken all reasonable care) the person does not know and has no reason to suspect that relevant proceedings are active.

(5) A person is not guilty of contempt of court under the strict liability rule as the distributor of a publication containing any such matter if at the time of distribution (having taken all reasonable care) the person does not know that it contains such matter and has no reason to suspect that it is likely to do so.

(6) The burden of proof of any fact tending to establish a defence afforded by this section to any person lies upon that person.

(7) Subject to this section a person is not guilty of contempt of court under the strict liability rule in respect of a fair and accurate report of legal proceedings held in public, published contemporaneously and in good faith.

(8) In any such proceedings the court may, if it appears to be necessary for avoiding a substantial risk of prejudice to the administration of justice in those proceedings, or in any other proceedings pending or imminent, order that the publication of any report of the proceedings, or any part of the proceedings, be postponed for a period the court thinks necessary for that purpose.

(9) For the purposes of subsection (7) a report of proceedings is to be treated as published contemporaneously —

(a) in the case of a report of which publication is postponed pursuant to an order under subsection (8) of this section - if published as soon as practicable after that order expires;

(b) in the case of a report of sending proceedings of which publication is permitted by virtue only of section 200 or 201 of the Criminal Procedure and Evidence Ordinance 2014 (reporting of sending proceedings) - if published as soon as practicable after publication is so permitted.

(10) A publication made as or as part of a discussion in good faith of public affairs or other matters of general public interest is not to be treated as a contempt of court under the strict liability rule if the risk of impediment or prejudice to particular legal proceedings is merely incidental to the discussion.

[Contempt of Court Ord. Schedule; UK Contempt of Court Act 1981 ss.1 to 5]

470. Confidentiality of jury's deliberations

(1) Subject to subsection (2), it is a contempt of court to obtain, disclose or solicit any particulars of statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations in any legal proceedings.

(2) This section does not apply to any disclosure of any particulars —

(a) in the proceedings in question for the purpose of enabling the jury to arrive at their verdict, or in connection with the delivery of that verdict; or

(b) in evidence in any subsequent proceedings for an offence alleged to have been committed in relation to the jury in the first mentioned proceedings,

or to the publication of any particulars so disclosed.

[UK Contempt of Court Act 1981 s.8]

471. Use of tape recorders

(1) Subject to subsection (4), it is a contempt of court to —

(a) use in court, or bring into court for use, any tape recorder or other instrument for recording sound, except with the leave of the court;

(b) publish a recording of legal proceedings made by means of any such instrument, or any recording derived directly or indirectly from it, by playing it in the hearing of the public or any section of the public, or to dispose of it or any recording so derived, with a view to such publication;

(c) use any such recording in contravention of any conditions of leave granted under paragraph (a).

(2) Leave under subsection (1)(a) may be granted or refused at the discretion of the court, and if granted may be granted subject to conditions the court thinks proper with respect to the use of

any recording made pursuant to the leave; and if leave has been granted the court may at the like discretion withdraw or amend it either generally or in relation to any particular part of the proceedings.

(3) Without affecting any other power to deal with an act of contempt under subsection (1)(a), the court may order the instrument, or any recording made with it, or both, to be forfeited; and any object so forfeited must (unless the court otherwise determines on application by a person appearing to it to be the owner) be sold or otherwise disposed of in the manner the court directs.

(4) This section does not apply to the making or use of sound recordings for purposes of official transcripts of proceedings.

[UK Contempt of Court Act 1981 s.9]

472. Contempt of the Magistrate's Court or the Summary Court

(1) The Magistrates' Court has jurisdiction under this section to treat as in contempt of court any person who wilfully —

(a) insults the Senior Magistrate or justices of the peace, any witness before or officer of the court or any legal practitioner having business in the court, during his or her or their sitting or attendance in court or in going to or returning from the court;

(b) interrupts the proceedings of the court or otherwise misbehaves in court;

(c) commits a contempt of court of the kind mentioned in section 470 or 471.

(d) commits an offence under any of the provisions mentioned in section 464(1) in the face of the court.

(2) In any such case the Magistrate's Court or the Summary Court, as the case may be, may —

(a) order any officer of the court, or any police officer, to take the offender into custody and detain him or her until the rising of the court; and

(b) commit the offender to custody for a specified period not exceeding one month or impose on him or her a fine at level 4 on the standard scale, or both.

(3) The Magistrate's Court or the Summary Court, as the case may be, may at any time revoke an order of committal made under subsection (2) and, if the offender is in custody, order his or her discharge.

(4) Provisions of the Criminal Procedure and Evidence Ordinance 2014 relating to fines, power to rectify mistakes and appeals to Supreme Court apply in relation to an order made by the Magistrate's Court or the Summary Court under this section as they apply in relation to a sentence on conviction or finding of guilty of an offence by that court.

[UK Contempt of Court Act 1981 s.12]

473. Penalties and procedure

(1) If a court has power to commit a person to prison for contempt of court and (apart from this provision) no limitation applies to the period of committal, the committal must —

(a) (without affecting the power of the court to order the person's earlier discharge) be for a fixed term;

(b) not on any one occasion exceed 2 years in the case of committal by the Supreme Court or Court of Appeal, or one month in the case of committal by the Magistrate's Court or the Summary Court.

(2) In the Magistrate's Court and the Summary Court a fine for contempt of court must not exceed level 4 on the standard scale and is subject to section 472(4).

(3) A court has the same power to make a hospital order under Part 34 of the Criminal Procedure and Evidence Ordinance 2014 (Mentally Disordered Offenders) in the case of a person suffering from mental disorder who could otherwise be committed to prison for contempt of court as it has under that Part in the case of a person convicted of an offence.

(4) No proceedings for a contempt of court under this Part may be commenced except by, or with the consent of, the Attorney General, or on the motion of a court having jurisdiction to deal with it.

(5) A fine imposed under this section or section 468 is, for the purposes of any enactment, deemed to be a sum adjudged to be paid by a conviction and may be enforced accordingly.

[UK Contempt of Court Act 1981 ss.7, 14 and 16]

474. Times when proceedings are active

(1) Criminal, appellate and other proceedings are active for the purpose of section 469 at the times respectively prescribed by the following subsections; and in relation to proceedings in which more than one of the steps described in any of those subsections is taken, the reference in that subsection is a reference to the first of those steps.

(2) Subject to the following subsections, criminal proceedings are active from the relevant initial step specified in subsection (3) until concluded as described in subsection (4).

(3) The initial steps of criminal proceedings are —

(a) arrest without warrant;

(b) the issue of a warrant for arrest;

(c) the issue of a summons to appear;

(d) the service of an indictment or other document specifying the charge;

(e) an oral charge.

(4) Criminal proceedings are concluded —

(a) by acquittal or, as the case may be, by sentence;

(b) by any other verdict, finding, order or decision which puts an end to the proceedings;

(c) by discontinuance or by operation of law.

(5) The reference in subsection (4)(a) to sentence includes any order or decision consequent on conviction or finding of guilt which disposes of the case, either absolutely or subject to future events and a deferment of sentence under Part 23 of the Criminal Procedure and Evidence Ordinance 2014 (Sentencing: General Principles).

(6) Proceedings are discontinued within the meaning of subsection (4)(c) —

(a) if the charge or summons is withdrawn or a *nolle prosequi* entered;

(b) in the case of proceedings commenced by arrest without warrant - if the person arrested is released, otherwise than on bail, without having been charged.

(7) Criminal proceedings cease to be active if an order is made for the charge to lie on the file, but become active again if leave is later given for the proceedings to continue.

(8) Without affecting subsection (4)(b), criminal proceedings against a person cease to be active if —

(a) the defendant is found to be under a disability such as to render him or her unfit to be tried or unfit to plead; or

(b) a hospital order is made in his or her case under Part 34 of the Criminal Procedure and Evidence Ordinance [2014] (Mentally Disordered Offenders),

but become active again if they are later resumed.

(9) Criminal proceedings against a person which become active on the issue of a warrant for the person's arrest cease to be active 12 months after the date of the warrant unless the person has been arrested within that period, but become active again if the person is subsequently arrested.

(10) Proceedings other than criminal proceedings and appellate proceedings are active from the time when a date for the trial or hearing is fixed until the proceedings are disposed of or discontinued or withdrawn; and for the purposes of this subsection any motion or application made in or for the purposes of any proceedings is to be treated as a distinct proceeding.

(11) Appellate proceedings are active from the time when they are commenced by —

- (a) application for leave to appeal or apply for review, or by notice of such an application;
- (b) notice of appeal or of application for review; or
- (c) other originating process,

until disposed of or abandoned, discontinued or withdrawn.

(12) If, in appellate proceedings relating to criminal proceedings, the court —

- (a) remits the case to the court below; or
- (b) orders a new trial,

any further or new proceedings which result are to be treated as active from the conclusion of the appellate proceedings.

[UK Contempt of Court Act 1981 Sched.1]

475. Supplementary provisions

(1) No court may require a person to disclose, nor is any person guilty of contempt of court for refusing to disclose, the source of information contained in a publication for which the person is responsible, unless it is established to the satisfaction of the court that disclosure is necessary in the interests of justice or national security, or for the prevention of disorder or crime.

(2) If a court that has power to do so allows a name or other matter to be withheld from the public in proceedings before the court, the court may give any directions prohibiting the publication of that name or matter in connection with the proceedings that appear to the court to be necessary for the purpose for which it was so withheld.

(3) Nothing in this Part —

- (a) prejudices any defence available at common law to a charge of contempt of court under the strict liability rule;
- (b) implies that any publication is punishable as contempt of court under that rule which would not be so punishable apart from those provisions;
- (c) restricts liability for contempt of court in respect of conduct intended to impede or prejudice the administration of justice.

[UK Contempt of Court Act 1981 ss.10 and 11]

PART 19 – PERJURY, ETC.

476. Interpretation of Part

(1) For the purposes of this Part, the forms and ceremonies used in administering an oath are immaterial, if —

(a) the court or person before whom the oath is taken has power to administer an oath for the purpose of verifying the statement in question; and

(b) the oath has been administered in a form and with ceremonies which the person taking the oath has accepted without objection, or has declared to be binding on him or her.

(2) The expression “judicial proceedings” includes proceedings before the European Court or any court attached to it or any other court, tribunal or person having by law power to hear, receive, and examine evidence on oath.

[UK Perjury Act 1911 s.15 adapted]

Perjury

477. Perjury in judicial proceedings

(1) A person lawfully sworn as a witness or as an interpreter in any judicial proceedings who wilfully makes a statement material in the proceeding, which the person knows to be false or does not believe to be true, commits the offence of perjury.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) If a statement made for the purposes of any judicial proceedings is not made before the tribunal itself, but is made on oath before a person authorised by law to administer an oath to the person who makes the statement, and to record or authenticate the statement, it is, for the purposes of this section, to be treated as having been made in judicial proceedings.

(3) A statement made by a person lawfully sworn in the Falkland Islands for the purposes of any judicial proceedings in a place outside the Falkland Islands is, for the purposes of this section, to be treated as a statement made in judicial proceedings in the Falkland Islands.

(4) If, for the purposes of judicial proceedings in the Falkland Islands, a person is lawfully sworn under the authority of any enactment —

(a) in any part of Her Majesty’s dominions;

(b) before a British officer in a foreign country; or

(c) within the jurisdiction of the Admiralty of England,

a statement made by the person (unless the enactment under which it was made otherwise specifically provides) is to be treated for the purposes of this section as having been made in the judicial proceedings in the Falkland Islands for the purposes of which it was made.

(5) The question whether a statement in respect of which perjury is alleged was material is a question of law to be determined by the court of trial.

[UK Perjury Act 1911 s.1]

478. Perjury in the European Court, etc.

(1) A person who, in sworn evidence before the European Court or any court attached to it, makes any statement which the person knows to be false or does not believe to be true, commits an offence and may be proceeded against and punished as for an offence under section 477(1).

(2) For the purposes of this section, it is immaterial whether the defendant does or does not have Falkland Islands status.

[UK European Communities Act 1972 s.11(1) adapted]

479. Subornation of perjury

Every person who counsels, procures or suborns another person to commit an offence under this Part commits an offence.

Penalty: Imprisonment for 14 years or a fine, or both.

[UK Perjury Act 1911 s.7 adapted]

False statements

480. Penalty for giving false unsworn evidence

(1) This section applies when a person gives unsworn evidence in criminal proceedings pursuant to section 352 of the Criminal Procedure and Evidence Ordinance 2014 (Reception of unsworn evidence).

Penalty: (i) in the case of an adult - imprisonment for 6 months or a fine at level 5 on the standard scale, or both;

(ii) in the case of a youth – a fine at level 3 on the standard scale.

(2) A person who wilfully gives false evidence in such circumstances that, had the evidence been given on oath, the person would have been guilty of perjury, commits an offence.

[UK Youth Justice and Criminal Evidence Act 1999 s.57]

481. False written statements tendered in evidence

A person who in a written statement tendered in evidence in criminal proceedings by virtue of section 411 of the Criminal Procedure and Evidence Ordinance 2014 (Proof by written statement) wilfully makes a statement material in those proceedings which the person knows to be false or does not believe to be true, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

[UK Criminal Justice Act 1967 s.89]

482. False unsworn statements under the Evidence (Proceedings in Other Jurisdictions) Act 1975

A person who, in giving any evidence (either orally or in writing) otherwise than on oath, when required to do so by an order under section 2 of the UK Evidence (Proceedings in Other Jurisdictions) Act 1975, makes a statement —

(a) which the person knows to be false in a material particular; or

(b) which is false in a material particular and which the person does not believe to be true,

commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

[UK Perjury Act 1911 s.1A; Evidence (Proceedings in other Jurisdictions) Act 1975]

483. False statements on oath made otherwise than in judicial proceedings

A person who —

(a) being required or authorised by law to make any statement on oath for any purpose, and being lawfully sworn (otherwise than in judicial proceedings) wilfully makes a statement which is material for that purpose and which the person knows to be false or does not believe to be true; or

(b) wilfully uses any false affidavit for the purposes of the UK Bills of Sale Act 1878 as applied to the Falkland Islands,

commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

[UK Perjury Act 1911 s.2]

484. False statements, etc. with reference to marriage

(1) A person who, for the purpose of procuring a marriage, or a certificate or licence for marriage, knowingly and wilfully makes a false oath, or makes or signs a false declaration, notice or certificate, required under any enactment for the time being in force relating to marriage, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) A person who knowingly and wilfully makes, or knowingly and wilfully causes to be made, for the purpose of being inserted in any register of marriage, a false statement as to any particular required by law to be known and registered relating to any marriage, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(3) A person who forbids any marriage or the issue of any certificate or licence for marriage by falsely representing himself or herself to be a person —

(a) whose consent to the marriage is required by law; or

(b) who is authorised to forbid the issue of such a certificate,

knowing such representation to be false, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

[UK Perjury Act 1911 s.3; Criminal Justice Act 1925 s.28]

485. False statements, etc. as to births or deaths

A person who knowingly and wilfully —

- (a) makes a false answer to any question put by or on behalf of the Registrar General relating to the particulars required to be registered concerning any birth or death;
- (b) gives to the Registrar General any false information concerning any birth or death or the cause of any death;
- (c) makes any false certificate or declaration under or for the purposes of any enactment relating to the registration of births or deaths;
- (d) knowing any such certificate or declaration to be false, uses it as true or gives or sends it as true to any person;
- (e) makes, gives or uses, any false statement or declaration as to a child born alive as having been still-born, or as to the body of a deceased person or a still-born child in any coffin;
- (f) falsely pretends that any child born alive was still-born; or
- (g) makes any false statement with intent to have it inserted in any register of births or deaths,

commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

[UK Perjury Act 1911 s.4; UK Criminal Justice Act 1925 s.28]

486. False statutory declarations and other false statements

A person who knowingly and wilfully makes (otherwise than on oath) a statement that is false in a material particular commits an offence if the statement is made —

- (a) in a statutory declaration;
- (b) in an abstract, account, balance sheet, book, certificate, declaration, entry, estimate, inventory, notice, report, return or other document which the person is authorised or required to make, attest or verify, by any enactment then in force in the Falkland Islands;
- (c) in any written statement which the person is required to make or makes for the purposes of or in connection with any civil proceedings; or
- (d) in any oral declaration or oral answer which the person is required to make by, under, or in pursuance of any enactment,

commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

[UK Perjury Act 1911 s.5]

487. False declarations, etc. to obtain registration, etc. for carrying on a vocation

A person who —

(a) procures or attempts to procure himself or herself to be registered on any register or roll kept under or pursuant to any enactment in force in the Falkland Islands of persons qualified by law to practise any vocation or calling; or

(b) procures or attempts to procure a certificate of the registration of any person on any such register or roll,

by wilfully making or producing or causing to be made or produced either verbally or in writing, any declaration, certificate or representation which the person knows to be false or fraudulent, commits an offence.

Penalty: Imprisonment for 12 months or a fine at level 6 on the standard scale, or both.

[UK Perjury Act 1911 s.6]

488. False statement to procure passport

A person who, for the purpose of procuring a passport for himself or herself for any other person, makes a statement which is to his or her knowledge untrue, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

[UK Criminal Justice Act 1925 s.36]

489. Offences under the British Nationality Act 1981

(1) A person who, for the purpose of procuring anything to be done or not to be done under the UK British Nationality Act 1981 as applied to the Falkland Islands, makes a statement which the person knows to be false in a material particular, or recklessly makes a statement which is false in a material particular, commits an offence.

Penalty: Imprisonment for 3 months or a fine a level 4 on the standard scale, or both.

(2) A person who fails to comply with any requirement imposed on the person under the UK British Nationality Act 1981 with respect to the delivering up of certificates of naturalisation commits an offence.

Penalty: A fine at level 3 on the standard scale.

[UK British Nationality Act 1981 s.46 (part)]

Miscellaneous provisions

490. Corroboration required

(1) A person is not liable to be convicted of any offence under this Part, or for any offence declared by any other enactment to be perjury or subornation of perjury, or to be punishable as perjury or subornation, solely upon the evidence of one witness as to the falsity of any statement alleged to be false.

(2) The requirement for corroboration in relation to certain offences contained in subsection (1) applies also to an attempt to commit any of those offences.

[UK Perjury Act 1911 s.13 adapted]

491. Proof of former trial

On a prosecution —

(a) for perjury alleged to have been committed on the trial of an indictment or criminal information; or

(b) for procuring or suborning the commission of perjury on any such trial,

the fact of the former trial may be proved by the production of a certificate containing the substance and effect (omitting the formal parts) of the information or charge and trial purporting to be signed by the Registrar or clerk of the court, or other person having the custody of the records of the court where the indictment or information was tried, without proof of the signature or official character of the clerk or person appearing to have signed the certificate.

[UK Perjury Act 1911 s.14]

492. Form of indictment or charge

(1) In an information or charge for an offence under this Part, it is sufficient to state the substance of the offence charged, and before which court or person (if any) the offence was committed, without stating the proceedings or any part of the proceedings in the course of which the offence was committed, and without stating the authority of any court or person before whom the offence was committed.

(2) In an information or charge for aiding, abetting, counselling, suborning, or procuring any other person to commit an offence under this Part, or for conspiring with any other person to commit any such offence, it is sufficient —

(a) if that offence has been committed - to allege that offence, and then to allege that the defendant procured the commission of that offence;

(b) if that offence has not been committed - to state the substance of the offence charged against the defendant without stating any matter or thing which it is unnecessary to aver in the case of an indictment for a false statement or false representation that is an offence under this Part.

[UK Perjury Act 1911 s.12]

493. Saving for corrupt practice offence

If the making of a false statement by a person is not only an offence under this Part, but also by virtue of some other Part is a corrupt practice, the liability of the person under this Part is in addition to and not in substitution for the person's liability under that other Part.

[UK Perjury Act 1911 s.16(1)]

PART 20 – BRIBERY AND PUBLIC OFFICE OFFENCES

General bribery offences

494. Offences of bribing another person

(1) A person ('P') commits an offence in either of the following cases.

(2) Case 1 is where —

- (a) P offers, promises or gives a financial or other advantage to another person; and
 - (b) P intends the advantage —
 - (i) to induce a person to perform improperly a relevant function or activity; or
 - (ii) to reward a person for the improper performance of such a function or activity.
- (3) Case 2 is where —
- (a) P offers, promises or gives a financial or other advantage to another person; and
 - (b) P knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity.
- (4) In Case 1 it does not matter whether the person to whom the advantage is offered, promised or given is the same person as the person who is to perform, or has performed, the function or activity concerned.
- (5) In Cases 1 and 2 it is irrelevant whether the advantage is offered, promised or given by P directly or through a third party.
- (6) The maximum penalty for an offence under this section is —
- (a) if P is an individual - imprisonment for 10 years or a fine, or both;
 - (b) in any other case - a fine.
- [UK Bribery Act 2010 ss.1 and 11]*

495. Offences relating to being bribed

- (1) A person ('R') commits an offence in any of the following cases.
- (2) Case 3 is where R requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly.
- (3) Case 4 is where —
- (a) R requests, agrees to receive or accepts a financial or other advantage; and
 - (b) the request, agreement or acceptance itself constitutes the improper performance by R of a relevant function or activity.
- (4) Case 5 is where R requests, agrees to receive or accepts a financial or other advantage as a reward for the improper performance (whether by R or another person) of a relevant function or activity.

(5) Case 6 is where, in anticipation or in consequence of R requesting, agreeing to receive or accepting a financial or other advantage, a relevant function or activity is performed improperly—

(a) by R; or

(b) by another person at R's request, or with R's assent or acquiescence.

(6) In Cases 3 to 6 it is irrelevant whether —

(a) R requests, agrees to receive or accepts (or is to request, agree to receive or accept) the advantage directly or through a third party; or

(b) the advantage is (or is to be) for the benefit of R or another person.

(7) In Cases 4 to 6 it is irrelevant whether R knows or believes that the performance of the function or activity is improper.

(8) In Case 6, where a person other than R is performing the function or activity, it is also irrelevant whether that person knows or believes that the performance of the function or activity is improper.

(9) The maximum penalty for an offence under this section is —

(a) if P is an individual - imprisonment for 10 years or a fine, or both;

(b) in any other case - a fine.

[UK Bribery Act 2010 ss.2 and 11]

496. Function or activity to which bribe relates

(1) For the purposes of this Part, a function or activity is a relevant function or activity if —

(a) it falls within subsection (2); and

(b) meets one of more of conditions A to C.

(2) The following functions and activities fall within this subsection —

(a) any function of a public nature;

(b) any activity connected with a business;

(c) any activity performed by or on behalf of a body of persons (whether incorporated or not).

(3) Condition A is that a person performing the function or activity is expected to perform it in good faith.

(4) Condition B is that a person performing the function or activity is expected to perform it impartially.

(5) Condition C is that a person performing the function or activity is in a position of trust by virtue of performing it.

(6) A function or activity is a relevant function or activity even if it —

(a) has no connection with the Falkland Islands; and

(b) is performed in a place outside the Falkland Islands.

(7) In this section, “business” includes trade or profession.

[UK Bribery Act 2010 s.3]

497. Improper performance to which bribe relates

(1) For the purposes of this Part a relevant function or activity —

(a) is performed improperly if it is performed in breach of a relevant expectation; and

(b) is to be treated as being performed improperly if there is a failure to perform the function or activity and that failure is itself a breach of a relevant expectation.

(2) In subsection (1), “relevant expectation” —

(a) in relation a function or activity which meets condition A or B - means the expectation mentioned in the condition concerned; and

(b) in relation a function or activity which meets condition C - means any expectation as to the manner in which, or the reasons for which, the function or activity will be performed that arises from the position of trust mentioned in that condition.

(3) Anything that a person does (or omits to do) arising from or in connection with that person’s past performance of a relevant function or activity is to be treated for purposes of this Part as being done (or omitted) by that person in the performance of that function or activity.

[UK Bribery Act 2010 s.4]

498. Expectation test

(1) For the purposes of sections 496 and 497, the test of what is expected is a test of what a reasonable person in the Falkland Islands would expect in relation to the performance of the type of function or activity concerned.

(2) In deciding what such a person would expect in relation to the performance of a function or activity where the performance is not subject to the law of the Falkland Islands, any local custom

or practice is to be disregarded unless it is permitted or required by the written law of the place concerned.

(3) In subsection (2), “written law” means law contained in —

(a) any written constitution, or provision made by or under legislation, applicable to the place concerned; or

(b) any judicial decision which is so applicable and is evidenced in published written sources.

[UK Bribery Act 2010 s.5]

Bribery of foreign public officials

499. Bribery of foreign public officials

(1) A person (‘P’) who bribes a foreign public official (‘F’) with intent to influence F in F’s capacity as a foreign public official commits an offence if P’s intention is to obtain or retain —

(a) business; or

(b) an advantage in the conduct of business.

Penalty: (i) If P is an individual - imprisonment for 10 years or a fine, or both;

(ii) in any other case - a fine.

(2) P bribes F if, and only if —

(a) directly or through a third party P offers, promises or gives any financial advantage —

(i) to F; or

(ii) to another person at F’s request or with F’s assent or acquiescence; and

(b) F is neither permitted nor required by the written law applicable to F to be influenced in F’s capacity as a foreign public official by the promise, offer or gift.

(3) References in this section to influencing F in F’s capacity as a foreign public official mean influencing F in the performance of F’s functions as such an official, which includes —

(a) any omission to exercise those functions; and

(b) any use of F’s position as such an official, even if not within F’s authority.

(4) The term “foreign public official” means an individual who —

(a) holds a legislative, administrative or judicial position of any kind, whether appointed or elected, of a country or territory outside the Falkland Islands (or any subdivision of such a country or territory);

(b) exercises a public function —

(i) for or on behalf of a country or territory outside the Falkland Islands (or any subdivision of such a country or territory); or

(ii) for any public agency or public enterprise of that country or territory (or subdivision); or

(c) is an official or agent of a public international organisation.

(5) In this section, “public international organisation” means an organisation whose members are any of the following —

(a) countries or territories;

(b) governments of countries or territories;

(c) other public international organisations;

(d) a mixture of any of the above.

(6) For the purpose of section (3)(b), the written law applicable to F is —

(a) if the performance of the functions of F which P intends to influence would be subject to the law of the Falkland Islands - that law;

(b) if paragraph (a) does not apply and F is an official or agent of a public international organisation - the applicable written rules of that organisation;

(c) if paragraphs (a) and (b) do not apply - the law of the country or territory in relation to which F is a foreign public official so far as that law is contained in —

(i) any written constitution, or provision made by or under legislation, applicable to the country or territory concerned; or

(ii) any judicial decision which is so applicable and is evidenced in published written sources.

(7) For the purposes of this section, a trade or profession is a business.

[UK Bribery Act 2010 ss.6 and 11]

Failure of commercial organisations to prevent bribery

500. Failure of commercial organisations to prevent bribery

(1) A relevant commercial organisation ('C') commits an offence under this section if a person ('A') associated with C bribes another person intending to —

(a) obtain or retain business for C; or

(b) obtain or retain an advantage in the conduct of business for C.

Penalty: A fine.

(2) It is a defence for C to show that C had in place adequate procedures designed to prevent persons associated with C from undertaking such conduct.

(3) For the purposes of this section, A bribed another person if, and only if, A —

(a) is, or would be, guilty of an offence under section 494 or 495 (whether or not A has been prosecuted for such an offence); or

(b) would be guilty of such an offence if section 507(1)(c) and (3) were omitted.

(4) Section 501 applies as regards the meaning of a person associated with C and section 502 applies as regards a duty on the Governor to publish guidance.

(5) In this section —

“partnership” means —

(a) a partnership within the meaning of the Companies and Private Partnership Ordinance; and

(b) a limited partnership registered under that Ordinance,

or a firm or entity of a similar character formed under the law of a place outside the Falkland Islands;

“relevant commercial organisation” means —

(a) a body incorporated under the law of the Falkland Islands which carries on a business there or elsewhere;

(b) any other corporate body (wherever incorporated) which carries on business, or part of a business, in the Falkland Islands;

(c) a partnership formed under the law of the Falkland Islands which carries on a business (whether there or elsewhere); or

(d) any other partnership (wherever formed) which carries on a business, or part of a business, in the Falkland Islands,

and for purposes of this section, a trade or profession is a business.

[UK Bribery Act 2010 s.7]

501. Meaning of “associated person”

(1) For the purposes of section 500 a person (‘A’) is associated with C if (disregarding any bribe under consideration) A is a person who performs services for or on behalf of C.

(2) The capacity in which A performs services for or on behalf of C is irrelevant, so that A may (for example) be C’s employee, agent or subsidiary.

(3) Subject to subsection (4), the question of whether A is a person who performs services for or on behalf of C is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between A and C.

(4) In determining a question as mentioned in subsection (3), if A is an employee of C, it is to be presumed unless the contrary is shown that A is a person who performs services for or on behalf of C.

[UK Bribery Act 2010 s.8]

502. Guidance about commercial organisations preventing bribery

(1) The Governor, after consulting the Criminal Justice Council, may by order publish guidance about procedures that relevant commercial organisations can put in place to prevent persons associated with them from bribing as mentioned in section 500(1).

(2) The Governor, after consulting as aforesaid, may from time to time by order publish revisions to guidance published under this section, or to revised guidance.

(3) Expressions used in this section have the same meaning as in section 500.

[UK Bribery Act 2010 s.9]

Misconduct in judicial or public office

503. Misconduct in public office

A public officer who wilfully and without reasonable excuse or justification —

(a) neglects to perform his or her duty; or

(b) misconducts himself or herself to such a degree as to amount to an abuse of the public’s trust in the office holder,

commits an offence.

Penalty: Imprisonment for 14 years or a fine, or both.

[Common law]

Miscellaneous

504. Consent to prosecution

No proceedings under this Part may be commenced except by, or with the consent of, the Attorney General.

[UK Bribery Act 2010 s.10]

505. Territorial application of this Part

(1) If —

- (a) no act or omission which forms part of an offence under section 494, 495 or 499 takes place in the Falkland Islands;
- (b) a person's acts or omissions done or made outside the Falkland Islands would form part of such an offence if done or made in the Falkland Islands; and
- (c) that person has a close connection with the Falkland Islands,

proceedings for the offence may be taken in the Falkland Islands.

(2) An offence is committed under section 500 irrespective of whether the acts or omissions which form part of the offence take place in the Falkland Islands or elsewhere.

(3) For the purposes of subsection (1), a person has a close connection with the Falkland Islands if the person was at the time when the acts or omissions were done or made, the person was —

- (a) an individual who had Falkland Islands status; or
- (b) a corporate body incorporated by or under the law of or carrying on business in the Falkland Islands.

[UK Bribery Act 2010 s.12]

506. National security as a defence

(1) It is a defence for a person charged with a relevant bribery offence to prove that the person's conduct was necessary for the proper exercise of the functions of —

- (a) the functions of the Crown in relation to national security; or
- (b) the armed forces when engaged on active service.

(2) For the purposes of subsection (1), a "relevant bribery offence" means —

- (a) an offence under section 494 which would not also be an offence under section 499;
- (b) an offence under section 495;

(c) an offence of attempting or conspiring to commit, the commission of an offence falling within paragraph (a) or (b);

(d) an offence committed by encouraging, or aiding and abetting, the commission of an offence falling within paragraph (a) or (b).

(3) In relation to the intelligence services operating in the Falkland Islands, the Governor must ensure that the service has in place arrangements designed to ensure that any conduct of a member of the service which would otherwise be a relevant bribery offence is necessary for a purpose falling within subsection (1)(a).

(4) In relation to the armed services operating in the Falkland Islands, the Governor must ensure that the forces have in place arrangements designed to ensure that any conduct of —

(a) a member of the armed forces who is engaged on active service; or

(b) a civilian subject to service discipline when working in support of any person falling within paragraph (a),

which would otherwise be a relevant bribery offence, is necessary for a purpose falling within subsection (1)(b).

(5) In this section —

“active service” means service in —

(a) an action or operation against an enemy;

(b) an operation outside the British Islands for the protection of life or property; or

(c) the military occupation of a foreign country or territory;

“civilian subject to service discipline” and “enemy” have the same meaning as in the Act of 2006.

[UK Bribery Act 2010 s.13]

507. Bribery offences by corporate bodies

(1) This section applies if an offence under any of sections 494, 495 or 499 is committed by a corporate body.

(2) If the offence is proved to have been committed with the consent or connivance of —

(a) a senior officer of the corporate body; or

(b) a person purporting to act in such a capacity,

the senior officer or person (as well as the corporate body) is guilty of the offence and liable to be proceeded against and punished accordingly.

(3) Subsection (2) does not apply, in the case of an offence committed under section 494, 495 or 499 by virtue of section 505(1), to a senior officer or person purporting to act in such a capacity unless the senior officer or person has a close connection with the Falkland Islands (within the meaning given by section 505(3)).

(4) In this section —

“director” means, in relation to a corporate body the affairs of which are managed by its members, a member of the body;

“senior officer” means, in relation to a corporate body, a director, manager, secretary or other similar officer of the body.

[UK Bribery Act 2010 s.14]

508. Bribery offences by partnerships

(1) Proceedings for an offence under section 500 alleged to have been committed by a partnership must be brought in the name of the partnership (and not in that of any of the partners).

(2) For the purpose of such proceedings —

(a) statutory provisions relating to the service of documents have effect as if the partnership were a corporate body; and

(b) the provisions of the Criminal Procedure and Evidence Ordinance 2014 relating to proceedings against a corporate body apply as they apply in relation to such a body.

[UK Bribery Act 2010 s.15]

509. Application to Crown

This Part applies to individuals in the public service of the Crown as it applies to other individuals.

[UK Bribery Act 2010 s.16]

510. Abolition of common law offences

The common law offences of bribery and embracery are abolished.

[UK Bribery Act 2010 s.17(1)]

PART 21 - PUBLIC ORDER

511. Interpretation of Part

(1) In this Part, unless the context otherwise requires —

“caravan” means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted;

“damage”, in relation to land, includes the deposit of any substance capable of polluting the land;

“distribute” means distribute to the public or a section of the public;

“dwelling” means any structure or part of a structure occupied as a person’s home or as other living accommodation (whether the occupation is separate or shared with others) but does not include any part not so occupied;

“exempt person”, in relation to land (or any gathering on land), means the occupier, any member of the occupier’s family, any employee or agent of the occupier and any person whose dwelling is situated on the land;

“land” means land in the open air and includes a place partly open to the air;

“meeting” means a meeting held for the purpose of the discussion of matters of public interest or for the purpose of the expression of views on such matters;

“music” includes sounds wholly or predominantly characterised by the emission of a succession of repetitive beats;

“night” means the interval between 9.0 p.m. and 6.0 a.m. on the next succeeding day;

“occupier” in relation to land means the person entitled to possession of the land by virtue of an estate or interest that person holds, and in relation to assemblies on land includes the person reasonably believed by the person applying for or making the order to be the occupier;

“owner”, in relation to land, means the person in whom the freehold estate is vested or who holds the land under a lease for a term of years or from year to year;

“premises” means any place and includes any vehicle, vessel, aircraft or hovercraft;

“private land” means land other than Crown land in terms of the Land Ordinance;

“public” includes a section of the public;

“public meeting” includes any meeting in a public place and any meeting which the public or any section of it are permitted to attend, whether on payment or otherwise;

“public place” means —

- (a) any highway (as defined in the Road Traffic Ordinance); and

(b) any place to which at the material time 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;

“publication” includes a publication in electronic form and, in the case of a publication which is, or may be, produced from electronic data, any medium on which the data are stored;

“sound equipment” means equipment designed or adapted for amplifying music and any equipment suitable for use in connection with such equipment.

“structure” includes a tent, caravan, vehicle, vessel or other temporary or movable structure;

“trespass”, in relation to land, means trespass as against the occupier of the land;

“vehicle” includes any vehicle, whether or not it is in a fit state for use on roads, and includes any chassis or body, with or without wheels, appearing to have formed part of such a vehicle, and any load carried by, and anything attached to, such a vehicle, and a caravan;

“violence” means any violent conduct, so that —

(a) except in the context of affray - it includes violent conduct towards property as well as violent conduct towards persons; and

(b) it is not restricted to conduct causing or intended to cause injury or damage but includes any other violent conduct;.

(2) For the purposes of this Part a person may be regarded as residing on any land even if the person has a home elsewhere.

[UK Public Order Act 1986 as am. by Criminal Justice & Public Order Act 1994]

Riot, etc.

512. Riot

(1) If 12 or more persons who are present together use or threaten unlawful violence for a common purpose and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety, each of the persons using unlawful violence for the common purpose commits the offence of riot.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) It is immaterial whether or not the 12 or more use or threaten unlawful violence simultaneously.

(3) The common purpose may be inferred from conduct.

(4) No person of reasonable firmness need actually be, or be likely to be, present at the scene.

(5) Riot may be committed in private as well as in public places.

[UK Public Order Act 1986 s.1 adapted]

513. Violent disorder

(1) If 3 or more persons who are present together use or threaten unlawful violence and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety, each of the persons using or threatening unlawful violence commits the offence of violent disorder.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) It is immaterial whether or not the 3 or more use or threaten unlawful violence simultaneously.

(3) No person of reasonable firmness need actually be, or be likely to be, present at the scene.

(4) Violent disorder may be committed in private as well as in public places.

[UK Public Order Act 1986 s.2]

514. Affray

(1) If —

(a) a person ('A') uses or threatens unlawful violence towards another person; and

(b) A's conduct is such as would cause any person of reasonable firmness present at the scene to fear for his or her personal safety,

A commits the offence of affray.

Penalty: Imprisonment for 3 years or a fine, or both.

(2) If 2 or more persons use or threaten the unlawful violence, it is the conduct of them taken together that must be considered for the purposes of subsection (1).

(3) For the purposes of this section a threat cannot be made by the use of words alone.

(4) No person of reasonable firmness need actually be, or be likely to be, present at the scene.

(5) Affray may be committed in private as well as in public places.

[UK Public Order Act 1986 s.3]

515. Fear or provocation of violence

(1) A person ('A') commits an offence if A —

(a) uses towards another person ('B') threatening, abusive or insulting words or behaviour;
or

(b) distributes or displays to another person ('B') any writing, sign or other visible representation which is threatening, abusive or insulting,

either –

(c) with intent —

(i) to cause ('B') to believe that immediate unlawful violence will be used against ('B') or another by any person; or

(ii) to provoke the immediate use of unlawful violence by ('B') or another; or

(d) whereby ('B') is likely to believe that such violence will be used or it is likely that such violence will be provoked.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed if the words or behaviour are used, or the writing, sign or other visible representation is distributed or displayed, by a person inside a dwelling and the other person is also inside that or another dwelling.

[UK Public Order Act 1986 s.4]

516. Intentionally abusive conduct

(1) A person ('A') who, with intent to cause another person ('B') harassment, alarm or distress—

(a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour; or

(b) displays any writing, sign or other visible representation which is threatening, abusive or insulting,

and thereby causes B or any other person harassment, alarm or distress, commits an offence.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed if the words or behaviour are used, or the writing, sign or other visible representation is displayed, by a person inside a dwelling and the person who is harassed, alarmed or distressed is also inside that or another dwelling.

(3) It is a defence for A to prove that —

(a) A was inside a dwelling and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, would be heard or seen by a person outside that or any other dwelling; or

(b) A's conduct was reasonable.

[UK Public Order Act 1986 s.4A, inserted by Criminal Justice & Public Order Act 1994]

517. Disorderly conduct

(1) A person who —

- (a) uses threatening or abusive words or behaviour, or disorderly behaviour; or
- (b) displays any writing, sign or other visible representation which is threatening or abusive,

within the hearing or sight of a person likely to be caused harassment, alarm or distress by such words, behaviour or representation, commits an offence.

Penalty: A fine at level 3 on the standard scale.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed if the words or behaviour are used, or the writing, sign or other visible representation is displayed, by a person inside a dwelling and the other person is also inside that or another dwelling.

(3) It is a defence for the defendant to prove that —

- (a) the defendant had no reason to believe that there was any person within hearing or sight who was likely to be caused harassment, alarm or distress;
- (b) the defendant was inside a dwelling and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, would be heard or seen by a person outside that or any other dwelling; or
- (c) the defendant's conduct was reasonable.

(4) A police officer may arrest without warrant any person who —

- (a) engages in offensive conduct which the police officer warns the person to stop; and
- (b) engages in further offensive conduct immediately or shortly after the warning.

[UK Public Order Act 1986 s.5 am. by Crime & Courts Act 2013]

518. Riot, etc.: Mental element

(1) A person commits riot only if he or she intends to use violence or is aware that his or her conduct may be violent.

(2) A person commits violent disorder or affray only if he or she intends to use or threaten violence or is aware that his or her conduct may be violent or threaten violence.

(3) A person commits an offence under section 516 only if he or she intends his or her words or behaviour, or the writing, sign or other visible representation, to be threatening, abusive or insulting, or is aware that it may be threatening, abusive or insulting.

(4) A person commits an offence under section 517 only if the person —

(a) intends his or her words or behaviour, or the writing, sign or other visible representation, to be threatening or abusive;

(b) is aware that they might be threatening or abusive; or

(c) (if the offence is constituted by behaviour) intends his or her behaviour to be, or is aware that it might be, disorderly.

(5) For the purposes of this section a person whose awareness is impaired by intoxication is to be taken to be aware of that of which the person would be aware if not intoxicated, unless he or she shows either that the intoxication was not self-induced or that it was caused solely by the taking or administration of a substance in the course of medical treatment.

(6) In subsection (5) “intoxication” means any intoxication, whether caused by drink, drugs or other means, or by a combination of means.

(7) Subsections (1) and (2) do not affect the determination for the purposes of riot or violent disorder of the number of persons who use or threaten violence.

[UK Public Order Act 1986 s.6 am. by Crimes & Courts Act 2013]

519. Riot, etc.: Procedure

(1) No prosecution for an offence of riot or encouraging or assisting the offence of riot may be commenced except by, or with the consent of, the Attorney General.

(2) For the purposes of the rules against charging more than one offence in the same count or information, each of sections 512 to 517 creates one offence.

(3) If on the trial of a person charged with violent disorder or affray the court finds the person not guilty of the offence charged, it may find the person guilty of an offence under section 515.

[UK Public Order Act 1986 s.7]

520. Common law offences of riot etc. abolished

(1) The common law offences of riot, rout, unlawful assembly and affray are abolished.

(2) In any enactment coming into force or instrument taking effect after the coming into force of this Part, a reference to “riot”, “rout”, “unlawful assembly” or “affray”, or their cognate expressions, is to be construed as a reference to the offences created by sections 512 to 514.

(3) Subject to subsection (2), and unless a different intention appears, nothing in this Part affects the meaning of “riot” or of any cognate expression in any enactment in force, or instrument taking effect, before the coming into force of this Part.

[UK Public Order Act 1986 ss.9 & 10]

Raves

521. Power to remove persons attending or preparing for a rave

(1) This section applies to a gathering on land in the open air of 100 or more persons (whether or not trespassers) at which amplified music is played during the night (with or without intermissions) and is such as, by reason of its loudness and duration and the time at which it is played, is likely to disturb the peace and quiet of persons living in the locality.

(2) For the purpose of subsection (1) a gathering continues during intermissions in the music and, if the gathering extends over several days, throughout the period during which amplified music is played at night (with or without intermissions).

(3) If, as respects any land in the open air, a police officer of the rank of inspector or above reasonably believes that —

(a) 2 or more persons are making preparations for the holding there of a gathering to which this section applies;

(b) 10 or more persons are attending such a gathering which is in progress; or,

(c) 10 or more persons are waiting within 100 metres for such a gathering to begin there,

the officer may give a direction that those persons and any other persons who come to prepare or wait for or to attend the gathering must leave the land and remove any vehicles or other property which they have with them on the land.

(4) A direction under subsection (3), if not communicated to the persons referred to in that subsection by the police officer giving the direction, may be communicated to them by any police officer at the scene.

(5) Persons are to be treated as having had a direction under subsection (3) communicated to them if reasonable steps have been taken to bring it to their attention.

(6) A direction under subsection (3) does not apply to an exempt person.

(7) If a person knowing that a direction has been given which applies to that person —

(a) fails to leave the land as soon as reasonably practicable, or

(b) having left again enters the land within the period of 7 days beginning with the day on which the direction was given,

the person commits an offence.

Penalty: Imprisonment for 3 months or a fine at level 4 on the standard scale, or both.

(8) In proceedings for an offence under this section it is a defence for the defendant to show that he or she had a reasonable excuse for failing to leave the land as soon as reasonably practicable or, as the case may be, for again entering the land.

[UK Criminal Justice & Public Order Act 1994 s.63]

522. Powers of entry and seizure

(1) If a police officer of the rank of inspector or above reasonably believes that circumstances exist in relation to any land which would justify the giving of a direction under section 521 in relation to a gathering to which that section applies, that officer may authorise any police officer to enter the land —

(a) to ascertain whether such circumstances exist; and

(b) to exercise any power conferred on a police officer by section 521 or subsection (4).

(2) A police officer who is authorised under subsection (1) to enter land for any purpose may enter the land without a warrant.

(3) If a direction has been given under section 521 and a police officer reasonably suspects that any person to whom the direction applies has, without reasonable excuse —

(a) failed to remove any vehicle or sound equipment on the land which appears to the officer to belong to the person or to be in the person's possession or under the person's control; or

(b) entered the land as a trespasser with a vehicle or sound equipment within 7 days after the direction was given,

the officer may seize and remove the vehicle or sound equipment.

(4) Subsection (3) does not authorise the seizure of any vehicle or sound equipment of an exempt person.

[UK Criminal Justice & Public Order Act 1994 s.64]

523. Power to stop persons from proceeding

(1) If a police officer in uniform reasonably believes that a person is on the way to a gathering to which section 521 applies and in relation to which a direction under section 521(3) is in force, the officer may, subject to subsections (2) and (3), stop the person and direct him or her not to proceed in the direction of the gathering.

(2) The power conferred by subsection (1) may only be exercised at a place within 100 metres of the boundary of the site of the gathering.

(3) No direction may be given under subsection (1) to an exempt person.

(4) A person who fails to comply with a direction under subsection (1) which the person knows has been given to him or her commits an offence.

Penalty: A fine at level 3 on the standard scale.
[UK Criminal Justice & Public Order Act 1994 s.65]

524. Forfeiture of sound equipment

(1) If a person is convicted of an offence under section 521 in relation to a gathering to which that section applies and the court is satisfied that any sound equipment which has been seized from the person under section 522(3), or which was in the possession or under the control of the person at the relevant time, has been used at the gathering, the court may make an order for forfeiture under this subsection in respect of that property.

(2) The court may make an order under subsection (1) whether or not it also deals with the offender in respect of the offence in any other way and without regard to any restrictions on forfeiture in any enactment.

(3) In considering whether to make an order under subsection (1) in respect of any property a court must have regard to —

(a) the value of the property; and

(b) the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making).

(4) An order under subsection (1) operates to deprive the offender of his or her rights, if any, in the property to which it relates, and the property (if not already in police possession) is to be taken into the possession of the police.

(5) Subject to subsection (6), if any property has been forfeited under subsection (1), the Magistrate's Court or the Summary Court may, on application by a claimant of the property, other than the offender from whom it was forfeited, make an order for delivery of the property to the applicant if it appears to the court that the claimant is the owner of the property.

(6) An application under subsection (5) by a claimant of the property must be made within 6 months after the date on which an order under subsection (1) was made in respect of the property.

(7) An application under subsection (5) will not succeed unless the claimant satisfies the court either that the claimant had not consented to the offender having possession of the property or that the claimant did not know, and had no reason to suspect, that the property was likely to be used at a gathering to which section 521 applies.

(8) An order under subsection (5) does not affect the right of any person to take, within 6 months after the making of the order, proceedings for the recovery of the property from the person who is in possession of it in pursuant to the order, but on the expiration of 6 months the right ceases.

(9) If no application by a claimant of the property under subsection (5) has been made within 6 months after the making of the order, or no such application has succeeded, section 90 of the Interpretation and General Clauses Ordinance governs the forfeiture of the property.

(10) In subsection (1), “relevant time”, in relation to a person convicted of an offence under section 69 means the time of the person’s arrest for the offence or of the issue of a summons in respect of it.

[UK Criminal Justice & Public Order Act 1994 s.66]

525. Retention of and charges for seized property

(1) A vehicle which has been seized and removed by a police officer under section 522(3) may be retained in accordance with regulations made by the Governor under the Criminal Procedure and Evidence Ordinance 2014.

(2) Any sound equipment which has been seized and removed by a police officer under section 522(3) may be retained until the conclusion of proceedings against the person from whom it was seized.

(3) The Chief Police Officer is entitled to recover from a person from whom a vehicle has been seized the charges prescribed in respect of the removal, retention, disposal and destruction of the vehicle by the Chief Police Officer.

(4) Charges payable under subsection (4) in respect of a vehicle are recoverable as a simple contract debt and the Chief Police Officer is entitled to retain custody of the vehicle until any such charges are paid, subject to regulations made under subsection (3).

(5) In subsection (2) “conclusion of proceedings” against a person means —

- (a) the person being sentenced or otherwise dealt with for the offence or the acquittal of the person;
- (b) the discontinuance of the proceedings; or
- (c) a decision not to prosecute the person,

whichever is the earlier.

[UK Criminal Justice & Public Order Act 1994 s.67]

Disguises

526. Authorisation relating to disguises

(1) If a police officer of the rank of inspector or above reasonably believes —

- (a) that activities may take place in any locality in the Falkland Islands that are likely (if they take place) to involve the commission of offences; and

(b) that it is expedient, in order to prevent or control the activities, to give an authorisation under this subsection,

the officer may authorise the power conferred by section 527 to be exercised in that locality for a specified period not exceeding 24 hours.

(2) If it appears to an officer of the rank of inspector or above that it is expedient to do so, having regard to offences which have, or are reasonably suspected to have, been committed in connection with any incident or activity in the locality, the officer may extend the authorisation for a further period not exceeding 24 hours.

(3) An authorisation or extension under this section must be in writing signed by the police officer who gives it, and must specify —

(a) the locality in which and the period during which the powers conferred by section 527 are exercisable;

(b) the grounds for the authorisation or extension.

(4) The police officer who gives an authorisation under subsection (1) or an extension under subsection (2) must as soon as practicable inform the Chief Police Officer.

[UK Criminal Justice & Public Order Act 1994 s.60AA & 60A (part) as am. by 1997 c.21 and 2001 c.24]

527. Power to require removal of disguise

(1) An authorisation under section 526 confers on any police officer in uniform power in the locality and during the period specified in the authorisation —

(a) to require any person to remove any item which the officer reasonably believes the person is wearing wholly or mainly for the purpose of concealing his or her identity;

(b) to seize any item which the officer reasonably believes any person intends to wear wholly or mainly for that purpose.

(2) A person who fails to remove an item he or she is wearing when required to do so by a police officer in the exercise of the powers under this section commits an offence.

Penalty: Imprisonment for one month or a fine at level 2 on the standard scale, or both.

(3) Anything seized by a police officer under subsection (1)(b) may be retained in accordance with regulations made by the Governor under the Criminal Procedure and Evidence Ordinance 2014.

[UK Criminal Justice & Public Order Act 1994 s.60AA & 60A (part) as am. by 1997 c.21 and 2001 c.24]

Causing public alarm or anxiety

528. Interference with goods with intention of causing public alarm or anxiety, etc.

(1) A person who, with the intention of causing —

- (a) public alarm or anxiety;
- (b) injury to members of the public consuming or using the goods;
- (c) economic loss to any person by reason of the goods being shunned by members of the public; or
- (d) economic loss to any person by reason of steps taken to avoid any such alarm or anxiety, injury or loss,

does any of the following —

- (i) contaminates or interferes with goods;
- (ii) makes it appear that goods have been contaminated or interfered with;
- (iii) places goods which have been contaminated or interfered with, or which appear to have been contaminated or interfered with, in a place where goods of that description are consumed, used, sold or otherwise supplied,

commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) A person who, with any such intention as is mentioned in paragraph (a), (c) *or* (d) of subsection (1), threatens that that person or another will do, or claims that that person or another has done, any of the acts mentioned in sub-paragraph (i), (ii) or (iii) of that subsection, commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

(3) A person who is in possession of —

- (a) materials to be used for contaminating or interfering with goods or making it appear that goods have been contaminated or interfered with; or
- (b) goods which have been contaminated or interfered with, or which appear to have been contaminated or interfered with,

with a view to the commission of an offence under subsection (1), commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

(4) In this section “goods” includes substances whether natural or manufactured and whether or not incorporated in or mixed with other goods.

(5) The reference in subsection (2) to a person claiming that certain acts have been committed does not include a person who in good faith reports or warns that such acts have been, or appear to have been, committed.

[UK Public Order Act 1986 s.38]

529. Bomb hoaxes

(1) A person who —

(a) places any article or substance in any place whatever; or

(b) dispatches any article or substance by post or any other means whatever of sending things from one place to another,

with the intention (in either case) of inducing in some other person a belief that it is likely to explode or ignite and thereby cause personal injury or damage to property, commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) A person who communicates any information which he or she knows or believes to be false to another person with the intention of inducing in that or any other person a false belief that a bomb or other thing liable to explode or ignite is present in any place or location whatever commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

(3) For a person to commit an offence against subsection (1) or (2) it is not necessary for the person to have any other particular person in mind as the person in whom he or she intends to induce the belief mentioned in that subsection.

[UK Criminal Law Act 1977 s.51]

Quasi-military organisations, uniforms etc.

530. Quasi-military organisations

(1) If the members or adherents of any association of persons, whether incorporated or not, are—

(a) organised, trained or equipped for the purpose of enabling them to be employed in usurping the functions of the police or of the armed forces of the Crown; or

(b) organised and trained or organised and equipped either for the purpose of enabling them to be employed for the use or display of physical force in promoting any political object, or in such manner as to arouse reasonable apprehension that they are organized and either trained or equipped for that purpose,

any person who takes part in the control or management of the association, or in organising or training any members or adherents of it as described above, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) In any proceedings against a person under subsection (1) it is a defence for the defendant to show that he or she did not consent to or connive at the organisation, training, or equipment of members or adherents of the association in contravention of subsection (1).

(3) No proceedings for an offence against this section may be commenced except by, or with the consent of, the Attorney General.

(4) If upon application by the Attorney General it appears to the court that any association is an association of which members or adherents are organised, trained, or equipped in contravention of subsection (1), the court may —

(a) make an order to prevent any disposition without the leave of the court of property held by or for the association;

(b) direct an inquiry and report to be made as to any such property and as to the affairs of the association;

(c) make such further orders as appear to the court to be just and equitable for the application of such property in or towards —

(i) the discharge of the liabilities of the association lawfully incurred before the date of the application, or since that date with the approval of the court;

(ii) the repayment of moneys to persons who became subscribers or contributors to the association in good faith and without knowledge of the contravention;

(iii) any costs incurred in connection with any inquiry and report directed under paragraph (b) or in winding-up or dissolving the association,

(d) order that any property which is not directed by the court to be so applied is forfeited to the Crown.

(5) In any criminal or civil proceedings under this section proof of things done or of words written, spoken or published (whether or not in the presence of any party to the proceedings) by any person taking part in the control or management of an association or in organizing, training or equipping members or adherents of it is admissible as evidence of the purposes for which, or the manner in which, the members or adherents (whether those persons or others) were organized, trained or equipped.

(6) If a justice of the peace is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this section has been committed, and that evidence of the commission of it is to be found at any premises or place specified in the information, the justice

may, on application by a police officer of the rank of inspector or above, grant a search warrant authorizing the officer, or another officer named in the warrant, together with any other persons named in the warrant and any other police officers to —

- (a) enter the premises or place at any time within one month from the date of the warrant, if necessary by force;
- (b) search the premises or place and every person found therein; and
- (c) seize anything found on the premises or place or on any such person which the officer has reasonable ground for suspecting to be evidence of the commission of the offence.

(7) Nothing in this section prohibits —

- (a) the employment of a reasonable number of persons as stewards to assist in the preservation of order at any public meeting held upon private premises;
- (b) making of arrangements for that purpose;
- (c) instructing persons to be employed in their lawful duties as stewards; or
- (d) providing them with suitable badges or other appropriate distinguishing signs.

[UK Public Order Act 1936 s.2]

531. Prohibition of uniforms in connection with political objects

(1) Subject to subsection (2), a person who in any public place or at any public meeting wears a uniform signifying his or her association with —

- (a) any political organisation; or
- (b) the promotion of any political object,

commits an offence.

Penalty: Imprisonment for 3 months or a fine at level 4 on the standard scale, or both.

(2) If the Chief Police Officer is satisfied that the wearing of the uniform on any ceremonial, anniversary or other special occasion is not likely to involve risk of public disorder, the Chief Police Officer may, with the written consent of the Governor, issue a permit for the wearing of such uniform on that occasion either absolutely or subject to conditions specified in the permit.

[UK Public Order Act 1936 s.1]

Breaches of the peace

532. Behaviour likely to cause a breach of the peace

A person who in any public place behaves in such a manner that a breach of the peace is likely to be caused by the behaviour commits an offence.

Penalty: (i) Binding over with a recognisance to keep the peace; or
(ii) if the person refuses to be so bound over - imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

[UK Public Order Act s.40(4); Magistrates Courts Act 1980 s.115(3)]

533. Disorderly conduct in a place of lawful custody

A person who in any place of lawful custody behaves in a riotous, indecent, disorderly or insulting manner commits an offence.

Penalty: Imprisonment for 1 month or a fine at level 1 on the standard scale, or both.

[UK Town Police Clauses Act 1847 s.29]

534. Disorderly or indecent behaviour while intoxicated

(1) It is an offence for a person, while intoxicated —

(a) to commit in any public place or police station any disorderly or indecent behaviour; or

(b) to be in possession of a firearm.

Penalty: (i) On first conviction - imprisonment for 2 months or a fine at level 1 on the standard scale, or both;

(ii) on a second or subsequent conviction - imprisonment for 3 months or a fine at level 3 on the standard scale, or both.

(2) In this section “intoxication” means physical or mental impairment, whether caused by the consumption of alcohol, drugs or other means, or by a combination of means, and “intoxicated” is to be construed accordingly.

[UK Criminal Justice Act 1967 s.91]

PART 22 – HATE CRIMES

535. Interpretation of Part

(1) In this Part, unless the context otherwise requires —

“distribute” means distribute to the public or a section of the public;

“hatred on the grounds of sexual orientation” means hatred against a group of persons defined by reference to sexual orientation (whether towards persons of the same sex, the opposite sex or both);

“racial hatred” means hatred against a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins;

“recording” means any record from which visual images or sounds may, by any means, be reproduced; and —

(a) references to the distribution, showing or playing of a recording are to its distribution, showing or playing of a recording to the public or a section of the public; and

(b) “play” and “show”, and related expressions, in relation to a recording, are to be construed accordingly;

“religious hatred” means hatred against a group of persons defined by reference to religious belief or lack of religious belief.

(2) References in this Part to the publication or distribution of written material are to its publication or distribution to the public or a section of the public.

[UK Public Order Act 1986 passim]

Stirring up racial hatred

536. Use of words or behaviour or display of written material

(1) A person who uses threatening, abusive or insulting words or behaviour, or displays any written material which is threatening, abusive or insulting, commits an offence if —

(a) the person intends by doing so to stir up racial hatred; or

(b) having regard to all the circumstances racial hatred is likely to be stirred up by the person’s actions.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed if the words or behaviour are used, or the written material is displayed, by a person inside a dwelling and are not heard or seen except by other persons in that or another dwelling.

(3) In proceedings for an offence under this section it is a defence for the defendant to prove that he or she was inside a dwelling and had no reason to believe that the words or behaviour used, or the written material displayed, would be heard or seen by a person outside that or another dwelling.

(4) A person who is not shown to have intended to stir up racial hatred does not commit an offence under subsection (1) if the person did not intend his or her words or behaviour, or the written material, to be, and was not aware that it might be, threatening, abusive or insulting.

(5) This section does not apply to words or behaviour used, or written material displayed, solely for the purpose of being included in a programme service.

[UK Public Order Act 1986 s.18]

537. Publishing or distributing written material

(1) A person who publishes or distributes written material which is threatening, abusive or insulting commits an offence if —

(a) the person intends by doing so to stir up racial hatred; or

(b) having regard to all the circumstances racial hatred is likely to be stirred up by the person's actions.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) In proceedings for an offence under subsection (1) it is a defence for a defendant who is not shown to have intended to stir up racial hatred to prove that he or she was not aware of the content of the material and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.

[UK Public Order Act 1986 s.19]

538. Public performance of a play

(1) If a public performance of a play is given which involves the use of threatening, abusive or insulting words or behaviour, any person who presents or directs the performance commits an offence if —

(a) the person intends by doing so to stir up racial hatred; or

(b) having regard to all the circumstances, and taking the performance as a whole, racial hatred is likely to be stirred up by the person's actions.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) If a person presenting or directing the performance is not shown to have intended to stir up racial hatred, it is a defence for the person to prove that he or she did not know, and had no reason to suspect that —

(a) the performance would involve the use of the offending words or behaviour;

(b) the offending words or behaviour were threatening, abusive or insulting; or

(c) the circumstances in which the performance would be given would be such that racial hatred would be likely to be stirred up.

(3) Subject to subsection (4), this section does not apply to a performance given solely or primarily for one or more of the following purposes —

(a) rehearsal;

(b) making a recording of the performance; or

(c) enabling the performance to be included in a programme service.

(4) If it is proved that the performance was attended by persons other than those directly connected with the giving of the performance, or the doing in relation to it of the things mentioned in paragraph (b) or (c) of subsection (3), the performance is, unless the contrary is shown, to be taken not to have been given solely or primarily for the purposes mentioned in that subsection.

(5) For the purposes of this section a person —

(a) is not to be treated as presenting a performance of a play by reason only of taking part in it as a performer;

(b) if taking part as a performer in a performance directed by another person, is to be treated as directing the performance if without reasonable excuse he or she performs otherwise than in accordance with that other person's direction;

(c) is to be taken as directing a performance of a play given under his or her direction even if he or she is not present during the performance;

(d) is not to be treated as aiding or abetting the commission of an offence under this section by reason only of taking part in a performance as a performer.

[UK Public Order Act 1986 s.20]

539. Distributing, showing or playing a recording

(1) A person who distributes, or shows or plays, a recording of visual images or sounds which are threatening, abusive or insulting commits an offence if —

(a) the person intends by doing so to stir up racial hatred; or

(b) having regard to all the circumstances racial hatred is likely to be stirred up by the person's actions.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) In proceedings for an offence under this section it is a defence for a defendant who is not shown to have intended to stir up racial hatred to prove that he or she was not aware of the content of the recording and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.

(3) This section does not apply to the showing or playing of a recording solely for the purpose of enabling the recording to be included in a programme service.

[UK Public Order Act 1986 s.21]

540. Broadcasting or including a programme in a programme service

(1) If a programme involving threatening, abusive or insulting visual images or sounds is included in a programme service, each of the persons mentioned in subsection (2) commits an offence if —

(a) the person intends by that inclusion to stir up racial hatred; or

(b) having regard to all the circumstances, racial hatred is likely to be stirred up by that inclusion.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) The persons referred to in subsection (1) are —

- (a) the person providing the programme service;
- (b) any person by whom the programme is produced or directed; and
- (c) any person by whom offending words or behaviour are used.

(3) If the person providing the programme, or a person by whom the programme was produced or directed, is not shown to have intended to stir up racial hatred, it is a defence for the person to prove that —

- (a) the person did not know and had no reason to suspect that the programme would involve the offending material; and
- (b) having regard to the circumstances in which the programme was included in a programme service it was not reasonably practicable for the person to secure the removal of the material.

(4) It is a defence for a person by whom the programme was produced or directed who is not shown to have intended to stir up racial hatred to prove that the person did not know and had no reason to suspect that —

- (a) the programme would be included in a programme service; or
- (b) the circumstances in which the programme would be broadcast would be such that racial hatred would be likely to be stirred up.

(5) It is a defence for a person by whom offending words or behaviour were used and who is not shown to have intended to stir up racial hatred to prove that the person did not know and had no reason to suspect that —

- (a) a programme involving the use of the offending material would be included in a programme service; or
- (b) the circumstances in which a programme involving the use of the offending material would be so included, or in which a programme so included would involve the use of the offending material, would be such that racial hatred would be likely to be stirred up.

(6) A person who is not shown to have intended to stir up racial hatred does not commit an offence under this section if the person did not know, and had no reason to suspect, that the offending material was threatening, abusive or insulting.

[UK Public Order Act 1986 s.22]

541. Possession of racially inflammatory material

(1) A person ('A') who has in A's possession written material which is threatening, abusive or insulting, or a recording of visual images or sounds which are threatening, abusive or insulting, with a view to its being displayed, shown, played, published, distributed or included in a programme service, whether by A or another person, commits an offence if —

(a) A intends racial hatred to be stirred up by any such action; or

(b) having regard to all the circumstances, racial hatred is likely to be stirred up by any such action.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) For the purpose of subsection (1), regard must be had to such display, showing, playing, publication, distribution or inclusion as A has, or might reasonably be inferred to have, in view.

(3) In proceedings for an offence under subsection (1) it is a defence for A, if A is not shown to have intended to stir up racial hatred, to prove that A was not aware of the content of the written material or recording and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.

[UK Public Order Act 1986 s.23]

Stirring up religious hatred, or hatred on the ground of sexual orientation

542. Use of words or behaviour or display of written material

(1) A person who uses threatening words or behaviour, or displays any written material which is threatening, and intends by doing so to stir up religious hatred, or hatred on the grounds of sexual orientation, commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed if the words or behaviour are used, or the written material is displayed, by a person inside a dwelling and are not heard or seen except by other persons in that or another dwelling.

(3) In proceedings for an offence under this section it is a defence for the defendant to prove that he or she was inside a dwelling and had no reason to believe that the words or behaviour used, or the written material displayed, would be heard or seen by a person outside that or another dwelling.

(4) This section does not apply to words or behaviour used, or written material displayed, solely for the purpose of being included in a programme service.

[UK Public Order Act 1986 s.29B ins. by Schedule to the Racial and Religious Hatred Act 2006 and am. by the Criminal Justice and Immigration Act 2008 Schedule 16]

543. Publishing or distributing written material

(1) A person who publishes or distributes written material which is threatening and who intends by doing so to stir up religious hatred, or hatred on the grounds of sexual orientation, commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) References in this Part to the publication or distribution of written material are to its publication or distribution to the public or a section of the public.

[UK Public Order Act 1986 s.29C ins. by Schedule to the Racial and Religious Hatred Act 2006 and am. by the Criminal Justice and Immigration Act 2008 Schedule 16]

544. Public performance of a play

(1) If a public performance of a play is given which involves the use of threatening words or behaviour, any person who presents or directs the performance and who intends by doing so to stir up religious hatred, or hatred on the grounds of sexual orientation, commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) This section does not apply to a performance given solely or primarily for one or more of the following purposes —

- (a) rehearsal;
- (b) making a recording of the performance; or
- (c) enabling the performance to be included in a programme service.

(3) If it is proved that the performance was attended by persons other than those directly connected with the giving of the performance or the doing in relation to it of the things mentioned in paragraph (b) or (c), the performance is, unless the contrary is shown, to be taken not to have been given solely or primarily for the purpose mentioned above.

(4) For the purposes of this section —

- (a) a person is not to be treated as presenting a performance of a play by reason only of taking part in it as a performer;
- (b) a person taking part as a performer in a performance directed by another is to be treated as a person who directed the performance if without reasonable excuse he or she performs otherwise than in accordance with that other person's direction; and
- (c) a person is to be taken to have directed a performance of a play given under his or her direction even if he or she was not present during the performance;
- (d) a person is not to be treated as aiding or abetting the commission of an offence under this section by reason only of taking part in a performance as a performer.

[UK Public Order Act 1986 s.29D ins. by Schedule to the Racial and Religious Hatred Act 2006 and am. by the Criminal Justice and Immigration Act 2008 Schedule 16]

545. Distributing, showing or playing a recording

(1) A person who distributes, or shows or plays, a recording of visual images or sounds which are threatening and who intends by doing so to stir up religious hatred, or hatred on the grounds of sexual orientation, commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) In this Part “recording” means any record from which visual images or sounds may, by any means, be reproduced; and references to the distribution, showing or playing of a recording are to its distribution, showing or playing to the public or a section of the public.

(3) This section does not apply to the showing or playing of a recording solely for the purpose of enabling the recording to be included in a programme service.

[UK Public Order Act 1986 s.29E ins. by Schedule to the Racial and Religious Hatred Act 2006 and am. by the Criminal Justice and Immigration Act 2008 Schedule 16]

546. Broadcasting or including programme in a programme service

(1) If a programme involving threatening visual images or sounds is included in a programme service, each of the persons mentioned in subsection (2) who intends by that inclusion to stir up religious hatred, or hatred on the grounds of sexual orientation, commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) The persons are —

(a) the person providing the programme service;

(b) any person by whom the programme is produced or directed; and

(c) any person by whom offending words or behaviour are used.

[UK Public Order Act 1986 s.29F ins. by Schedule to the Racial and Religious Hatred Act 2006 and am. by the Criminal Justice and Immigration Act 2008 Schedule 16]

547. Possession of inflammatory material

(1) A person who has in his or her possession written material which is threatening, or a recording of visual images or sounds which are threatening, with a view —

(a) in the case of written material, to its being displayed, published, distributed, or included in a programme service whether by that person or another; or

(b) in the case of a recording, to its being distributed, shown, played, or included in a programme service, whether by that person or another,

and who intends religious hatred, or hatred on the grounds of sexual orientation, to be stirred up by any of those actions, commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) For the purpose of subsection (1), regard must be had to such display, publication, distribution, showing, playing, or inclusion in a programme service as the person has, or it may reasonably be inferred that the person has, in view.

[UK Public Order Act 1986 s.29G ins. by Schedule to the Racial and Religious Hatred Act 2006 and am. by the Criminal Justice and Immigration Act 2008 Schedule 16]

Hate crimes - Supplementary

548. Powers of entry and search

(1) If a justice of the peace is satisfied by information on oath that there are reasonable grounds for suspecting, as regards any premises specified in the information, that a performance of a play is to be given at those premises, and that an offence under section 538 or 544 is likely to be committed in respect of that performance, the justice of the peace may issue a warrant under his or her hand empowering any police officer at any time within 7 days from the date of the warrant to enter the premises and to attend any performance of a play which may be given there.

(2) If a justice of the peace is satisfied by information on oath laid by a police officer that there are reasonable grounds for suspecting that a person has possession of written material or a recording in contravention of section 541 or section 547, the justice of the peace may issue a warrant under his or her hand authorising any police officer to enter and search the premises where it is suspected the material or recording is situated.

(3) A police officer entering or searching premises in pursuance of a warrant issued under this section may use reasonable force if necessary.

[UK Public Order Act 1986 ss.24 and 29G; UK Theatres Act 1968 s.15]

549. Script as evidence of what was performed

(1) If a performance of a play was based on a script, then, in any proceedings for an offence under section 538 or section 544 alleged to have been committed in respect of that performance—

(a) an actual script on which that performance was based is admissible as evidence of what was performed and of the manner in which the performance or any part of it was given; and

(b) if such a script is given in evidence on behalf of any party to the proceedings then, except in so far as the contrary is shown, whether by evidence given on behalf of the same or any other party, the performance is to be taken to have been given in accordance with that script.

(2) In this section “script”, in relation to a performance of a play, means the text of the play (whether expressed in words or in musical or other notation) together with any stage or other directions for its performance, whether contained in a single document or not.

[UK Theatres Act 1968 s.9]

550. Power to make copies of scripts

(1) If a police officer of the rank of sergeant or above has reasonable grounds for suspecting —

(a) that an offence under section 538 or section 544 has been committed by any person in respect of a performance of a play; or

(b) that a performance of a play is to be given and that an offence under that section is likely to be committed by any person in respect of that performance,

the officer may require the person suspected of committing the offence to produce a copy of any actual script on which the performance was or, as the case may be, will be based.

(2) A person who without reasonable excuse fails to comply with a requirement under subsection (1) commits an offence.

Penalty: A fine at level 4 on the standard scale.

(3) If, in the case of a performance of a play based on a script, a copy of an actual script on which that performance was based has been provided to a police officer, section 548 applies in relation to that copy as it applies in relation to an actual script on which the performance was based.

[UK Theatres Act 1968 s.10]

551. Power to order forfeiture

(1) A court by or before which a person is convicted of an offence —

(a) under section 536 or 542 relating to the display of written material; or

(b) under any of sections 537, 539, 541, 543, 545 or 547,

must order to be forfeited any written material or recording produced to the court and shown to its satisfaction to be written material or a recording to which the offence relates.

(2) An order made under this section does not take effect until the expiry of the ordinary time within which an appeal may be instituted or, if an appeal is duly instituted, until it is finally decided or abandoned.

(3) For the purposes of subsection (2) —

(a) an application for leave to appeal is to be treated as the institution of an appeal; and

(b) if a decision on appeal is subject to a further appeal, the appeal is not finally determined until the expiry of the ordinary time within which a further appeal may be instituted or, if a further appeal is duly instituted, until the further appeal is finally decided or abandoned.

[UK Public Order Act 1986 ss.25 and 29H]

552. Savings for reports of parliamentary or judicial proceedings

(1) Nothing in any of sections 536 to 547 applies to a fair and accurate report of proceedings in the Legislative Assembly.

(2) Nothing in any of sections 536 to 547 applies to a fair and accurate report of proceedings publicly heard before a court or tribunal exercising judicial authority, if the report is published contemporaneously with the proceedings or, if it is not reasonably practicable or would be unlawful to publish a report of them contemporaneously, as soon as publication is reasonably practicable and lawful.

[UK Public Order Act 1986 ss.26 and 29K]

553. Saving for freedom of expression

(1) Nothing in this Part is to be read or given effect in a way which prohibits or restricts freedom of religion or of expression to the extent reasonably justifiable in a democratic society.

(2) Without limiting subsection (1), nothing in this Part is to be read or given effect in a way which prohibits or restricts —

(a) discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents or any other belief system or the beliefs or practices of its adherents; or

(b) proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system.

(3) In this Part, the discussion or criticism of sexual conduct or practices or the urging of persons to refrain from or modify such conduct or practices is not to be taken of itself to be threatening or intended to stir up hatred.

[UK Racial and Religious Hatred Act 2006 s.29J am. by CJI Act 2008 and adapted]

554. Procedural

(1) No proceedings for an offence under any of sections 536 to 547 may be commenced except by, or with the consent of, the Attorney General.

(2) For the purposes of the rules against charging more than one offence in the same count or information, each of sections 536 to 547 creates a separate offence.

[UK Public Order Act 1986 ss.27 and 29L]

Racially or religiously aggravated offences

555. Meaning of “racially or religiously aggravated”

(1) An offence is racially or religiously aggravated for the purposes of this Part if —

(a) at the time of committing the basic offence, or immediately before or afterwards, the offender demonstrates towards the victim of the offence hostility based on the victim’s membership (or presumed membership) of a racial or religious group; or

(b) the offence is motivated (wholly or partly) by hostility towards members of a racial or religious group based on their membership of that group.

(2) For the purposes of subsection (1) —

(a) “basic offence” means an offence mentioned in any of sections 556(1), 557(1), 558(1) and 559(1);

“membership”, in relation to a racial or religious group, includes association with members of that group;

“presumed” means presumed by the offender;

“racial group” means a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins;

“religious group” means a group of persons defined by reference to religious belief or lack of religious belief;

(b) it is immaterial the purposes of subsection (1) whether the offender’s hostility is also based to any extent on any other factor not mentioned in that paragraph

[UK Crime and Disorder Act 1998 s.28 am. by Anti-Terrorism Crime and Security Act 2001]

556. Racially or religiously aggravated assaults

A person who commits an offence under —

(a) section 64 (Wounding with intent to do grievous bodily harm);

(b) section 65 (Malicious wounding);

(c) section 70 (Common assault); or

(d) section 71 (Assault occasioning actual bodily harm),

which is racially or religiously aggravated as defined in section 555 also commits an offence under this section.

Penalty: (i) For an offence under paragraph (a) – imprisonment for 16 years or a fine, or both;

(ii) for an offence under paragraph (b) - imprisonment for 9 years or a fine, or both;

(iii) for an offence under paragraph (c) - imprisonment for 2 years or a fine, or both;

(iv) for an offence under paragraph (d) – imprisonment for 7 years or a fine, or both.

[UK Crime & Disorder Act 1998 s.29 am. by Anti-Terrorism, Crime & Security Act 2001]

557. Racially or religiously aggravated criminal damage

(1) A person who commits an offence under section 195(1) (Destroying or damaging property) or section 196 (1) (Arson) which is racially or religiously aggravated as defined in section 555 also commits an offence under this section.

Penalty: Imprisonment for 14 years or a fine, or both.

(2) A person who commits an offence under section 195(2) (destroying or damaging property with intent to endanger life) or section 196(2) (arson with intent to endanger life) which is racially or religiously aggravated as defined in section 555 also commits an offence under this section.

Penalty: Imprisonment for life.

(3) An offence under subsection (2) is triable on indictment only.

(4) For the purposes of subsections (1) and (2), section 555(1)(a) has effect as if the person to whom the property belongs (or is treated as belonging under section 195 or section 196) were the victim of the offence.

[UK Crime & Disorder Act 1998 s.30 amended]

558. Racially or religiously aggravated public order offences

A person who commits an offence under —

- (a) section 515 (Fear or provocation of violence);
- (b) section 516 (Intentionally abusive conduct); or
- (c) section 517 (Disorderly conduct),

which is racially or religiously aggravated as defined in section 555 also commits an offence under this section.

Penalty: (i) For an offence under paragraph (a) or (b) - imprisonment for 2 years or a fine, or both; or

(ii) for an offence under paragraph (c) - a fine at level 5 on the standard scale.

[UK Crime and Disorder Act 1998 s.31 amended]

559. Racially or religiously aggravated harassment etc.

A person who commits an offence under —

- (a) section 143 (Offence of harassment);
- (b) section 144 (Offence of stalking);
- (c) section 145 (Putting people in fear of violence); or
- (d) section 146 (Stalking involving fear of violence or serious alarm or distress),

which is racially or religiously aggravated as defined in section 555, also commits an offence under this section.

Penalty: (i) For an offence under paragraph (a) or (b) - imprisonment for 2 years or a fine, or both;

(ii) for an offence under paragraph (c) or (d) - imprisonment for 7 years or a fine, or both.

[UK Crime & Disorder Act 1998 s.32 amended]

560. Alternative verdicts

(1) If, on the trial of a person charged with an offence under a provision of subsection (1) of any of sections 556 to 559, the court finds the person not guilty of the offence charged, the court may find the person guilty of the basic offence to which the charge relates.

(2) If, on the trial of a person charged with an offence under section 559(c), the court finds the person not guilty of the offence charged, the court may find the person guilty of an offence under section 559(a).

(3) If, on the trial of a person charged with an offence under section 559(d), the court finds the person not guilty of the offence charged, the court may find the person guilty of an offence under section 559(b).

[UK Crime & Disorder Act 1998 ss.31(6) and 32 adapted]

PART 23 – PUBLIC NUISANCES

561. Noise nuisance

(1) Subject to section 562, it is an offence for a person, through the use of an instrument or by any other means, to —

(a) make noise; or

(b) cause noise to be made,

if the noise causes or is likely to cause —

(i) annoyance or distress to a reasonable person having regard to the time of day; or

(ii) a breach of the peace.

Penalty: A fine at level 4 on the standard scale.

(2) In having regard to the time of day, the hours between 11 p.m. and 6 a.m. are deemed to be quiet hours and a lower level of noise is to be considered tolerable by a reasonable person and subparagraph (i) of subsection (1) is to be construed accordingly.

(3) If the noise is emitted or caused by an animal, the owner and the person who is responsible for, or who has charge or control of the animal, are both liable as though each was making the noise himself or herself.

(4) In proceedings under subsection (1) it is immaterial whether the person making the noise is in a public place, a dwelling or elsewhere.

(5) If a person makes noise between the hours of 6 a.m. and 11 p.m. contrary to this section, a police officer may, instead of taking proceedings, request the person concerned to reduce the level of noise or to stop making it or take any steps required to reduce the level of noise or to stop the making of it.

(6) If a person makes noise between the hours of 11 p.m. and 6 a.m. contrary to this section, a police officer may, instead of taking proceedings, request the person concerned to stop or take any steps required to stop the making of the noise.

(7) A person who fails to comply with a reasonable request by a police officer under subsection (5) or (6) commits an offence.

Penalty: A fine at level 4 on the standard scale.

(8) A person does not commit an offence under this section if the making of the noise is authorised under another enactment or is in accordance with the terms and conditions of a permit or licence issued under an enactment or under section 562.

[Gibraltar Crimes Act 2012; SH Crimes Bill]

562. Noise nuisance: Exemptions

(1) The Governor may issue a permit for the purposes of authorising a public performance, a fair or other event, to named persons, to make noise that is in breach of section 561, subject to any conditions the Governor considers necessary.

(2) In considering the application for a permit and the imposition of any conditions, the Governor must have regard to the interests of the persons whom the Governor foresees may be affected by the grant of the permit.

(3) A person who acts within the terms of a permit issued under subsection (1) is not liable to proceedings for an offence under section 561.

(4) If a condition of a permit is breached, the person to whom the permit is issued, as well as the person who commits the breach, may be proceeded with for an offence under section 561.

[Gibraltar Crimes Ord. and SH Crimes Bill]

563. Causing danger in a public place

It is an offence for a person —

(a) to fix or place any flower-pot or box or other heavy article in any upper window or terrace situate above any public place without sufficiently guarding it against falling down;

(b) to leave open any vault or cellar, or the entrance from any public place to any cellar or room underground, without a sufficient fence or handrail;

(c) to leave the door, window or other covering of any vault, cellar or store defective;

(d) not sufficiently to fence any area, pit or sewer left open, or to leave such open area, pit or sewer without a sufficient light after sunset to warn and prevent persons from falling into it;
or

(e) in any manner or from any place to throw or discharge any stone or other missile or thing whatsoever to the damage or danger of any person;

(f) without lawful authority or excuse make any bonfire.

Penalty: A fine at level 3 on the standard scale.

[*Metropolitan Police Act 1839 s.60(8); UK Town Police Clauses Act 1847 s.28*]

564. Obstruction and other nuisances in streets, etc.

(1) Subject to subsection (2), it is an offence for a person to —

(a) obstruct the free passage of persons along a highway without lawful authority or reasonable excuse;

(b) place, hang up or otherwise expose to sale any goods, wares, merchandise, matter or thing so that it projects into or over any footway or beyond the line of any house, shop or building at which it is exposed so as to obstruct or incommode the passage of any person over or along the footway;

(c) throw or lay in any public place any building or construction materials or similar articles, or any wares, unless they are placed or enclosed so as to prevent any mischief happening to passers-by;

(d) throw or lay rags, dirt, litter or ashes, or nightsoil, or any carrion, fish, offal or rubbish on any public place or drain, or on the seashore;

(e) cause any offensive matter to run into any public place;

(f) discharge any smoke or steam from any premises (except from a chimney at the top) into any public place;

(g) cause or permit the condensed water or moisture from any steam pipe, flue or funnel to fall into or upon any public place;

(h) cause a nuisance by the deposit of excrement, urine, or faecal matter of any kind in any public place, or upon or against any house, building, doorstep, doorway, wall, fencing or paling;

(i) follow, jostle, or otherwise annoy any person passing in any public place; or

(j) ride or drive furiously any horse or carriage, or drive furiously any livestock.

Penalty: A fine at level 2 on the standard scale.

(2) If any rubbish, lead, iron, wood, goods, commodity or other article, matter or thing is placed or allowed to remain in any public place so that it causes obstruction, annoyance or danger to any person, a police officer may —

(a) remove the thing or cause it to be removed and taken to a place of safety;

(b) detain it at the risk of the owner until the expenses of removal and detention are paid; and

- (c) if such expenses are not paid within 7 days - sell or dispose of the thing and apply the proceeds as directed by the Governor.

[UK Metropolitan Police Act 1839 ss.54(17) and 60(2); UK Town Police Clauses Act 1847 s.28].

565. Posting bills

- (1) It is an offence for a person to affix any poster, bill or other paper against or upon any building, wall, fence, or pole without the express consent of the owner or occupier of the premises or property concerned.

Penalty: A fine at level 2 on the standard scale.

- (2) It is an offence for a person to allow the person's goods, trade, business occupation, profession or other concern to be given publicity by or to benefit from the affixing of a poster, bill or other paper in breach of subsection (1), unless the person shows that the affixing of the bill by which the publicity was given occurred without the person's consent.

Penalty: A fine at level 2 on the standard scale.

[UK Metropolitan Police Act 1839 ss.54 and 60; UK Town Police Clauses Act 1847 s.28].

566. Begging, etc.

- (1) A person who in any public place begs or seeks alms commits an offence.

Penalty: (i) on a first conviction - imprisonment for 4 months or a fine at level 2 on the standard scale, or both;

(ii) on a second or subsequent conviction - imprisonment for 9 months or a fine at level 5 on the standard scale, or both.

- (2) A person who causes, procures, encourages or allows a child under the age of 16 to beg or seek alms in a public place commits an offence.

Penalty: (i) On a first conviction - imprisonment for 1 month or a fine at level 1 on the standard scale, or both;

(ii) on a second or subsequent conviction - imprisonment for 2 months or a fine at level 3 on the standard scale, or both.

- (3) It is a defence to a charge under subsection (1) for a person to show that his or her conduct was authorised by a permit issued pursuant to an enactment.

[Irish Law Reform Commission report; Gibraltar Crimes Act; SH Crimes Bill]

PART 24 – CRIMINAL TRESPASS

Criminal trespass

567. Interpretation of Part

- (1) In this Part, unless the context otherwise requires —

“access”, in relation to any premises, means any part of any site or building within which the premises are situated which constitutes an ordinary means of access to the premises (whether or not that is its sole or primary use);

“caravan” means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted;

“displaced residential occupier” has the meaning given by section 573;

“firearm” has the same meaning as in the Firearms Ordinance;

“intending residential occupier” has the meaning given by section 574;

“land” includes premises;

“offensive weapon” has the same meaning as in Part 7;

“premises” means any building, any part of a building under separate occupation, any land ancillary to a building and the site comprising any building or buildings together with any land ancillary thereto;

“residential premises” means premises that are or form part of premises used mainly for residential purposes, or intended by the owner to be used for those purposes, whether by the owner or some other person;

“site” means the whole or part of any building or buildings, or any land, or both;

“vehicle” includes any vehicle, whether or not it is in a fit state for use on roads, and includes any chassis or body, with or without wheels, appearing to have formed part of such a vehicle, and any load carried by, and anything attached to, such a vehicle, and a caravan.

(2) References to a building apply also to any structure other than a movable one, and to any movable structure, vehicle or vessel designed or adapted for use for residential purposes; and for this purpose —

(a) a part of a building is under separate occupation if anyone is in occupation or entitled to occupation of that part as distinct from the whole;

(b) land is ancillary to a building if it is adjacent to it and used (or intended for use) in connection with the occupation of that building or any part of it.

[UK Criminal Law Act 1977 s.12 (part)]

568. Failing to obey directions to leave land

(1) If a police officer of the rank of Inspector or above reasonably believes —

(a) that a person is trespassing on land with the purpose of residing there for any period;

(b) that reasonable steps have been taken by or on behalf of the occupier to ask the person to leave; and

(c) that the person has caused damage to the land or to property on the land or used threatening, abusive or insulting words or behaviour towards the occupier, a member of the occupier's family or an employee or agent of the occupier,
the officer may direct the person to leave the land.

(2) If a police officer of the rank of Inspector or above reasonably believes —

(a) that 2 or more persons are trespassing on land with the common purpose of residing there for any period;

(b) that reasonable steps have been taken by or on behalf of the occupier to ask them to leave;

(c) that —

(i) any of those persons has caused damage to the land or to property on the land or used threatening, abusive or insulting words or behaviour towards the occupier, a member of the occupier's family or an employee or agent of the occupier; or

(ii) that those persons have between them 2 or more vehicles on the land,

the officer may direct those persons, or any of them, to leave the land and to remove any vehicles or other property they have with them on the land.

(3) If the police officer reasonably believes that the person was not, or the persons were not, originally trespassers but has become a trespasser, or have become trespassers, on the land, the officer must reasonably believe that the other conditions specified in subsection (1) or (2), as the case may be, are satisfied after the person or persons became trespassers before the officer can exercise the power conferred by subsection (1) or (2) respectively.

(4) A direction under subsection (2), if not communicated to the persons referred to in that subsection by the police officer giving the direction, may be communicated to them by any police officer at the scene.

(5) A person who, knowing that a direction under subsection (1) or (2) has been given which applies to the person —

(a) fails to leave the land as soon as reasonably practicable; or

(b) having left again enters the land as a trespasser within 3 months after the direction was given,

commits an offence.

Penalty: Imprisonment for 3 months or a fine at level 4 on the standard scale, or both.

(6) If a direction has been given under subsection (2) and a police officer reasonably suspects that any person to whom the direction applies has, without reasonable excuse —

(a) failed to remove from the land a vehicle which appears to the officer to belong to the person or to be in the person's possession or under the person's control; or

(b) entered the land as a trespasser with a vehicle within 3 months after the direction was given,

the officer may seize and remove the vehicle.

(7) In proceedings for an offence under this section it is a defence for the defendant to show —

(a) that the defendant was not trespassing on the land; or

(b) that the defendant had a reasonable excuse for failing to leave the land as soon as reasonably practicable or, as the case may be, for again entering the land as a trespasser.

(8) A person may be regarded for the purposes of this section as having a purpose of residing in a place even if the person has a home elsewhere.

[UK Criminal Justice & Public Order Act 1994 ss.61 & 62 adapted]

569. Forcible entry on or holding of land

(1) A person who, in order to take possession of any land, enters on the land in a violent manner, whether such violence consists in actual force applied to any other person or in threats or in breaking open any house, or in collecting an unusual number of people, commits the offence of forcible entry on land.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) For the purpose of subsection (1) —

(a) it is immaterial whether the person is entitled to enter on the land or not; but

(b) a person who enters upon land of belonging to the person which is in the custody of a servant or agent of the person does not commit forcible entry.

(3) A person who —

(a) is in actual possession of land when not entitled by law to possession of it; and

(b) holds possession of it, in a manner likely to cause a breach of the peace or reasonable apprehension of a breach of the peace, against a person who is so entitled,

commits the offence of forcible holding of land.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

[Gibraltar Crimes Act; SH Crimes Bill]

570. Violence to secure entry

(1) Subject to the following subsections, any person ('A') who, without lawful authority, uses or threatens violence for the purpose of securing entry into any premises for A or for any other person if —

(a) there is someone present on those premises at the time who is opposed to the entry which the violence is intended to secure; and

(b) A knows that that is the case,

commits an offence.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) Subsection (1) does not apply to a person who is a displaced residential occupier or a protected intending occupier of the premises in question or who is acting on behalf of such an occupier; and if the defendant adduces sufficient evidence that he or she was, or was acting on behalf of, such an occupier the defendant is presumed to have been, or to have been acting on behalf of, such an occupier unless the contrary is proved by the prosecution.

(3) Subject to subsection (2), the fact that A has any interest in or right to possession or occupation of any premises does not for the purposes of subsection (1) constitute lawful authority for the use or threat of violence by A or anyone else for the purpose of securing A's entry into those premises.

(4) It is immaterial for the purposes of this section —

(a) whether the violence in question is directed against the person or against property; or

(b) whether the entry which the violence is intended to secure is for the purpose of acquiring possession of the premises in question or for any other purpose.

[UK Criminal Law Act 1977 s.6]

571. Remaining in public premises

(1) A person who, having entered any public premises, persists without lawful excuse in remaining in the premises after being required to leave by a police officer acting on the request of a person in lawful occupation or control of the premises, commits an offence.

Penalty: A fine at level 2 on the standard scale.

(2) In this section, "public premises" means —

(a) any building or part of a building, any land ancillary to a building, and the site comprising any building or buildings together with any ancillary land, which belongs to or is occupied by the Government or any statutory public body; and

(b) any premises used for public worship or for education,

and for the purposes of this definition land is ancillary to a building if it is adjacent to it and used (or intended for use) in connection with the occupation of that building or any part of it.

(3) In this section, “person in control” includes (without limiting the scope of that expression) the owner, tenant or licensee of premises, and any person in lawful occupation of them, and, in relation to premises belonging to or occupied by the Government, includes any Government or Crown servant; and any employee or agent of a person mentioned in this definition.

[Gibraltar Crimes Act; SH Crimes Bill]

572. Remaining in residential premises

(1) Subject to the following subsections, a person who is in any residential premises as a trespasser after having entered as such commits an offence if the person fails to leave the premises within 48 hours after being required to do so by or on behalf of —

(a) a displaced residential occupier of the premises; or

(b) an individual who is an intending residential occupier of the premises.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) In proceedings for an offence under this section it is a defence for the defendant to prove that the defendant believed that the person requiring the defendant to leave the premises was not a displaced residential occupier or intending residential occupier of the premises or a person acting on behalf of such an occupier.

(3) In proceedings for an offence under this section it is also a defence for the defendant to prove —

(a) that the premises in question are or form part of premises used mainly for non-residential purposes; and

(b) that the defendant was not on any part of the premises used wholly or mainly for residential purposes.

(4) A reference in the preceding subsections to premises includes a reference to any access to them, whether or not such access itself constitutes premises within the meaning of this Part.

(5) A requirement to leave the premises made pursuant to subsection (1) must be in writing served on the trespasser in person or, if that is not practicable, by affixing it to the premises in a conspicuous place at or near the main or usual entrance.

[UK Criminal Law Act 1977 s.7 as am. by Criminal Justice & Public Order Act 1994 s.73]

573. Meaning of “displaced residential occupier”

(1) Subject to subsection (2), a person (‘A’) who was occupying any premises as a residence immediately before being excluded from occupation by anyone who entered those premises, or any access to those premises, as a trespasser is a displaced residential occupier of the premises

for the purposes of this Part so long as A continues to be excluded from occupation of the premises by the original trespasser or by any subsequent trespasser.

(2) A person who was occupying the premises in question as a trespasser immediately before being excluded from occupation is not by virtue of subsection (1) a displaced residential occupier of the premises for the purposes of this Part.

(3) A person who by virtue of subsection (1) is a displaced residential occupier of any premises is to be regarded for the purposes of this Part as a displaced residential occupier also of any access to those premises.

(4) Anyone who enters or is on or in occupation of any premises by virtue of —

(a) any title derived from a trespasser; or

(b) any licence or consent given by a trespasser or by a person deriving title from a trespasser,

is to be treated as a trespasser for the purposes of this Part; and references in this Part to a person entering or being on or occupying any premises as a trespasser are to be construed accordingly.

(5) A person who is on any premises as a trespasser does not cease to be a trespasser for the purposes of this Part by virtue of being allowed time to leave the premises, nor does a person cease to be a displaced residential occupier of any premises by virtue of any such allowance of time to a trespasser.

[UK Criminal Law Act 1977 s.12 (part)]

574. Meaning of “intending residential occupier”

(1) For the purposes of this Part, an individual is an intending residential occupier of premises if—

(a) he or she has in those premises a freehold interest or a leasehold interest;

(b) he or she requires the premises for his or her own occupation as a residence or for occupation by a proposed tenant as a residence;

(c) he or she or the proposed tenant is excluded from occupation of the premises by a person who entered them, or any access to them, as a trespasser.

(2) An individual is also an intending residential occupier of premises if he or she —

(a) has a tenancy of those premises or a licence to occupy those premises granted by a person with a freehold interest or a leasehold interest in them;

(b) requires the premises for his or her own occupation as a residence; or

(c) is excluded from occupation of the premises by a person who entered them, or any access to them, as a trespasser.

(3) A person who is an intending residential occupier of any premises is to be regarded for the purposes of this Part as an intending residential occupier also of any access to those premises.

[UK Criminal Law Act 1977 s.12A and Schedule added by Criminal Justice & Public Order Act 1994 s.74 modified]

575. Squatting in a residential building

(1) A person commits an offence if —

(a) the person is in a residential building as a trespasser having entered it as a trespasser;

(b) the person knows or ought to know that he or she is a trespasser; and

(c) the person is living in the building or intends to live there for any period.

Penalty: Imprisonment for 12 months or a fine at level 6 on the standard scale, or both

(2) The offence is not committed by a person holding over after the end of a lease or licence (even if the person leaves and re-enters the building).

(3) For the purposes of this section —

(a) “building” includes any structure or part of a structure (including a temporary or moveable structure); and

(b) a building is “residential” if it is designed or adapted, before the time of entry, for use as a place to live.

(4) For the purposes of this section the fact that a person derives title from a trespasser, or has the permission of a trespasser, does not prevent the person from being a trespasser.

(5) For the purposes of subsection (1)(a) it is irrelevant whether the person entered the building as a trespasser before or after the commencement of this section.

[UK LASPO Act 2012 s.144]

Aggravated trespass

576. Offence of aggravated trespass

(1) A person (‘A’) commits the offence of aggravated trespass if A trespasses on land in the open air and, in relation to any lawful activity which persons are engaging in or are about to engage in on that or adjoining land in the open air, does there anything which is intended by A to have the effect of —

(a) intimidating those persons or any of them so as to deter them or any of them from engaging in that activity;

(b) obstructing that activity, or

(c) disrupting that activity.

Penalty: Imprisonment for 3 months or a fine at level 4 on the standard scale, or both.

(2) Activity on any occasion on the part of a person or persons on land is lawful for the purposes of this section if the person or persons may engage in the activity on the land on that occasion without committing an offence or trespassing on the land.

[UK Criminal Justice & Public Order Act 1994 s.68]

577. Power to remove persons committing or participating in aggravated trespass

(1) If the senior police officer present at the scene reasonably believes —

(a) that a person is committing, has committed or intends to commit the offence of aggravated trespass on land in the open air; or

(b) that 2 or more persons are trespassing on land in the open air and are present there with the common purpose of intimidating persons so as to deter them from engaging in a lawful activity or of obstructing or disrupting a lawful activity,

the officer may direct that person or those persons, or any of them, to leave the land.

(2) A direction under subsection (1), if not communicated to the persons referred to in that subsection by the police officer giving the direction, may be communicated to them by any police officer at the scene.

(3) A person who, knowing that a direction under subsection (1) has been given which applies to the person —

(a) fails to leave the land as soon as practicable; or

(b) having left again enters the land as a trespasser within 3 months after the direction was given,

commits an offence.

Penalty: Imprisonment for 3 months or a fine at level 4 on the standard scale, or both.

(4) In proceedings for an offence under subsection (2) it is a defence for the defendant to show—

(a) that the defendant was not trespassing on the land; or

(b) that the defendant had a reasonable excuse for failing to leave the land as soon as practicable or, as the case may be, for again entering the land as a trespasser.

(5) In this section “lawful activity” has the same meaning as in section 576(2).

[UK Criminal Justice & Public Order Act 1994 s.69]

578. Trespassing with an offensive weapon

A person who is on any premises as a trespasser, after having entered as such, commits an offence if, without lawful authority or reasonable excuse, the person has with him or her on the premises any offensive weapon or any firearm.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale.

[UK Criminal Law Act 1977 s.8]

Unauthorised camping

579. Camping in a vehicle

(1) If it appears to the Chief Police Officer that persons are for the time being residing in a vehicle or vehicles within the Falkland Islands on —

- (a) any land forming part of a highway;
- (b) any other unoccupied land; or
- (c) any occupied land without the consent of the occupier,

the Chief Police Officer may direct that those persons and any others with them are to leave the land and remove the vehicle or vehicles and any other property they have with them on the land.

(2) Notice of a direction under subsection (1) must be served on the persons to whom the direction applies, but it is sufficient for this purpose for the direction to specify the land and (unless the direction applies to only one person) to be addressed to all occupants of the vehicles on the land, without naming them.

(3) A person who, knowing that a direction under subsection (1) above has been given which applies to the person —

- (a) fails, as soon as practicable, to leave the land or remove from the land any vehicle or other property which is the subject of the direction; or
- (b) having removed any such vehicle or property again enters the land with a vehicle within 3 months after the direction was given,

commits an offence.

Penalty: A fine at level 3 on the standard scale.

(4) A direction under subsection (1) operates to require persons who re-enter the land within 3 months of the giving of the direction with vehicles or other property to leave and remove the vehicles or other property as it operates in relation to the persons and vehicles or other property on the land when the direction was given.

(5) In proceedings for an offence under this section it is a defence for the defendant to show that the failure to leave or to remove the vehicle or other property as soon as practicable or the re-entry with a vehicle was due to illness, mechanical breakdown or other immediate emergency.

[UK Criminal Justice & Public Order Act 1994 s.77]

580. Orders for removal of unauthorised campers

(1) The Magistrate's Court or the Summary Court may, on a complaint made by the Chief Police Officer, if satisfied that persons and vehicles in which they are residing are present on land within the Falkland Islands in contravention of a direction given under section 579, make an order requiring the removal of any vehicle or other property which is so present on the land and any person residing in it.

(2) An order under this section may authorise the Chief Police Officer to take such steps as are reasonably necessary to ensure that the order is complied with and, in particular, may authorise the Chief Police Officer, by any police officer, to —

(a) enter upon the land specified in the order; and

(b) take, in relation to any vehicle or property to be removed in pursuance of the order, any steps for securing entry and rendering it suitable for removal specified in the order.

(3) A police officer must not enter upon any occupied land pursuant to this section unless the owner and occupier of the land has been given at least 24 hours notice of the intention to do so, or unless after reasonable inquiries it is not possible to ascertain their names and addresses.

(4) A person who wilfully obstructs a police officer in the exercise of powers conferred by an order under this section commits an offence.

Penalty: A fine at level 3 on the standard scale.

(5) If a complaint is made under subsection (1), a summons issued by the court requiring the person or persons to whom it is directed to appear before the court to answer to the complaint may be directed —

(a) to the occupant of a particular vehicle on the land in question; or

(b) to all occupants of vehicles on the land in question,

without naming the person or persons.

(6) The power of the Magistrate's Court and the Summary Court to issue a warrant for the arrest of a defendant who fails to appear does not apply to proceedings on a complaint under this section.

[UK Criminal Justice & Public Order Act 1994 s.78]

581. Provisions as to directions and orders

(1) The following provisions apply in relation to the service of notice of a direction under section 579 and of a summons under section 580, referred to in this section as a “relevant document”.

(2) If it is impracticable to serve a relevant document on a person named in it, the document is to be treated as duly served on the person if a copy of it is fixed in a prominent place to the vehicle concerned; and if a relevant document is directed to the unnamed occupants of vehicles, it is to be treated as duly served on those occupants if a copy of it is fixed in a prominent place to every vehicle on the land in question at the time when service is thus effected.

(3) The Chief Police Officer must take all reasonably practicable steps to ensure that a copy of any relevant document is displayed on the land in question (otherwise than by being fixed to a vehicle) in such a manner that it is likely to be seen by any person camping on the land.

(4) Notice of any relevant document must be given by a police officer to the owner of the land in question and to any occupier of that land unless, after reasonable inquiries, it is not possible to ascertain the name and address of the owner or occupier; and the owner of any such land and any occupier of such land is entitled to appear and to be heard in the proceedings.

[UK Criminal Justice & Public Order Act 1994 s.79]

582. Camping on Crown land or private land

(1) Subject to subsection (2), a person who camps on Crown land except with the previous permission in writing of the Governor, or a person acting on the Governor’s authority, commits an offence.

Penalty: Imprisonment for 3 months or a fine at level 4 on the standard scale, or both.

(2) A person who camps on private land except with the previous permission of the owner or the owner’s agent commits an offence.

(3) Nothing in this section applies to a police officer or other public officer when engaged in the execution of his or her duty.

[Gibraltar Criminal Offences Act s.165B to E]

Designated sites

583. Trespassing on a designated site

(1) A person who enters, or is on, any designated site as a trespasser, commits an offence.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) A “designated site” means a site —

(a) specified or described (in any way) in an order made by the Governor; and

(b) designated for the purposes of this section by the order.

(3) The Governor may only designate a site for the purposes of this section if —

(a) it is comprised in Crown land; or

(b) it appears to the Governor that it is appropriate to designate the site in the interests of the security of the Falkland Islands.

(4) It is a defence for a person charged with an offence under this section to prove that the defendant did not know, and had no reasonable cause to suspect, that the site in relation to which the offence is alleged to have been committed was a designated site.

(5) No proceedings for an offence under this section may be commenced except by, or with the consent of, the Attorney General.

(6) For the purposes of this section a person who is on any designated site as a trespasser does not cease to be a trespasser by virtue of being allowed time to leave the site.

[UK Serious Organised Crime & Police Act 2005 s.128]

PART 25 – HARMFUL AND OBSCENE PUBLICATIONS

584. Interpretation and general provisions

(1) In this Part, unless the context otherwise requires —

“article” means —

(a) any writing, drawing, print, painting, photograph, book, card, lithographic or other engraving, printed matter, picture, poster, emblem, cinematograph film or any description of article containing or embodying matter to be read or looked at or both;

(b) any sound record; and

(c) any film or other record of a picture or pictures, moving or otherwise;

“distribute” has the meaning given that term by section 589;

“film exhibition” means an exhibition of moving pictures produced otherwise than by the simultaneous reception and exhibition of programmes included in a programme service;

“harmful publication” means any publication declared by the Governor under subsection (2) to be a harmful publication;

“import” in relation to a publication means to bring or cause to be brought into the Falkland Islands, wherever the publication is brought ashore, and whether or not there is an intention to bring the same ashore;

“indecent” has the same meaning as in Part 10;

“periodical publication” includes every publication issued periodically or in parts or numbers at intervals whether regular or irregular;

“plate” includes a block, mould, matrix and stencil;

“publication” has the meaning given that term by the Interpretation and General Clauses Ordinance.

(2) If the Governor in Council, after consulting the Criminal Justice Council, is of opinion that any publication published whether in or outside the Falkland Islands is of a kind likely to fall into the hands of youths and consists wholly or mainly of stories told in pictures (with or without the addition of written matter), being stories portraying —

- (a) the commission of crimes;
- (b) acts of violence or cruelty; or
- (c) incidents of a repulsive or horrible nature,

in such a way that the work as a whole would tend to corrupt a youth into whose hands it might fall, the Governor may by order declare it to be a harmful publication for the purposes of this Part, and in the case of a periodical publication may, by the same or a subsequent order, prohibit the importation of any past or future issue of it.

(3) References in this Part to possession or distribution for gain —

- (a) include possession or distribution by way of trade or for public exhibition;
- (b) mean any such possession or distribution whether the gain is to accrue by way of consideration for the distribution or in any other way; and
- (c) apply whether in fact any gain does accrue.

(4) This Part applies in relation to anything which is intended to be used, either alone or as one of a set, for the reproduction or manufacture from it of articles containing or embodying matter to be read, looked at or listened to, as if it were an article containing or embodying that matter so far as that matter is to be derived from it or from the set.

(5) No proceedings for an offence under this Part may be commenced except by, or with the consent of, the Attorney General.

(6) This Part is in addition to, and does not derogate from, the provisions of Part 10 relating to indecent photographs of youths, prohibited images of youths, or extreme pornographic images.
[UK Children and Young Persons (Harmful Publications) Act 1955 ss.1 and 4; (part); Customs Consolidation Act 1876; Customs & Excise Management Act 1979]

Harmful publications

585. Prohibition of importation of harmful publications

(1) A person who imports —

- (a) any harmful publication;
- (b) any plate prepared for the purpose of printing copies of a harmful publication; or
- (c) any photographic film prepared for that purpose,

commits an offence.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) Without affecting criminal liability under subsection (1), the importation of an article of a kind mentioned in subsection (1) is prohibited for purposes of the Customs Ordinance as if the article were the subject of an order made under section 143 of the Customs Ordinance and as if the maximum penalty there specified were as specified in subsection (1) above.

[UK Children and Young Persons (Harmful Publications) Act 1955 s.4 (part) adapted]

586. Offence of printing, publishing, selling, etc. harmful publications

(1) A person who prints, publishes, sells or lets on hire a harmful publication, or has any such publication in the person's possession for the purpose of selling it or letting it on hire, commits an offence.

Penalty: Imprisonment for 4 months or a fine at level 4 on the standard scale, or both.

(2) In any proceedings against a person in respect of selling or letting on hire a harmful publication or of having it in the person's possession for the purpose of selling it or letting it on hire, it is a defence for the person to prove that the person had not examined the contents of the publication and had no reasonable cause to suspect that it was one to which this section applies.

[UK Children and Young Persons (Harmful Publications) Act 1955 s.2]

587. Powers of search and seizure

(1) The powers of search and seizure in Part 3 of the Criminal Procedure and Evidence Ordinance 2014 apply to a publication which is the subject of an offence under section 586, including —

- (a) any copies of the relevant publication or any other harmful publication; or
- (b) any plate prepared for the purpose of printing copies of the relevant publication or any other harmful publication, or any photographic film prepared for that purpose.

(2) The power of search and seizure in relation to a suspected offence committed by a person under section 5 extends to any premises, stall or vehicle used by the person for the purposes of trade or business.

(3) On the conviction of a person for an offence under this Part the provisions of sections 617 and 622 of the Criminal Procedure and Evidence Ordinance 2014 apply to the publication which is the subject of the offence, including —

(a) any copies of the relevant publication; and

(b) any plate prepared for the purpose of printing copies of the publication, or any photographic film prepared for that purpose,

found in the possession of the person or under that person's control.

[UK Children and Young Persons (Harmful Publications) Act 1955 s.3]

Obscene publications

588. Test of obscenity

(1) For the purposes of this Part a publication or article is deemed to be obscene if its effect (or, if the publication or article comprises 2 or more distinct items, the effect of any one of the items) is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

(2) In proceedings against a person for an offence under this Part, the question whether the publication or article is obscene is to be determined —

(a) by reference to such distribution as in the circumstances it may reasonably be inferred the person had in contemplation and to any further distribution that could reasonably be expected to follow from it, but not to any other publication or article;

(b) as if any reference to distribution of it were a reference to distribution of items reproduced from it;

(c) on the assumption that copies of it, and items reproduced or manufactured from it, would be distributed in any manner likely having regard to the circumstances in which it was found, but in no other manner.

[UK Obscene Publications Act 1959 s.1 am. by Criminal Law Act 1977 and Criminal Justice and Police Act 1994 adapted]

589. Meaning of 'distribution'

(1) For the purposes of this Part a person distributes a publication or article who —

(a) circulates, sells, lets on hire, gives, or lends it, or who offers it for sale or for letting on hire; or

(b) in the case of a publication or article containing or embodying matter to be looked at or a record - shows, plays or projects it, or, if the matter is data stored electronically, transmits the data.

(2) A person also distributes a publication or article to the extent that any matter recorded on it is included by the person in a programme included in a programme service.

(3) If the inclusion of any matter in a programme included in a programme service would, if that matter were recorded matter, constitute the distribution of an obscene publication or article for the purposes of this Part by virtue of subsection (4), this Part has effect in relation to the inclusion of that matter in that programme as if it were recorded matter.

(4) A publication or article is deemed to be had or kept for distribution if it is had or kept for the reproduction or manufacture from it of items for distribution.

[UK Obscene Publications Act 1959 s.2 am. by Criminal Law Act 1977 and Criminal Justice and Police Act 1994 adapted]

590. Distribution or possession of obscene publication or article

(1) A person who for gain —

(a) distributes an obscene publication or article; or

(b) has in the person's possession an obscene publication or article for distribution,

commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) For the purpose of proceedings for an offence under this section, a person is deemed to have in the person's possession a publication or article for distribution for gain if with a view to such distribution the person has the publication or article in the person's ownership, possession or control.

(3) A person may not be convicted of an offence under this section in respect of a publication or article if the person proves that the person had not examined the publication or article and had no reasonable cause to suspect that it was such that having it would make the person liable to be convicted of an offence against this section.

[UK Obscene Publications Act 1959 s.2 (part) as am. by Obscene Publications Act 1964 and Criminal Law Act 1977; Customs and Excise Management Act 1979]

591. Manufacture, etc. of obscene publication or article

(1) A person who for gain —

(a) manufactures or produces;

(b) imports or exports; or

(c) causes to be manufactured, produced, imported or exported,

any obscene publication or article commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) A person who advertises or makes known by any means, in order to assist in any of the acts mentioned in subsection (1), that another person is engaged in any of those acts commits an offence.

Penalty: Imprisonment for 3 years or a fine, or both.

(3) A person who advertises or makes known how or from whom any obscene publication or article can be procured, either directly or indirectly, commits an offence.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

[SH Obscene Publications Ordinance s.2 modified; UK Customs and Excise Management Act 1979]

592. Common law offence abolished

(1) No proceedings may be brought against a person at common law for the possession, distribution, manufacture, importation, exportation, advertising or promotion of an obscene publication or article.

(2) Subsection (1) does not prevent the prosecution of a person for any offence in relation to the possession, distribution, importation, manufacture or advertising of any publication or article under any other enactment.

(3) Without limiting subsection (1), no proceedings may be brought against a person for an offence at common law —

(a) in respect of a film exhibition or anything said or done in the course of such an exhibition, if it is of the essence of the common law offence that the exhibition or, as the case may be, what was said or done was obscene, indecent, offensive, disgusting or injurious to morality; or

(b) in respect of an agreement to give a film exhibition or to cause anything to be said or done in the course of such an exhibition if the common law offence consists of conspiring to corrupt public morals or to do any act contrary to public morals or decency.

[UK Obscene Publications Act 1959 s.2 (part) as am. by Obscene Publications Act 1964 and Criminal Law Act 1977]

593. Arrest, search and seizure and forfeiture

(1) If a police officer has reasonable grounds for suspecting that a person has committed an offence under section 590 or 591, the officer may require the person to give his or her name and address and, if the person refuses or fails to do so or gives a name and address which the officer reasonably suspects to be false, may arrest the person without warrant.

(2) The powers of search and seizure in Part 3 of the Criminal Procedure and Evidence Ordinance 2014 apply to a publication or article which is the subject of an offence under section 590 or 591, including —

(a) any copies of the publication or article; and

(b) any plate, film or other equipment prepared for the purpose of printing or producing copies of the publication or article.

(3) The power of search and seizure in relation to a suspected offence committed by a person under either of those sections extends to any premises, stall or vehicle used by the person for the purposes of trade or business and to the seizure and removal of any documents found in the premises or, as the case may be, on the stall or vehicle, which relate to a trade or business carried on at the premises or from the stall or vehicle.

(4) Subject to subsection (5), any article seized under subsection (2) or (3) must be brought before a justice of the peace, who may issue a summons to the occupier of the premises or, as the case may be, the user of the stall or vehicle, to appear on a day specified in the summons before the Magistrates' Court or the Summary Court to show cause why the publication or article should not be forfeited.

(5) If on a hearing under subsection (4) the court is satisfied, with respect to any publication or article, that at the time when it was seized it was obscene and kept for distribution for gain, the court must order the article to be forfeited.

(6) On the conviction of a person for an offence under this Part the provisions of section 617 of the Criminal Procedure and Evidence Ordinance 2014 apply to the publication or article which is the subject of the offence, including —

(a) any copies of the relevant publication or article; and

(b) any plate, film or other equipment prepared for the purpose of printing or producing copies of the publication or article,

found in the possession of the person or under that person's control.

(7) Subsection (6) does not apply in relation to any article seized under subsection (3) which is returned to the occupier of the premises or, as the case may be, to the user of the stall or vehicle in or on which it was found.

(8) In addition to the person summoned under subsection (4) —

(a) the owner, author or maker of any publication or article brought before the court; and

(b) any other person through whose hands the publication or article had passed before being seized,

is entitled to appear before the court on the day specified in the summons to show cause why the publication or article should not be forfeited.

(9) If an order is made under subsection (5) for the forfeiture of any publication or article, any person who appeared, or was entitled to appear, to show cause against the making of the order

may appeal to the Supreme Court, and the order does not take effect until the expiration of the period within which notice of appeal to the Supreme Court may be given against the order.

(10) If as respects any article brought before it the court does not order forfeiture under subsection (5) —

(a) the court may order the person on whose information the warrant for the seizure of the article was issued to pay costs the court thinks reasonable to any person who has appeared before the court to show cause why the article should not be forfeited; and

(b) costs ordered to be paid under this subsection are enforceable as a civil debt.

[UK Obscene Publications Act 1959 s.3 (part) as am. by Courts Act 1971, Criminal Law Act 1977 and PACE Act 1984; Video Recordings Acts 1984 and 2010]

594. Defence of public good

(1) Subject to subsection (2), a person must not be convicted of an offence under section 590 or 591 in relation to a publication or article, and the powers of forfeiture under section 593 do not apply, if it is proved that publication of the article in question is justified as being for the public good on the ground that it is in the interests of science, literature, the arts or learning, or of other objects of general public concern.

(2) The opinion of experts as to the scientific, literary, artistic, scientific, educational or other merits of a publication or article may be admitted in any proceedings under this Part either to establish or to negative the ground mentioned in subsection (1).

[UK Obscene Publications Act 1959 s.4 as am. by Criminal Law Act 1977]

595. Assisting the commission of an offence overseas

(1) It is an offence for a person in the Falkland Islands to —

(a) encourage, aid and abet, or assist the commission in any place outside the Falkland Islands of an offence punishable under the provisions of any law in force in that place corresponding to the provisions of section 590 or 591; or

(b) do any act preparatory to or in furtherance of any act which if committed in the Falkland Islands would constitute an offence under either of those sections.

Penalty: Imprisonment for 3 years or a fine, or both.

(2) For the purposes of subsection (1) —

(a) “corresponding law” means any law stated in a certificate purporting to be issued by or on behalf of the authorities of any place outside the Falkland Islands to be a law providing for the suppression of the circulation of and traffic in obscene publications in accordance with the provisions of the International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications 1923; and

- (b) any statement in any such certificate as to the effect of the law mentioned in the certificate, or any statement in any such certificate that any facts constitute an offence against that law, is conclusive.

[SH Obscene Publications Ordinance s.3]

Unsolicited publications

596. Unsolicited publications

- (1) A person who sends or causes to be sent to another person —

- (a) any book, magazine or leaflet; or
- (b) advertising material for any such publication,

which the person knows or ought reasonably to know is unsolicited and which describes or illustrates human sexual techniques, commits an offence.

Penalty: (i) For a first offence – a fine at level 2 on the standard scale;

(ii) for a subsequent offence – a fine at level 5 on the standard scale.

- (2) In this section, “unsolicited” means, in relation to goods sent to any person, that they are sent without any prior request made by the person or on the person’s behalf.

- (3) No proceedings for an offence under this section may be commenced except by, or with the consent of, the Attorney General.

[UK Unsolicited Goods and Services Act 1971 s.5]

Indecent displays

597. Indecent displays: Offence

- (1) If any indecent matter is publicly displayed, the person making the display and any person causing or permitting the display to be made each commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

- (2) Any matter which is displayed in or so as to be visible from any public place is, for the purposes of this section, deemed to be publicly displayed.

- (3) In subsection (2), “public place”, in relation to the display of any matter, means any place to which the public have or are permitted to have access (whether on payment or otherwise) while that matter is displayed.

- (4) Nothing in this section applies in relation to any matter —

- (a) included by any person in a programme service;
- (b) included in the display of an art gallery or museum and visible only from within the gallery or museum;

(c) displayed by or with the authority of, and visible only from within a building occupied by, the Crown; or

(d) included in a performance of a play.

(5) In this section “matter” includes anything capable of being displayed, except that it does not include an actual human body or any part thereof; and in determining for the purpose of this section whether any displayed matter is indecent —

(a) any part of that matter which is not exposed to view is to be disregarded; and

(b) account may be taken of the effect of juxtaposing one thing with another.

[UK Indecent Displays (Control) Act 1981 ss.1 and 4]

CHAPTER 4 – SUPPLEMENTARY PROVISIONS

PART 26 – MISCELLANEOUS AND TRANSITIONAL

598. Service of documents

(1) Any notice or other document required or authorised by this Ordinance to be served on any person may be served by —

(a) delivering it to the person;

(b) leaving it at the person's usual or last known address (whether residential or otherwise);

(c) sending it to the person by post at that address; or

(d) sending it to the person by electronic means, if the person has facilities to receive such communications.

(2) Any notice or other document so required or authorised to be served on a corporate body is duly served on it if served on the secretary or clerk of the body.

(3) For the purposes of this section, the proper address of any person is, in the case of the secretary or clerk of a body corporate, that of the registered or principal office of that body, and in any other case the last address of the person to be served which is known to the Governor.

599. Criminal procedure rules and practice directions

(1) In addition to any other power in this Ordinance to make criminal procedure rules, the Chief Justice may make criminal procedure rules to implement this Ordinance.

(2) Rules made under this section or any other provision of this Ordinance —

(a) must be consistent with the Constitution and this Ordinance;

(b) must be made only after consulting the Criminal Justice Council;

(c) may create offences carrying a maximum penalty of 3 months' imprisonment or a fine at level 5 on the standard scale, or both;

(d) may make different provision for different cases or circumstances and may contain such incidental, supplemental, saving or transitional provisions as the Chief Justice, after consulting as required by paragraph (b), thinks fit.

(3) The Chief Justice, after consulting the Criminal Justice Council, may issue practice directions as to the practice to be adopted in the Supreme Court, the Magistrate's Court and the Summary Court on specific aspects of criminal procedure and practice arising under this Ordinance.

600. Amendment of Schedules

(1) The Governor, after consulting the Criminal Justice Council, may by order amend any Schedule to this Ordinance.

(2) An order under subsection (1) —

(a) may make such transitional and consequential provisions as appear to the Governor, after consulting as required by subsection (1), to be necessary or expedient;

(b) requires the approval of the Legislative Assembly.

601. Repeal and disapplication of laws – Schedule 5

(1) The Ordinances listed in Part 'A' of Schedule 5 (the "repealed Ordinances") are repealed.

(2) Consequently, the English Acts applied to the Falkland Islands by Schedule 1 to the Crimes Ordinance and by the Sexual Offences Ordinance 2005 ("the repealed Acts") cease to have effect as part of the law of the Falkland Islands.

(3) The provisions of the Ordinances listed in Part 'B' of Schedule 5 are repealed, and are included in the term "repealed Ordinances".

(4) The imperial enactments listed in Part 'C' of Schedule 5 (the "disapplied Acts"), being English Acts that apply to the Falkland Islands by their own force or by virtue of Chapter X of the Interpretation and General Clauses Ordinance, are disapplied in relation to the Falkland Islands.

(5) In this section, the term "disapply" has the same effect as an order by the Governor under section 79(2) of the Interpretation and General Clauses Ordinance declaring that a UK enactment has never been enacted, except that the disapplication only has effect from the date of commencement of this section.

(6) After the commencement of this section, there are no common law offences in the Falkland Islands, that is to say, no person may be prosecuted for an offence unless it is one created by or under an enactment.

(7) In particular, but without limiting subsection (6), the following are not offences in the Falkland Islands —

- (a) sedition and seditious libel;
- (b) defamatory libel;
- (c) obscene libel;
- (d) blasphemy.

(8) There is no defence of marital coercion in the Falkland Islands.

602. Saving provisions

(1) Except as expressly provided in this Ordinance, nothing in this Ordinance affects —

- (a) the liability, trial or punishment of a person for an offence against any other law in force in the Falkland Islands other than this Ordinance;
- (b) any of the written laws for the time being in force for the government of the police force or of the armed forces of the Crown.

(2) Subject to subsection (3), all items of subsidiary legislation made under any of the repealed Ordinances or repealed or disapplied Acts continue in force as if made under the corresponding provision of this Ordinance until amended or replaced under this Ordinance.

(3) If there is no corresponding provision of this Ordinance under which an item of subsidiary legislation referred to in subsection (2) could be made, the item is repealed or disapplied, as the case may be, except that it continues to have effect in relation to proceedings that had commenced before the repeal or disapplication as provided by section 603.

(4) Any legislative instrument made by the Governor or Chief Justice under a repealed Ordinance or repealed or disapplied Act which could be made or issued by the Governor or Chief Justice under this Ordinance continues to have effect as if made or issued by the Governor or Chief Justice respectively under this Ordinance (irrespective of a requirement for consultation) until varied or revoked under this Ordinance.

(5) Any direction, exemption, notice or other non-legislative instrument made or issued by any person or body under any of the repealed Ordinances or repealed disapplied Acts which could be made or issued by an equivalent person or body under this Ordinance continues to have effect as if made or issued by that person or body under this Ordinance until varied or revoked under this Ordinance.

(6) Any delegation made, direction given or other action taken by a person under any of the repealed Ordinances or repealed or disappplied Acts which could be taken by an equivalent person under this Ordinance continues to have effect as if taken by that person under this Ordinance.

(7) This section is in addition to, and does not displace, section 346 as regards the effect of the repeal of the Sexual Offences Ordinance, 2005.

603. Transitional provisions

(1) Proceedings for an offence under any enactment or at common law that had commenced before the commencement of this Ordinance must be conducted as if this Ordinance had not been enacted.

(2) If proceedings for an offence committed under any of the repealed Ordinances or repealed or disappplied Acts have not been commenced at the commencement of this Ordinance —

(a) if there is an equivalent offence under this Ordinance - proceedings must be brought under this Ordinance;

(b) if there is no equivalent offence - proceedings cannot be brought.

(3) Subsections (1) and (2) do not apply in relation to an offence of conspiracy if the agreement was entered into before the commencement of this Ordinance and the conspiracy continued to exist after that date.

(4) For the purposes of this section, an offence is committed wholly or partly before the commencement of this Ordinance if any of the conduct or events alleged to constitute the offence occurred before that commencement.

(5) The maximum sentence for an offence under a repealed Ordinance or repealed or disappplied Act that can be imposed for an offence under that Ordinance or Act committed before the commencement of this Ordinance is the maximum sentence for that offence under that Ordinance or Act.

(6) If an offence committed before the commencement of this Ordinance is by any enactment then in force made punishable only on summary conviction, it remains only so punishable.

(7) An appeal against conviction or sentence in respect of an offence committed before the commencement of this Ordinance must be conducted as if this Ordinance had not been enacted.

(8) All sentences of imprisonment (including suspended sentences), fines, conditional discharges, disqualifications and forfeitures imposed before the commencement of this Ordinance continue to have effect and can be varied or appealed from as if this Ordinance had not been enacted.

(9) For purposes of this section, proceedings for an offence commence on —

(a) arrest without warrant;

- (b) the issue of a warrant for arrest;
- (c) the issue of a summons to appear;
- (d) the service of an indictment or other document specifying the charge; or
- (e) an oral charge,

in respect of the offence.

[UK Criminal Justice & Public Order Act 1994 s.35]

604. Consequential amendments

(1) A reference in any other enactment to a repealed Ordinance or to a repealed or disappplied Act is, to the extent possible, to be read as a reference to the corresponding provision of this Ordinance.

(2) A reference in any other enactment to the Governor or Chief Justice exercising legislative functions in relation to criminal offences is, to the extent possible, to be read as a reference to the Governor or Chief Justice, as the case may be, exercising equivalent functions under this Ordinance after consulting the Criminal Justice Council.

(3) The Governor, after consulting the Criminal Justice Council, may by order make such modifications or adaptations of any enactment as the Governor considers necessary or expedient in consequence of the repeal of the repealed Ordinances, the repeal of the repealed Acts, and the disapplication of the disappplied enactments.

(4) An order under subsection (3) may make such transitional and consequential provisions as the Governor, after consulting the Criminal Justice Council, considers necessary or expedient.

(5) Without affecting the powers in subsections (3) and (4), the Ordinance listed in Part D of Schedule 5 is amended in the manner set out in that Schedule.

605. Ordinance binds the Crown

This Ordinance is binding on the Crown.

SCHEDULES

Schedule 1 - Forfeiture of indecent photographs of children

Schedule 2 - Sexual offences to which sections 290 and 291 apply

Schedule 3 - Sexual offences for purposes of Part 11

Schedule 4 - Other offences for purposes of Part 11

Schedule 5 - Repealed and disapplied laws

SCHEDULE 1

FORFEITURE OF INDECENT PHOTOGRAPHS OF CHILDREN (section 251(3))

Application of Schedule

1. (1) This Schedule applies if —

- (a) property which has been lawfully seized in the Falkland Islands is in the custody of a police officer;
- (b) apart from this Schedule, there is no legitimate reason for the officer to retain custody of the property;
- (c) the officer is satisfied that there are reasonable grounds for believing that the property is or is likely to be forfeitable property; and
- (d) apart from this Schedule, the officer is not aware of any person who has a legitimate reason for possessing the property or any readily separable part of it.

(2) The term “forfeitable property” means —

- (a) any indecent photograph or pseudo-photograph of a child;
- (b) any property which it is not reasonably practicable to separate from any property within sub-paragraph (a).

(3) For the purposes of this paragraph —

(a) a part of any property is a “readily separable part” of the property if, in all the circumstances, it is reasonably practicable for it to be separated from the remainder of that property; and

(b) it is reasonably practicable for a part of any property to be separated from the remainder if it is reasonably practicable to separate it without prejudicing the remainder of the property or another part of it.

(4) The circumstances mentioned in paragraph (3)(a) include the time and costs involved in separating the property.

Possession pending forfeiture

2. (1) The property must be retained in the custody of a police officer until it is returned or otherwise disposed of in accordance with this Schedule.

(2) The provisions of the Criminal Procedure and Evidence Ordinance 2014 relating to property seized in the investigation of an offence do not apply to property held under this Schedule.

The relevant officer

3. “The relevant officer”, in relation to any property, is the police officer who for the time being has custody of the property.

Notice of intended forfeiture

4. (1) The relevant officer must give notice of the intended forfeiture of the property (“notice of intended forfeiture”) to —

(a) every person whom he believes to have been the owner of the property, or one of its owners, at the time of the seizure of the property;

(b) if the property was seized from premises - every person whom he believes to have been an occupier of the premises at that time; and

(c) if the property was seized as a result of a search of any person - that person.

(2) The notice of intended forfeiture must set out —

(a) a description of the property; and

(b) how a person may give a notice of claim under this Schedule and the period within which such a notice must be given.

(3) Subject to paragraph (4), the notice of intended forfeiture may be given to a person only by—

(a) delivering it to the person personally;

- (b) addressing it to the person and leaving it for the person at the appropriate address; or
 - (c) addressing it to the person and sending it to the person at that address by post.
- (4) A notice given in accordance with paragraph (1)(b) may, if it is not practicable to give the notice in accordance with paragraph (3), be given by —
- (a) addressing it to “the occupier” of those premises, without naming the person; and
 - (b) leaving it for the person at those premises or sending it to the person at those premises by post.
- (5) Property may be treated or condemned as forfeited under this Schedule only if —
- (a) the requirements of this paragraph have been complied with in the case of the property; or
 - (b) it was not reasonably practicable for them to be complied with.
- (6) In this paragraph “the appropriate address”, in relation to a person, means —
- (a) in the case of a corporate body - its registered or principal office in the Falkland Islands;
 - (b) in the case of a firm - the principal office of the partnership;
 - (c) in the case of an unincorporated body or association - the principal office of the body or association;
 - (d) in any other case – the person’s usual or last known place of residence in the Falkland Islands or last known place of business in the Falkland Islands.
- (7) In the case of —
- (a) a company registered outside the Falkland Islands;
 - (b) a firm carrying on business outside the Falkland Islands; or
 - (c) an unincorporated body or association with offices outside the Falkland Islands,

the references in this paragraph to its principal office include references to its principal office within the Falkland Islands (if any).

Notice of claim

5. (1) A person claiming to have a legitimate reason for possessing the property or a part of it may give notice of the claim to a police officer at any police station.

(2) Oral notice is not sufficient for this purpose.

Time and form of notice

6. (1) A notice of claim may not be given more than one month after —

- (a) the date of the giving of the notice of intended forfeiture; or
- (b) if no such notice has been given - the date on which the property began to be retained under this Schedule (see paragraph 2).

(2) A notice of claim must specify —

- (a) the name and address of the claimant;
- (b) a description of the property, or part of it, in respect of which the claim is made;
- (c) in the case of a claimant who is outside the Falkland Islands, the name and address of a person in the Falkland Islands who is authorised to accept service, and to act, on behalf of the claimant.

(3) Service upon a person so specified is to be taken to be service on the claimant for the purposes of any proceedings by virtue of this Schedule.

(4) In a case in which notice of intended forfeiture was given to different persons on different days, the reference in this paragraph to the day on which that notice was given is a reference in relation —

- (a) to a person to whom notice of intended forfeiture was given - to the day on which that notice was given to that person; and
- (b) to any other person - to the day on which notice of intended forfeiture was given to the last person to be given such a notice.

Automatic forfeiture if no claim is made

7. (1) If the property is unclaimed it is treated as forfeited.

(2) The property is “unclaimed” if, by the end of the period for the giving of a notice of claim —

- (a) no such notice has been given in relation to it or any part of it; or
- (b) the requirements of paragraphs 5 and 6 have not been complied with in relation to the only notice or notices of claim that have been given.

(3) Paragraph (1) applies in relation to a readily separable part of the property as it applies in relation to the property, and for this purpose paragraph (2) applies as if references to the property were to the part.

(4) In this paragraph “readily separable part” has the meaning given by paragraph 1.

Decision whether to take court proceedings to condemn property as forfeited

8. (1) If a notice of claim in respect of the property, or a part of it, is duly given in accordance with paragraphs 5 and 6, the relevant officer must decide whether to take proceedings to ask the court to condemn the property or a part of it as forfeited.

(2) The decision whether to take such proceedings must be made as soon as reasonably practicable after the giving of the notice of claim.

Return of property if no forfeiture proceedings

9. (1) This paragraph applies if, in a case in which a notice of claim has been given, the relevant officer decides not to take proceedings —

(a) for condemnation of the property; or

(b) for condemnation of a part of the property.

(2) The relevant officer must return the property or part to the person who appears to the officer to have a legitimate reason for possessing the property or, if there is more than one such person, to one of those persons.

(3) Any property required to be returned in accordance with sub-paragraph (2) must be returned as soon as reasonably practicable after the decision not to take proceedings for condemnation.

Forfeiture proceedings

10. (1) This paragraph applies if, in a case in which a notice of claim has been given, the relevant officer decides to take proceedings for condemnation of the property or a part of it (“the relevant property”).

(2) Subject to sub-paragraphs (5) and (7), the court must condemn the relevant property if it is satisfied that —

(a) the relevant property is forfeitable property; and

(b) no-one who has given a notice of claim has a legitimate reason for possessing the relevant property.

(3) If the court is not satisfied that the relevant property is forfeitable property, the court must order its return to the person who appears to the court to have a legitimate reason for possessing it or, if there is more than one such person, to one of those persons.

(4) If the court is satisfied that —

(a) the relevant property is forfeitable property; and

(b) a person who has given a notice of claim has a legitimate reason for possessing the relevant property, or that more than one such person has such a reason,

the court must order the return of the relevant property to that person or, as the case may be, to one of those persons.

(5) If the court is satisfied that any part of the relevant property is a separable part, sub-paragraphs (2) to (4) apply separately in relation to each separable part of the relevant property as if references to the relevant property were references to the separable part.

(6) For this purpose a part of any property is a “separable part” of the property if —

(a) it can be separated from the remainder of that property; and

(b) if a person has a legitimate reason for possessing the remainder of that property or any part of it - the separation will not prejudice the remainder or part.

(7) If the court is satisfied that —

(a) a person who has given a notice of claim has a legitimate reason for possessing part of the relevant property; and

(b) although the part is not a separable part within the meaning given by sub-paragraph (6), it can be separated from the remainder of the relevant property,

the court may order the return of that part to that person.

(8) Sub-paragraph (7) does not apply to any property required to be returned to a person under sub-paragraph (4).

Supplementary orders

11. (1) If the court condemns property under sub-paragraph 10(2), the court —

(a) may order the relevant officer to take such steps in relation to the property or any part of it as it thinks appropriate; and

(b) if it orders a step to be taken - may make that order conditional on specified costs relating to the taking of that step being paid by a specified person within a specified period.

(2) A court order under any of sub-paragraphs 10(3), (4), (5) or (7) requiring the return of a part of the relevant property to a person may be made conditional on specified costs relating to the separation of the part from the remainder of the relevant property being paid by that person within a specified period.

(3) If the court makes an order under sub-paragraph 10(7) for the return of a part of the relevant property, the court —

(a) may order the relevant officer to take such steps as it thinks appropriate in relation to any property which will be prejudiced by the separation of that part; and

(b) if it orders a step to be taken - may make that order conditional on specified costs relating to the taking of that step being paid by a specified person within a specified period.

(4) For the purposes of this paragraph, “specified” means specified in, or determined in accordance with, the court order.

Magistrate’s Court

12. Proceedings by virtue of this Schedule are civil proceedings and may be instituted in the Magistrate’s Court or in the Summary Court.

Appeals

13. (1) Either party may appeal against the decision of the Magistrate’s Court or the Summary Court to the Supreme Court.

(2) This paragraph does not affect any right to require the statement of a case for the opinion of the Supreme Court.

(3) If an appeal has been made (whether by case stated or otherwise) against the decision of the Magistrate’s Court or the Summary Court in proceedings by virtue of this Schedule in relation to property, the property is to be left in the custody of a police officer pending the final determination of the matter.

Effect of forfeiture

14. If property is treated or condemned as forfeited under this Schedule the forfeiture is to be treated as having taken effect as from the time of the seizure.

Disposal of property which is not returned

15. (1) If —

(a) property is required to be returned to a person under this Schedule;

(b) the property is (without having been returned) still in the custody of the relevant officer after the end of the period of 12 months beginning with the day on which the requirement to return it arose; and

(c) it is not practicable to dispose of it by returning it immediately to the person to whom it is required to be returned,

section 622 of the Criminal Procedure and Evidence Ordinance 2014 as to disposal of property applies.

(2) If property would be required to be returned to a person under this Schedule but for a failure to satisfy a condition imposed by virtue of paragraph 11(2) (return of property conditional on

payment of costs within specified period), the relevant officer may dispose of the property in any manner the officer thinks fit.

Provisions as to proof

16. (1) In proceedings under this Schedule, the fact, form and manner of the seizure are to be taken, without further evidence and unless the contrary is shown, to have been as set forth in the process.

(2) In any proceedings, the condemnation by a court of property as forfeited under this Schedule may be proved by the production of either —

(a) the order of condemnation; or

(b) a certified copy of the order purporting to be signed by an officer of the court by which the order was made or granted.

Saving for owner's rights

17. Neither the imposition of a requirement by virtue of this Schedule to return property to a person nor the return of it to a person in accordance with such a requirement affects —

(a) the rights in relation to that property, or any part of it, of any other person; or

(b) the right of any other person to enforce his rights against the person to whom it is returned.

Interpretation

18. (1) In this Schedule —

“the court” is to be construed in accordance with paragraph 12;

“forfeitable property” is to be construed in accordance with paragraph 1(2);

“premises” has the same meaning as in the Criminal Procedure and Evidence Ordinance 2014; and

“the relevant officer” is to be construed in accordance with paragraph 3.

(2) For the purposes of this Schedule the circumstances in which a person (‘P’) has a legitimate reason for possessing an indecent photograph of a child (‘C’) include —

(a) the photograph was of C aged 16 or over;

(b) one or both of the following apply —

(i) P and C are married or civil partners or are living together in an enduring family relationship;

- (ii) P and C were married or civil partners or were so living together at the time P obtained the photograph;
 - (c) the photograph shows C alone or with P, but does not show any other person;
 - (d) C has consented to the photograph being in P's possession (and that consent has not been withdrawn); and
 - (e) P owns the photograph, or is authorised (directly or indirectly) by the owner to possess it.
- [UK Protection of Children Act 1978 (as am. by Police & Justice Act 2006 s.39)]*

SCHEDULE 2
(sections 290(9) and 291(10))

SEXUAL OFFENCES TO WHICH SECTIONS 290 AND 291 APPLY

PART A
SEXUAL OFFENCES TO WHICH SECTION 290 APPLIES

1. The following are sexual offences to which section 291 (Offences outside the Falkland Islands) applies —

- (a) an offence under any of sections 208 to 211 (sexual offences against children under 13);
- (b) an offence under any of sections 212 to 218 (child sex offences);
- (c) an offence under any of the following sections if the victim of the offence was under 13 at the time of the offence —
 - sections 204 to 207 (Rape and related offences)
 - sections 219 to 222 (Abuse of position of trust)
 - sections 227 and 228 (Familial child sex offences)
 - sections 232 to 235 (Offences against persons with a mental disorder)
 - sections 236 to 239 (Inducements, etc. to persons with a mental disorder)
 - sections 240 to 243 (Offences by care workers)
 - sections 260 to 263 (Abuse of children through prostitution and pornography)
 - section 280 (Administering a substance with intent);

(d) an offence under section 247, 248 or 253 (Indecent photographs or images of youths) in relation to a photograph or pseudo-photograph or image showing a person under 13;

(e) an offence under section 280 or 281 (Preparatory offences) if the intended offence was an offence against a person under 13.

2. A reference in paragraph 1 to an offence includes —

- (a) an attempt or conspiracy to commit that offence;
- (b) encouraging the commission of that offence; and
- (c) aiding and abetting the commission of that offence.

PART B SEXUAL OFFENCES TO WHICH SECTION 291 APPLIES

Section 291 (Encouraging the commission of certain sexual acts outside the Falkland Islands) applies to an offence under any of sections 204 to 215 and sections 217 to 228 in which the victim of the offence has not attained the age of 16 years.

SCHEDULE 3 (section 2 and Part 11)

SEXUAL OFFENCES FOR PURPOSES OF PART 11

Offences under the UK Sexual Offences Act 1956

1. An offence under section 1 (Rape).
2. An offence under section 5 (Intercourse with girl under 13).
3. An offence under section 6 (Intercourse with girl under 16) if the offender was 20 or over.
4. An offence under section 10 (Incest by a man) if the victim or (as the case may be) other party was under 18.
5. An offence under section 12 (Buggery) if —
 - (a) the offender was 20 or over; and
 - (b) the victim or (as the case may be) other party was under 18.

6. An offence under section 13 (Indecency between men) if —
 - (a) the offender was 20 or over; and
 - (b) the victim or (as the case may be) other party was under 18.
7. An offence under section 14 (Indecent assault on a woman) if —
 - (a) the victim or (as the case may be) other party was under 18; or
 - (b) the offender, in respect of the offence or finding, is or has been —
 - (i) sentenced to imprisonment for not less than 30 months; or
 - (ii) admitted to a hospital subject to a restriction order.
8. An offence under section 15 (Indecent assault on a man) if —
 - (a) the victim or (as the case may be) other party was under 18; or
 - (b) the offender, in respect of the offence or finding, is or has been —
 - (i) sentenced to imprisonment for a term of not less than 30 months; or
 - (ii) admitted to a hospital subject to a restriction order.
9. An offence under section 16 (Assault with intent to commit buggery), if the victim or (as the case may be) other party was under 18.
10. An offence under section 28 (Causing or encouraging prostitution of, intercourse with or indecent assault on, girl under 16).

Offences under the Sexual Offences Act 2003 as applied to the Falkland Islands by the Schedule to the Sexual Offences Ordinance 2005

1. An offence under section 1 or 2.
2. An offence under section 3 if —
 - (a) in the case of an offender under 18 - he or she is or has been sentenced, in respect of the offence, to imprisonment for not less than 12 months;
 - (b) in any other case —
 - (i) the victim was under 18; or
 - (ii) the offender, in respect of the offence or finding, is or has been —

- (A) sentenced to a term of imprisonment;
 - (B) detained in a hospital; or
 - (C) made the subject of a community order of at least 120 hours.
3. An offence under any of sections 4 to 6.
 4. An offence under section 7 if the offender —
 - (a) was 18 or over; or
 - (b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.
 5. An offence under any of sections 8 to 12.
 6. An offence under section 13, if the offender is or has been sentenced, in respect of the offence, to imprisonment for not less than 12 months.
 7. An offence under section 14 if the offender —
 - (a) was 18 or over; or
 - (b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.
 8. An offence under section 15.
 9. An offence under any of sections 17 to 20 of the Sexual Offences Act 2003 (Abuse of position of trust) if the offender, in respect of the offence, is or has been —
 - (a) sentenced to a term of imprisonment;
 - (b) detained in a hospital; or
 - (c) made the subject of a community order of at least 120 hours.
 10. An offence under section 25 or 26 if the offender —
 - (a) was 18 or over; or
 - (b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.
 11. An offence under any of sections 30 to 37.

12. An offence under any of sections 38 to 41 if —

- (a) in the case of an offender under 18, he or she is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;
- (b) in any other case, the offender, in respect of the offence or finding, is or has been —
 - (i) sentenced to a term of imprisonment;
 - (ii) detained in a hospital; or
 - (iii) made the subject of a community order of at least 120 hours.

13. An offence under section 47 if the victim or (as the case may be) other party was under 16, and the offender —

- (a) was 18 or over; or
- (b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

14. An offence under section 48 if the offender —

- (a) was 18 or over; or
- (b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

15. An offence under section 49 if the offender —

- (a) was 18 or over; or
- (b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

16. An offence under section 50 (Arranging or facilitating child prostitution or pornography) if the offender —

- (a) was 18 or over; or
- (b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

17. An offence under section 61.

18. An offence under section 62 or 63 if —

(a) in the case of an offender under 18 – he or she is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case —

(i) the intended offence was an offence against a person under 18; or

(ii) the offender, in respect of the offence or finding, is or has been —

(A) sentenced to a term of imprisonment;

(B) detained in a hospital; or

(C) made the subject of a community order of at least 120 hours.

19. An offence under section 64 or 65 if —

(a) in the case of an offender under 18 – he or she is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case - the offender, in respect of the offence or finding, is or has been —

(i) sentenced to a term of imprisonment; or

(ii) detained in a hospital.

20. An offence under section 66 if —

(a) in the case of an offender under 18 - he or she is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case —

(i) the victim was under 18; or

(ii) the offender, in respect of the offence or finding, is or has been —

(A) sentenced to a term of imprisonment;

(B) detained in a hospital; or

(C) made the subject of a community order of at least 120 hours.

21. An offence under section 67 if —

(a) in the case of an offender under 18 - he or she is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case —

(i) the victim was under 18; or

(ii) the offender, in respect of the offence or finding, is or has been —

(A) sentenced to a term of imprisonment;

(B) detained in a hospital; or

(C) made the subject of a community order of at least 120 hours.

22. An offence under section 69 or 70 if —

(a) in the case of an offender under 18 - he or she is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case - the offender, in respect of the offence or finding, is or has been —

(i) sentenced to imprisonment; or

(ii) detained in a hospital.

Offences under Part 10 of this Ordinance

1. An offence under section 204 or 205.

2. An offence under section 206 if —

(a) in the case of an offender under 18 - he or she is or has been sentenced, in respect of the offence, to imprisonment for not less than 12 months;

(b) in any other case —

(i) the victim was under 18; or

(ii) the offender, in respect of the offence or finding, is or has been —

(A) sentenced to a term of imprisonment;

(B) detained in a hospital; or

(C) made the subject of a community order of at least 120 hours.

3. An offence under any of sections 207 to 209.
4. An offence under section 210 if the offender —
 - (a) was 18 or over; or
 - (b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.
5. An offence under any of sections 211 to 215.
6. An offence under section 216, if the offender is or has been sentenced, in respect of the offence, to imprisonment for not less than 12 months.
7. An offence under section 217 if the offender —
 - (a) was 18 or over; or
 - (b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.
8. An offence under section 218.
9. An offence under any of sections 219 to 222 if the offender, in respect of the offence, is or has been —
 - (a) sentenced to a term of imprisonment;
 - (b) detained in a hospital; or
 - (c) made the subject of a community order of at least 120 hours.
10. An offence under section 227 or 228 if the offender —
 - (a) was 18 or over; or
 - (b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.
11. An offence under any of sections 232 to 239.
12. An offence under any of sections 240 to 243 if —
 - (a) in the case of an offender under 18, he or she is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case, the offender, in respect of the offence or finding, is or has been —

- (i) sentenced to a term of imprisonment;
- (ii) detained in a hospital; or
- (iii) made the subject of a community order of at least 120 hours.

13. An offence under 247 or 248 if —

- (a) the indecent photograph or pseudo-photograph showed persons under 16; and
- (b) the offender was 18 or over or is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

14. An offence under 253 if —

- (a) the offender was 18 or over; and
- (b) is or has been sentenced in respect of the offence to imprisonment for not less than 2 years.

15. An offence under section 257 if the victim or (as the case may be) other party was under 16, and the offender —

- (a) was 18 or over; or
- (b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

16. An offence under section 258 if the offender —

- (a) was 18 or over; or
- (b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

17. An offence under section 259 if the offender —

- (a) was 18 or over; or
- (b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

18. An offence under section 263 if the offender —

(a) was 18 or over; or

(b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

19. An offence under section 280.

20. An offence under section 281 or 282 if —

(a) in the case of an offender under 18 – he or she is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case —

(i) the intended offence was an offence against a person under 18; or

(ii) the offender, in respect of the offence or finding, is or has been —

(A) sentenced to a term of imprisonment;

(B) detained in a hospital; or

(C) made the subject of a community order of at least 120 hours.

21. An offence under section 283 or 284 if —

(a) in the case of an offender under 18 - he or she is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case - the offender, in respect of the offence or finding, is or has been —

(i) sentenced to a term of imprisonment; or

(ii) detained in a hospital.

22. An offence under section 285 if —

(a) in the case of an offender under 18 - he or she is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case —

(i) the victim was under 18; or

(ii) the offender, in respect of the offence or finding, is or has been —

(A) sentenced to a term of imprisonment;

(B) detained in a hospital; or

(C) made the subject of a community order of at least 120 hours.

23. An offence under section 286 if —

(a) in the case of an offender under 18 - he or she is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case —

(i) the victim was under 18; or

(ii) the offender, in respect of the offence or finding, is or has been —

(A) sentenced to a term of imprisonment;

(B) detained in a hospital; or

(C) made the subject of a community order of at least 120 hours.

24. An offence under section 287 or 288 if —

(a) in the case of an offender under 18 - he or she is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case - the offender, in respect of the offence or finding, is or has been —

(i) sentenced to imprisonment; or

(ii) detained in a hospital.

Other offences

1. An offence under section 1 of the UK Indecency with Children Act 1960 (Indecent conduct towards young child).

2. An offence under section 54 of the UK Criminal Law Act 1977 (Inciting girl under 16 to have incestuous sexual intercourse).

3. An offence under section 160 of the UK Criminal Justice Act 1988 (Possession of indecent photograph of a child) if the indecent photograph or pseudo-photograph showed persons under 16 and the offender —

(a) was 18 or over; or

- (b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.
4. An offence under section 3 of the UK Sexual Offences (Amendment) Act 2000 (c. 44) (Abuse of position of trust), if the offender was 20 or over.
 5. An offence under the Customs Ordinance in relation to the import of prohibited articles if —
 - (a) the prohibited articles included indecent photographs of persons under 16; and
 - (b) the offender was 18 or over.
 6. Conspiracy to commit any of the offences listed in this Schedule.
 7. Attempting to commit any of those offences.
 8. Encouraging any of those offences.
 9. Aiding and abetting any of those offences.
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SCHEDULE 4
(sections 322 and 323)

OTHER OFFENCES FOR THE PURPOSES OF PART 11

Murder at common law or under section 46

Manslaughter at common law or under section 50

An offence under section 52 (Soliciting murder)

An offence under section 53 (Threats to kill)

An offence under section 56 (Infanticide)

An offence under section 57 (Child destruction)

An offence under section 64 (Wounding, etc. with intent to cause grievous bodily harm)

An offence under section 65 (Malicious wounding)

An offence under section 66 (Attempting to choke etc. with intent to facilitate serious offence)

An offence under section 67 (Using drugs to facilitate serious offence)

An offence under section 68 (Administering poison)

An offence under section 69 (Setting spring guns, etc.)

An offence under section 71 (Assault occasioning actual bodily harm)

An offence under section 73 (Assault to prevent arrest)

An offence under section 74 (Assaulting persons when preserving wrecks)

An offence under section 77 (Causing or allowing the death of a child or vulnerable adult)

An offence under section 80 (Abandoning young child)

An offence under section 82 (Cruelty to or neglect of person under 16)

An offence of abduction under section 84 or 85

An offence under section 87 (Trafficking for labour)

An offence under section 88 (Female genital mutilation)

An offence under section 90 (Forced marriage)

Kidnapping under section 115(1)

False imprisonment at common law or under section 115(2)

Torture under section 116

An offence under section 178 (Causing grievous harm by explosion)

An offence under section 179 (Causing explosion, etc. with intent)

An offence under section 182 (Placing explosives with intent)

An offence under section 184 (Possession of explosives with intent)

An offence under section 195 (Destroying or damaging property)

An offence under section 196 (Arson)

An offence under section 260 (Paying for sexual services of a child) if the victim or (as the case may be) other party was 16 or over

An offence under any of sections 261 to 264 (Exploitation of prostitution)

An offence under section 276 (Sex trafficking)

An offence under section 348 (Theft)

An offence under section 354 (Robbery)

An offence under section 355 (Burglary)

An offence under section 356 (Aggravated burglary)

An offence under section 364 (Aggravated vehicle-taking) involving an accident which caused the death of any person

An offence of riot at common law or under section 512

An offence under section 513 (Violent disorder)

An offence of affray at common law or under section 514

An offence under section 87 of the Mental Health Ordinance (Ill-treatment of patients)

An offence under section 14 of the Road Traffic Ordinance (Causing death by reckless driving)

An offence under section 23 of the Firearms Ordinance (Possessing firearm with intent to injure)

An offence under section 24 of the Firearms Ordinance (Use of firearm or imitation firearm to effect unlawful purpose)

An offence under any provision of the Telecommunications Ordinance

Outraging public decency at common law

The following offences insofar they apply to the Falkland Islands by virtue of Part X of the Interpretation and General Clauses Ordinance —

An offence under section 1 of the UK Aviation Security Act 1982 (Hijacking)

An offence under section 2 of that Act (Destroying, damaging or endangering safety of aircraft)

An offence under section 3 of that Act (Other acts endangering or likely to endanger safety of aircraft)

An offence under section 4 of that Act (Offences in relation to certain dangerous articles)

An offence under section 1 of the Aviation and Maritime Security Act 1990 (endangering safety at aerodromes)

An offence under section 9 of that Act (Hijacking of ships)

An offence under section 10 of that Act (Seizing or exercising control of fixed platforms)

An offence under section 11 of that Act (Destroying ships or fixed platforms or endangering their safety)

An offence under section 12 of that Act (Other acts endangering or likely to endanger safe navigation)

An offence under section 13 of that Act (Offences involving threats)

An offence under section 1 of the UK Terrorism Act 2005 (Hostage-taking)

Conspiracy to commit any of the offences listed in this Schedule

Attempting to commit any of those offences

Encouraging any of those offences

Aiding and abetting any of those offences

SCHEDULE 5

(section 601)

REPEALED AND DISAPPLIED LAWS

PART 'A' REPEALED ORDINANCES

- Crimes Ordinance, including Schedules 1 and 2
- Contempt of Court Ordinance
- Sexual Offences Ordinance 2005

PART 'B' REPEALED PROVISIONS

- Police Ordinance, sections 55 and 57
- Road Traffic Ordinance, section 30

PART 'C'
DISAPPLIED IMPERIAL ENACTMENTS

Accessories and Abettors Act 1861

Obscene Publications Acts 1959 and 1964

Abortion Act 1967

Prohibition of Female Circumcision Act 1985

Human Organs Transplants Act 1989

Protection from Harassment Act 1997

Sex Offenders Act 1997

Crime and Disorder Act 1998

Anti-Terrorism, Crime and Security Act 2001

PART 'D'
CONSEQUENTIAL AMENDMENTS

In section 41 of the Telecommunications Ordinance —

- (a) renumber subsection (2) as “subsection (1)” and “subsection (2)” as “subsection (3)”;
- (b) under subsection (2) replace “subsection (1)” with “section 154 of the Crimes Ordinance [2014]”; and
- (c) under subsection (3) replace “any provision of this section” in each place it appears by “any provision of section 154 of the Crimes Ordinance”.

CRIMES BILL 2014 DERIVATION TABLE

CHAPTER 1 - PRELIMINARY

PART 1 – PRELIMINARY AND INTERPRETATION

<i>Clause</i>	<i>Derivation</i>
1	--
2	UK Theatres Act 1968 s.18; PACE Act 1984 s.23; Criminal Justice & Police Act 2001 s.66(1); Broadcasting Act 1990 s.201; Gibraltar Criminal Offences Act s.2

PART 2 – GENERAL PRINCIPLES

3	Crimes Ord. s.37; UK Children & Young Persons Act 1933 s.50 am. by Children & Young Persons Act 1963 s.16; UK Crime and Disorder Act 1998 s.34
4	UK CJ Act 1967 s.8
5	Crimes Ord. s.26; UK case law
6	Common law
7 to 13	UK CJ Act 1993 ss.1 to 6
14	Crimes Ord. s.8; UK Criminal Law Act 1967 s.6
15	UK Criminal Law Act 1967 s.4(2)
16	UK Theft Act 1968 s.30 adapted; Common law
17	Crimes Ord. s.51; UK Public Order Act 1986 s.28; UK Knives Act 1997 s.10 etc.
18	Crimes Ord. s.49; UK CJ Act 1988 s.34; Criminal Justice & Public Order Act 1994 s.32

PART 3 – ANCILLARY OFFENCES

19	Crimes Ord. s.10; UK Criminal Attempts Act 1981 s.1 (part)
20	UK Criminal Attempts Act 1981 s.2 adapted
21	UK Criminal Attempts Act 1981 s.4
22	UK Criminal Attempts Act 1981 s.6
23	UK Criminal Law Act 1977 s.1 am. by Criminal Attempts Act 1981
24	UK Criminal Law Act 1977 s.1A ins. by Criminal Justice (Terrorism & Conspiracy) Act 1998
25 to 30	UK Criminal Law Act 1977 ss.2 to 5
31	UK Serious Crime Act 2007 ss.44, 45 and 46 adapted
32	UK Serious Crime Act 2007 ss.47 and 48 adapted
33	UK Serious Crime Act 2007 s.49 and Schedule 3 adapted
34	UK Serious Crime Act 2007 ss.50 and 51 adapted
35	UK Serious Crime Act 2007 s.52 adapted
36	UK Serious Crime Act 2007 Schedule 4
37	UK Serious Crime Act 2007 ss.53, 54 (part) and 55, with s.34 definitions
38 to 41	UK Serious Crime Act 2007 ss. 56 to 59

- 42 UK Accessories & Abettors Act 1861 am. by Criminal Law Act 1977;
Magistrates' Courts Act 1980 s.44
43 UK Criminal Law Act 1967 s.4(1) and (3) adapted
44 UK Criminal Law Act 1967 s.5
45 Crimes Ord. s.11 modified

CHAPTER 2 – CRIMES AGAINST THE INDIVIDUAL

PART 4 – OFFENCES AGAINST THE PERSON

- 46 Common law; Crimes Ord. ss.22 and 23B; UK Murder (Abolition of
Death Penalty) Act 1965 s.1 adapted
47 Crimes Ord. s.23 modified; UK Homicide Act 1957 s.1
48 Crimes Ord. s.24 modified; UK Homicide Act 1957 s.2 am. by Coroners
& Justice Act 2009 s.52
49 Crimes Ord. s.25 modified; Coroners and Justice Act 2009 ss.54 & 55
50 Common law; UK OAP Act 1861 s.5 adapted; Road Traffic Offences Act
1988
51 UK OAP Act 1861 s.9
52 UK OAP Act 1861 s.4 am by Criminal Law Act 1977
53 UK OAP Act 1861 s.16 subst. by Criminal Law Act 1977
54 UK Homicide Act 1957 s.4 am. by Suicide Act 1961
55 UK Suicide Act 1961 s.2 am. by Coroners and Justice Act 2009 s.59
56 UK Infanticide Act 1938 s.1 am. by Coroners and Justice Act 2009 s.57
57 UK Infant Life Preservation Act 1929 ss.1 and 2; Abortion Act 1967 s.5
58 UK OAP Act 1861 s.58 am. by CJ Act 1948 s.1
59 UK OAP Act 1861 s.59 am by CJ Act 1948 s.1
60 UK Abortion Act 1967 ss.1 and 2 as amended and adapted
61 UK Abortion Act 1967 s.4 am. by the Human Fertilisation & Embryology
Act 1990
62 UK OAP Act 1861 s.60
63 UK OAP Act 1861 s.17 adapted
64 UK OAP Act 1861 s.18 am. by Criminal Law Act 1967
65 UK OAP Act 1861 s.20
66 UK OAP Act 1861 s.21 am. by CJ Act 1948 and Criminal Law Act 1967
67 UK OAP Act 1861 s.22 am. by CJ Act 1948
68 UK OAP Act 1861 ss.23 to 25 am. by CJ Act 1948 and Criminal Law Act
1967
69 UK OAP Act 1861 s.31 am. by CJ Act 1948
70 Common law; UK OAP Act 1861 s.42 replaced by CJ Act 1988 s.39
71 UK OAP Act 1861 s.47
72 Crimes Ord. s.33; Police Ord. s.55; UK Police Act 1996 s.89 adapted
73 UK OAP Act 1861 s.38 am. by Criminal Law Act 1967
74 UK OAP Act 1861 s.37 am. by CJ Act 1948
75 UK OAP Act 1861 s.36
76 UK OAP Act 1861 ss.44 and 45 am. by CJ Act 1988 and Courts Act 2003
77 UK Domestic Violence, Crime & Victims Act 2004 s.5 am. by DVCV

	(Am) Act 2012
78	UK Domestic Violence, Crime and Victims Act 2004 s.6 am. by DVCV (Am) Act 2012 and adapted
79	UK Domestic Violence, Crime and Victims Act 2004 s.6A ins. by DVCV (Am) Act 2012 and adapted
80	UK OAP Act 1861 s.27 am by CJ Act 1948
81	UK Licensing Act 1902 s.2
82.	UK Children & Young Persons Act 1933 s.1 as amended; Child Maltreatment Bill 2014
83.	UK Tattooing of Minors Act 1969
84.	UK Child Abduction Act 1984 s.1 am. by Children Act 1989
85.	UK Child Abduction Act 1984 s.2 am. by Children Act 1989
86.	UK Child Abduction Act 1984 ss.3, 4 and 105 and Schedule am. by Children Act 1989
87.	UK Immigration & Asylum (Treatment of Claimants) Act 2004 am. by Protection of Freedoms Act 2012 s.110
88.	UK Female Genital Mutilation Act 2003 ss.1 and 5 replacing Prohibition of Female Circumcision Act 1985
89.	UK Female Genital Mutilation Act 2003 ss.2, 3 and 4
90.	UK Anti-social Behaviour, Crime & Policing Act 2014 s.121
91.	UK Mental Capacity Act 2005 ss.1 and 2 adapted
92 to 101	UK Family Law Act 1996 ss.63A to 63R, ins. by Forced Marriage (Civil Protection) Act 2007
102	UK Crime & Security Act 2010 s.24; Family Law Act 1996 s.62
103 to 108	UK Crime & Security Act 2010 ss. 25 to 31
109 to 111	UK Human Organs Transplant Act 1989 ss.1 to 3
112 and 113	UK International Criminal Court (OT) Order 2001 Schedule 2 Arts. 55 to 57
114	UK Piracy Act 1837 s.2 adapted
115	Common law and UK case law
116	UK CJ Act 1988 ss.134, 135; CJ Act (OT) Order 1988
117	UK Coroners and Justice Act 2009 s.71
118	UK OAP Act 1861 s.57
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120	UK Criminal Justice & Immigration Act 2008 s.76 am. by LASPO Act 2012 s.148

PART 5 - CORPORATE MANSLAUGHTER

121	UK Corporate Manslaughter and Corporate Homicide Act 2007 s.25 adapted; Human Rights Act 1998 s.6; UK Trade Union and Labour (Consolidation) Act 1992 s.122
122 to 129	UK Corporate Manslaughter and Corporate Homicide Act 2007 ss.1 to 8
130	UK Corporate Manslaughter and Corporate Homicide Act 2007 s.11
131	UK Corporate Manslaughter and Corporate Homicide Act 2007 s.13
132	UK Corporate Manslaughter and Corporate Homicide Act 2007 s.14

133	UK Corporate Manslaughter and Corporate Homicide Act 2007 s.9
134	UK Corporate Manslaughter and Corporate Homicide Act 2007 s.10
135	UK Corporate Manslaughter and Corporate Homicide Act 2007 ss.15, 17 and 18
136	UK Corporate Manslaughter and Corporate Homicide Act 2007 s.19
137	UK Corporate Manslaughter and Corporate Homicide Act 2007 s.16
138	UK Corporate Manslaughter and Corporate Homicide Act 2007 s.20
139	UK Corporate Manslaughter and Corporate Homicide Act 2007 s.21
140	UK Corporate Manslaughter and Corporate Homicide Act 2007 s.23

PART 6 – PROTECTION FROM HARASSMENT

141	UK Protection from Harassment Act 1997 s.7 am. by Serious Organised Crime & Police Act 2005
142	UK Protection from Harassment Act 1997 s.1 am. by Serious & Organised Crime & Police Act 2005
143	UK Protection from Harassment Act 1997 s.2
144	UK Protection from Harassment Act s.2A ins. by Protection of Freedoms Act 2012 s.111
145	UK Protection from Harassment Act 1997 s.4
146	UK Protection from Harassment Act s.2A ins. by Protection of Freedoms Act 2012 s.111
147	UK Criminal Justice & Police Act 2001 s.42A ins. by Serious & Organised Crime and Police Act 2005 s.126
148	UK Protection from Harassment Act 1997 s.3
149	UK Protection from Harassment Act 1997 s.3A ins. by Serious & Organised Crime Act 2005 s.125
150	UK Protection from Harassment Act s.2B ins. by Protection of Freedoms Act 2012 s.112
151	UK Protection from Harassment Act 1997 s.5 am. by Domestic Violence, Crime and Victims Act 2004 s.12
152	UK Protection from Harassment Act 1997 s.5A ins. by Domestic Violence, Crime and Victims Act 2004 s.12
153	UK Malicious Communications Act 1988 s.1
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156 to 159	UK Knives Act 1997 ss.1 to 4
160	Gibraltar Criminal Offences Act s.41
161	UK CJ Act 1988 s.141A ins. by Offensive Weapons Act 1996
162 to 164	UK Knives Act 1997 ss.5 to 7
165	Crimes Ord. s.17; UK Crossbows Act 1987 ss.1, 2 and 6
166.	Crimes Ord. s.18; UK Crossbows Act 1987 ss.3 and 6
167.	Crimes Ord. s.19
168.	Crimes Ord. s.20; UK Crossbows Act 1987 s.7 (part)
169	Crimes Ord. s.16; UK CJ Act 1988 s.139

170	Crimes Ord. s.16A; UK CJ Act 1988 s.139A
171	UK CJ Act 1988 s.139AA ins. by LASPO Act 2012 s.142
172	UK CJ Act 1988 s.139B
173	UK Prevention of Crime Act 1953 s.1 am. by Offensive Weapons Act 1996 and s.1A ins. By LASPO Act 2012
174	UK CJ Act 1988 s.141; CJ Act 1988 (Offensive Weapons) Order 1988 (S.I. 1988/2019 as am. by 2002/1668, 2004/1271 and 2008/97)
175	UK Knives Act 1997 s.8 incorporating s.60 of the CJ and PO Act 1994 as am by Anti-terrorism, Crime & Security Act 2001
176	UK Knives Act 1997 s.8 incorporating s.60 & 60A of the CJ and PO Act 1994 as am. by Anti-terrorism, Crime & Security Act 2001

PART 8 – EXPLOSIVE SUBSTANCES

177	UK Explosives Act 1875 ss.3 and 104; Explosive Substances Act 1883 s.9
178	UK OAP Act 1861, s.28
179	UK OAP Act 1861, s.29
180	UK Explosive Substances Act 1883 s.2 am. by CJ Act 1975
181	UK Explosive Substances Act 1883 s.3 am. by CJ Act 1975
182	UK OAP Act 1861 s.30
183	UK Explosive Substances Act 1883 s.4 adapted
184	UK OAP Act 1861 s.64 adapted
185	UK Explosive Substances Act 1883 s.5 amplified
186	UK Explosive Substances Act 1883 s.8
187	Crimes Ord. s.12
188	Crimes Ord. s.13
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PART 9 - CRIMINAL DAMAGE

194	UK Criminal Damage Act 1971 s.10 am. by Police & Justice Act 2006
195 to 198	UK Criminal Damage Act 1971 ss.1 to 3
199	UK Criminal Damage Act 1971 s.5
200	UK Criminal Damage Act 1971 s.6
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202	Gibraltar Crimes Act; SH Crimes Bill

PART 10 – SEXUAL OFFENCES

203	UK Sexual Offences Act 2003 ss.78 and.79
204 to 217	UK Sexual Offences Act 2003 ss.1 to 14
218	UK Sexual Offences Act 2003 s.15 am. by Criminal Justice & Immigration Act 2008
219 to 222	UK Sexual Offences Act 2003 ss.16 to 19
223	UK Sexual Offences Act 2003 s.21 am. by Children Act 2004 and

	adapted
224 to 228	UK Sexual Offences Act 2003 ss.22 to 26
229	UK Sexual Offences Act 2003 s.27 am. by Criminal Justice & Immigration Act 2008
230	UK Sexual Offences Act 2003 s.28
231	UK Sexual Offences Act 2003 s.29 am. by Criminal Justice & Immigration Act 2008
232 to 246	UK Sexual Offences Act 2003 ss.30 to 44
247	UK CJ Act 1988 s.160 am. by Criminal Justice & Public Order Act 1994
248	UK Protection of Children Act 1978 s.1 as am. by Sexual Offences Act 2003
249	UK CJ Act 1988 s.160A; UK Protection of Children Act 1978 s.1A ins. by Sexual Offences Act 2003
250	UK Protection of Children Act 1978 s.1B ins. by Sexual Offences Act 2003 and adapted
251	UK Protection of Children Act 1978 s.4 as am. by Sexual Offences Act 2003
252	UK Protection of Children Act 1978 ss.2 and 7 as am. by Sexual Offences Act 2003
253	UK Coroners & Justice Act 2009 ss.62 and 66
254	UK Coroners & Justice Act 2009 s.63
255	UK Coroners & Justice Act 2009 s.64
256	UK Coroners & Justice Act 2009 ss.65 and 67
257	UK Criminal Justice & Immigration Act 1998 ss.63 and 67
258	UK Criminal Justice & Immigration Act 1998 s.64
259	UK Criminal Justice & Immigration Act 1998 ss.65 and 66
260	UK Sexual Offences Act 2003 s.47 adapted
261 to 266	UK Sexual Offences Act 2003 ss.48 to 53
267	UK Sexual Offences Act 2003 s.53A ins. by Policing and Crime Act 2009
268	UK Street Offences Act 1959 s.1 am. by CJ Act 1982, Sexual Offences Act 2003 and Policing and Crime Act 2009
269	UK Sexual Offences Act 2003 s.51A ins. by Policing and Crime Act 2009
270	UK Sexual Offences Act 1985 s.4 am. by Sexual Offences Act 2003; Sexual Offences Act 2003 s.54
271 to 274	UK Sexual Offences Act 1956 ss.33 to 36 as am. by Sexual Offences Act 2003
275	UK Children & Young Persons Act 1933 s.3
276	UK Sexual Offences Act s.59A ins. by Protection of Freedoms Act 2012
277	UK Sexual Offences Act 2003 s.60A ins. by Violent Crime Reduction Act 2006 and am. by Protection of Freedoms Act 2012
278	UK Sexual Offences Act 2003 s.60B ins. by Violent Crime Reduction Act 2006 and am. by Protection of Freedoms Act 2012
279	UK Sexual Offences Act 2003 s.60C ins. by Violent Crime Reduction Act 2006
280 to 282	UK Sexual Offences Act 2003 ss.61 to 63

283	UK Sexual Offences Act 2003 s.64 am. by Criminal Justice & Immigration Act 2008
284	UK Sexual Offences Act 2003 s.65 am. by Criminal Justice & Immigration Act 2008
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297	UK Sexual Offences Act 2003 s.80
298	UK Sexual Offences Act 2003 s.82 am. by Violent Crime Reduction Act 2006
299 to 301	UK Sexual Offences Act 2003 ss.83 to 85 am. by Criminal Justice & Immigration Act 2008
302	UK Sexual Offences Act 2003 s.86 adapted; S.I 2004/1220
303	UK Sexual Offences Act 2003 ss.87 and 88
304 to 307	UK Sexual Offences Act 2003 ss.89 to 92
308 to 310	UK Sexual Offences Act 2003 ss.88A to 88G ins. by Sexual Offences (Remedial) Order 2012 and adapted
311	UK Sexual Offences Act 2003 s.93 and Schedule 4, part
312	UK Sexual Offences Act 2003 s.93 and Schedule 4, part
313 to 315	UK Sexual Offences Act 2003 ss.94 to 96
316	UK Sexual Offences Act 2003 s.96B ins. by Violent Crime Reduction Act 2006
317 to 321	UK Sexual Offences Act 2003 ss.97 to 101
322 to 332	UK Sexual Offences Act 2003 ss.103A to 103K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5
333 to 342	UK Sexual Offences Act 2003 ss.122A to 122K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5
343	UK Sexual Offences Act 2003 s.130
344	UK Sexual Offences Act 2003 Sched.3
345	UK Sexual Offences Act 2003 s.132
346	UK Sexual Offences Act 2003 s.136ZB ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5 adapted

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348	UK Theft Act 1968 ss.1 and 7
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354 to 356	UK Theft Act 1968 ss.8 to 10
357	UK Theft Act 1968 s.25 as am. by Fraud Act 2006
358	UK Theft Act 1968 s.14; Postal Services Act 2000 s.125

359	UK Theft Act 1968 s.24 as am. by Fraud Act 2006
3609	UK Theft Act 1968 s.22 as am. by Fraud Act 2006
361	UK Theft Act 1978 s.23
362	UK Theft Act 1968 s.26
363	Road Traffic Ordinance s.30, replacing UK Theft Act 1968 s.12
364	UK Theft Act 1968 s.12A ins. by Aggravated Vehicle Taking Act 1992
365	UK Theft Act 1968 s.11
366	UK Theft Act 1978 s.3
367	UK Theft Act 1968 s.13
368	UK Theft Act 1968 s.21
369 to 372	UK Fraud Act 2006 ss.1 to 4
373	UK Fraud Act 2006 s.6
374	UK Fraud Act 2006 s.7
375	UK Fraud Act 2006 s.9 adapted
376	UK Fraud Act 2006 s.11
377	UK Fraud Act 2006 s.8 adapted
378	UK Fraud Act 2006 s.13
379	UK Theft Act 1968 s.17
380	UK Theft Act 1968 s.19
381	UK Theft Act 1968 s.20
382	UK Theft Act 1968 s.24A inserted by Theft (Am.) Act 1996
383	Common law
384	Crimes Ord. s.30; UK Regulation of Investigatory Powers Act 2000, s.1
385	UK Theft Act 1968 s.27
386	UK Theft Act 1968 s.31

PART 13 - FORGERY AND COUNTERFEITING

387	UK Forgery & Counterfeiting Act 1981 passim; Stamp Duties Act 1981 s.127
388 to 390	UK Forgery & Counterfeiting Act 1981 ss.8 to 10
391 to 395	UK Forgery & Counterfeiting Act 1981 ss.1 to 6
396	UK Forgery & Counterfeiting Act 1981 s.13
397 to 400	UK Forgery & Counterfeiting Act 1981 ss.14 to 17 and 22
401	UK Forgery & Counterfeiting Act 1981 s.28
402	UK Forgery & Counterfeiting Act 1981 ss.18 and 22 adapted
403	UK Forgery & Counterfeiting Act 1981 ss.19 and 22
404	UK Forgery & Counterfeiting Act 1981 ss.20 to 22 adapted
405 to 407	UK Identity Documents Act 2010 ss.4 to 6
408	UK Identity Documents Act 2010 ss.7 to 9

PART 14 - COMPUTER MISUSE

409	UK Computer Misuse Act 1990 s.17 and EU Convention Art.1
410	UK Computer Misuse Act 1990 s.1 am. by Police & Justice Act 2006 s.35
411	UK Computer Misuse Act 1990 s.2
412	UK Computer Misuse Act 1990 s.3 replaced by Police & Justice Act 2006 s.36

413	EU Convention Art 3
414	UK Computer Misuse Act 1990 s.3A ins. by Police & Justice Act 2006 s.37
415	EU Convention Art 11
416 to 420	UK Computer Misuse Act 1990 ss.4 to 9
421	UK Computer Misuse Act 1990 s.11
422	EU Convention Arts 15 &19
423	Gibraltar Crimes Act; SH Crimes Bill - Not in EU Convention
424	EU Convention Art. 16
425	EU Convention Art. 20
426	EU Convention Art. 17
427	EU Convention Art. 18
428	EU Convention Art. 21
429	EU Convention Arts. 20.3, 21.3
430	UK Computer Misuse Act 1990 s.10
431	EU Convention Art.12
432	Gibraltar Crimes Bill - Not in EU Convention
433	Gibraltar Crimes Act; SH Crimes Bill - Not in EU Convention
434	EU Convention Art 28
435	Gibraltar Crimes Act; SH Crimes Bill – Not in EU Convention but required by FCO

PART 15 - COMMERCIAL TRANSACTIONS

436	UK Auctions (Bidding Agreements) Act 1927 s.1 amended
437	Auctions (Bidding Agreements) Act 1969 s.2
438	Auctions (Bidding Agreements) Act 1969 s.3
439	UK Auctioneers Act 1845 s.7 applied by Auctions (Bidding Agreements) Acts 1927 and 1969
440	UK Mock Auctions Act 1961 s.1
441	UK Mock Auctions Act 1961 s.3
442	UK Unsolicited Goods and Services Act 1971 s.1
443	UK Unsolicited Goods and Services Act 1971 s.2

CHAPTER 3 - CRIMES AGAINST THE GENERAL PUBLIC

PART 16 – TREASON

444	Treason Act 1351; Treason Act 1702, s.3
445	Treason Felony Act 1848, ss.3, 7
446	Treason Act 1695 ss.5, 6
447	Treason Act 1842 ss.2, 3

PART 17 – SECURITY

448	UK Incitement to Disaffection Act 1934 ss.1 and 2 adapted
449	UK Armed Forces Act 2006 ss.8 and 10 adapted
450	UK Uniforms Act 1894 s.2
451	UK Uniforms Act 1894 s.3

452 UK Unlawful Drilling Act 1819 ss.1, 2 and 7
 453 Crimes Ord. s.31; Police Ord. s.57; UK Police Act 1996 s.91
 454 Crimes Ord s.32
 455 Crimes Ord. s.34 modified; UK Police Act 1996 s.89
 456 UK Police Act 1996 s.90; Commissioners for Revenue and Customs
 Act 2005 s.30
 457 Crimes Ord. ss.35 and 36
 458 Crimes Ord. s.38 modified
 459 Crimes Ord. ss.37 and 39 modified
 460 UK CJ Act 1961 s.22
 461 Crimes Ord.ss.42, 43, 44

PART 18 - JUDICIAL PROCEEDINGS

462 UK CJ Act 1925 s.1 (repealed)
 463 UK Administration of Justice Act 1960 s.12 adapted
 464 UK Magistrates' Courts Act 1980 s.8; UK Crime & Disorder Act 1998
 Sched. 3 expanded
 465 UK CJ Act 1925 s.41 adapted
 466 UK Criminal Law Act 1967 s.5 and common law
 467 Crimes Ord. s.50; UK Criminal Justice & Public Order Act 1994 s.51
 468 Common law; UK Contempt of Court Act 1981 s.6
 469 Contempt of Court Ord. Schedule; UK Contempt of Court Act 1981
 ss.1 to 5
 470 UK Contempt of Court Act 1981 s.8
 471 UK Contempt of Court Act 1981 s.9
 472 UK Contempt of Court Act 1981 s.12
 473 UK Contempt of Court Act 1981 ss.7, 14 and 16
 474 UK Contempt of Court Act 1981 Sched.1
 475 UK Contempt of Court Act 1981 ss.10 and 11

PART 19 – PERJURY, ETC.

476 UK Perjury Act 1911 s.15
 477 UK Perjury Act 1911 s.1
 478 UK European Communities Act 1972 s.11(1) adapted
 479 UK Perjury Act 1911 s.7 adapted
 480 UK Youth Justice and Criminal Evidence Act 1999 s.57
 481 UK CJ Act 1967 s.89
 482 UK Perjury Act 1911 s.1A; Evidence (Proceedings in other
 Jurisdictions) Act 1975
 483 UK Perjury Act 1911 s.2
 484 UK Perjury Act 1911 s.3; CJ Act 1925 s.28
 485 UK Perjury Act 1911 s.4; CJ Act 1925 s.28
 486 UK Perjury Act 1911 s.5
 487 UK Perjury Act 1911 s.6
 488 UK CJ Act 1925 s.36
 489 UK British Nationality Act 1981 s.46 (part)

490	UK Perjury Act 1911 s.13 adapted
491	UK Perjury Act 1911 s.14
492	UK Perjury Act 1911 s.12
493	UK Perjury Act 1911 s.16(1)

PART 20 – BRIBERY AND PUBLIC OFFICE OFFENCES

494 to 502	UK Bribery Act 2010 ss.1 to 9 and 11
503	Common law
504	UK Bribery Act 2010 s.10
505 to 510	UK Bribery Act 2010 ss.12 to 17(1)

PART 21 - PUBLIC ORDER

511	UK Public Order Act 1986 as am by Criminal Justice & Public Order Act 1994
412 to 515	UK Public Order Act 1986 ss.1 to 4 adapted
516	UK Public Order Act 1986 s.4A, inserted by Criminal Justice & Public Order Act 1994
517	UK Public Order Act 1986 s.5 am. by Crime & Courts Act 2013
518	UK Public Order Act 1986 s.6 am. by Crimes & Courts Act 2013
519	UK Public Order Act 1986 s.7
520	UK Public Order Act 1986 ss.9 & 10
521 to 525	UK Criminal Justice & Public Order Act 1994 ss.63 to 67
526 and 527	UK Criminal Justice & Public Order Act 1994 s.60AA & 60A as am by 1997 c.21 and 2001 c.24
528	UK Public Order Act 1986 s.38
529	UK Criminal Law Act 1977 s.51
530	UK Public Order Act 1936 s.2
531	UK Public Order Act 1936 s.1
532	UK Public Order Act s.40(4); Magistrates Courts Act 1980 s.115(3)
533	UK Town Police Clauses Act 1847 s.29
534	UK CJ Act 1967 s.91

PART 22 – HATE CRIMES

535	UK Public Order Act 1986 passim
536 to 541	UK Public Order Act 1986 ss.18 to 23 am. by Racial and Religious Hatred Act 2006
542 to 547	UK Public Order Act 1986 ss.29B to 29G ins. by Schedule to the Racial and Religious Hatred Act 2006 and am. by the Criminal Justice and Immigration Act 2008 Schedule 16
548	UK Public Order Act 1986 ss.24 and 29G; UK Theatres Act 1968 s.15
549	UK Theatres Act 1968 s.9
550	UK Theatres Act 1968 s.10
551	UK Public Order Act 1986 ss.25 and 29H
552	UK Public Order Act 1986 ss.26 and 29K
553	UK Racial and Religious Hatred Act 2006 s.29J adapted
554	UK Public Order Act 1986 s.27 and 29L

- 555 UK Crime and Disorder Act 1998 s.28 am. by Anti-Terrorism Crime and Security Act 2001
- 556 UK Crime & Disorder Act 1998 s.29 am. by Anti-Terrorism, Crime & Security Act 2001
- 557 to 559 UK Crime & Disorder Act 1998 ss.30 to 32 adapted
- 560 UK Crime & Disorder Act 1998 ss.31(6) and 32(5) adapted

PART 23 – PUBLIC NUISANCES

- 561 Gibraltar Crimes Act 2012; SH Crimes Bill
- 562 Gibraltar Crimes Ord. and SH Crimes Bill
- 563 Metropolitan Police Act 1839 s.60(8); UK Town Police Clauses Act 1847 s.28
- 564 UK Metropolitan Police Act 1839 ss.54(17) and 60(2); UK Town Police Clauses Act 1847 s.28.
- 565 UK Metropolitan Police Act 1839 ss.54 and 60; UK Town Police Clauses Act 1847 s.28.
- 566 Irish Law Reform Commission report; Gibraltar Crimes Act; SH Crimes Bill

PART 24 – CRIMINAL TRESPASS

- 567 UK Criminal Law Act 1977 s.12 (part)
- 568 UK Criminal Justice & Public Order Act 1994 ss.61 & 62 adapted
- 569 Gibraltar Crimes Act; SH Crimes Bill
- 570 UK Criminal Law Act 1977 s.6
- 571 Gibraltar Crimes Act; SH Crimes Bill
- 572 UK Criminal Law Act 1977 s.7 as am. by Criminal Justice & Public Order Act 1994 s.73
- 573 UK Criminal Law Act 1977 s.12 (part)
- 574 UK Criminal Law Act 1977 s.12A and Schedule added by Criminal Justice & Public Order Act 1994 s.74 modified
- 575 UK LASPO Act 2012 s.144
- 576 UK Criminal Justice & Public Order Act 1994 s.68
- 577 UK Criminal Justice & Public Order Act 1994 s.69
- 578 UK Criminal Law Act 1977 s.8
- 579 to 581 UK Criminal Justice & Public Order Act 1994 ss.77 to 79
- 582 Gibraltar Criminal Offences Act s.165B to E
- 583 UK Serious Organised Crime & Police Act 2005 s.128

PART 25 – HARMFUL AND OBSCENE PUBLICATIONS

- 584 UK Children and Young Persons (Harmful Publications) Act 1955 ss.1 and 4 (part); Customs Consolidation Act 1876; Customs & Excise Management Act 1979
- 585 UK Children and Young Persons (Harmful Publications) Act 1955 s.4 (part) adapted
- 586 UK Children and Young Persons (Harmful Publications) Act 1955 s.2
- 587 UK Children and Young Persons (Harmful Publications) Act 1955 s.3

588	UK Obscene Publications Act 1959 s.1 am. by Criminal Law Act 1977 and Criminal Justice and Police Act 1994 adapted
589	UK Obscene Publications Act 1959 s.2 am. by Criminal Law Act 1977 and Criminal Justice and Police Act 1994 adapted
590	UK Obscene Publications Act 1959 s.2 (part) as am. by Obscene Publications Act 1964 and Criminal Law Act 1977; Customs and Excise Management Act 1979
591	SH Obscene Publications Ordinance s.2 modified; UK Customs and Excise Management Act 1979
592	UK Obscene Publications Act 1959 s.2 (part) as am. by Obscene Publications Act 1964 and Criminal Law Act 1977
593	UK Obscene Publications Act 1959 s.3 (part) as am. by Courts Act 1971, Criminal Law Act 1977 and PACE Act 1984; Video Recordings Acts 1984 and 2010
594	UK Obscene Publications Act 1959 s.4 as am. by Criminal Law Act 1977
595	SH Obscene Publications Ordinance s.3
596	UK Unsolicited Goods and Services Act 1971 s.5
597	UK Indecent Displays (Control) Act 1981 ss.1 and 4

CHAPTER 4 – SUPPLEMENTARY PROVISIONS

PART 26 – MISCELLANEOUS AND TRANSITIONAL

598 to 602	--
603	UK Criminal Justice & Public Order Act 1994 s.35
604	--
605	--

Note:

Crimes Ord.	Crimes Ordinance
OT	Overseas Territories
UK CJ Act	Criminal Justice Act 1972, 1988 or 2003, as indicated
UK CYP Act	Children & Young Persons Act 1933
UK DVCV Act	Domestic Violence, Crime and Victims Act 2004
UK LASPOA	Legal Aid, Sentencing & Punishment of Offenders Act 2012
UK MC Act	Magistrates' Courts Act 1980
UK PACE Act	Police & Criminal Evidence Act 1984
UK SO (Am) Act	Sexual Offences (Amendment) Act 1992
UK SO (PM) Act	Sexual Offences (Protected Material) Act 1997
UK YJCE Act	Youth Justice & Criminal Evidence Act 1999
SH	St Helena Criminal Offences Ordinance or the Crimes Bill
Gibraltar	Gibraltar Crimes Bill or the Crimes Act (the Bill as enacted)
--	No direct precedent for the clause
'am'	amended by
'ins'	inserted by
'adapted'	adapted from a non-FI precedent

‘modified’

modified from an existing FI law

All UK laws are as amended to the middle of 2014 by e.g. LASPOA, Coroners & Justice Act 2009, Anti-social Behaviour, Crime and Policing Act 2014

CRIMES BILL 2014

DESTINATION TABLE

Most of the criminal offence laws of the Falkland Islands are to be repealed or disapplied by the CPE Bill. This table shows where provisions equivalent to the repealed Ordinances and sections listed in Parts A and B of Schedule 5 can be found. Some are derived directly from the FI law, others are substantially modified.

A blank against a section means there is no equivalent in the Crimes Bill.

The destination of UK laws listed in Schedule 1 to the Crimes Ordinance is shown in a separate table at the end.

The destination of disapplied UK enactments listed in Part C of Schedule 5 can be identified by reference to the Derivation Table. If the enactment is not in that table, it has been allowed to lapse as being of no current relevance (or repealed in the UK.)

Crimes Ordinance

PART I - INTRODUCTORY

1.	Short title and commencement	Clause 1
2.	Interpretation	Clause 2
3.	Common law offences	--
4.	Punishment of common law offences triable summarily	--
5.	Statutory offences replacing common law offences	Part 26
6.	English statutes adopted	--
7.	Modification of Interpretation and General Clauses Ordinance	--
8.	Prosecution of an act or omission which is an offence under two or more statutory provisions	Constitution s.6(6) Part 2
9.	Prosecution of an act or omission which is an offence by statute and at common law	--

PART II - OFFENCES

10.	Attempts to commit offences	Part 3
11.	Powers exercisable on convictions for attempts, etc.	Part 3
12.	Offences related to minefields	Part 8
13.	Possession of unexploded ordnance	Part 8
14.	Sale of explosives	Part 8
15.	Casting fireworks, etc.	Part 8
16.	Offence of having article with blade or point in public place	Part 7
16A.	Offence of having article with blade or point on school premises	Part 7
17.	Sale, etc., of crossbows to young persons	Part 7
18.	Possession of crossbow by person under the age of seventeen	Part 7
19.	Prohibited use of crossbow	Part 7
20.	Punishment of offences under sections 17 to 19	Part 7

21.	Powers of search and seizure	Part 7
22.	Sentencing for murder	Part 4
23.	Abolition of "constructive malice"	Part 4
23A.	Abolition of "Year and a Day Rule"	Part 4
23B.	Restrictions on institutions of proceedings for a fatal offence	Part 4
24.	Persons suffering from diminished responsibility	Part 4
25.	Provocation (<i>Abolished</i>)	
26.	Automatism	Part 2
27.	[<i>Repealed</i>]	
28.	[<i>Repealed</i>]	
29.	Conspiracy to defraud	Parts 2, 3
30.	Prohibition on interception	Part 12
31.	Causing disaffection among members of the police force	Part 17
32.	Duty to aid police officer	Part 17
33.	Assaults on police officers	Part 4
34.	Obstructing a police officer in the execution of his duty	Part 17
35.	Negligently permitting person to escape	Part 17
36.	Offence of escape	Part 17
37.	Meaning of legal custody	Part 17
38.	Assisting persons to escape	Part 17
39.	Using violence to escape	Part 17
40.	Obstruction of highways	Part 23
41.	Damage to highway	Part 9
42.	False alarm of fire	Part 17
43.	Wasting time of police	Part 17
44.	Wrongfully summoning ambulance or doctor	Part 17
45.	Endeavouring to break up lawful public meetings, disruption of religious worship, etc.	Part 21

PART III - GENERAL

46.	Abolition of blasphemy and sedition	Part 26
47.	Age of criminal responsibility	Part 2
48.	Abolition of defence of marital coercion	Part 26
49.	Abolition of corroboration rules	Part 2
50.	Intimidation, etc., of witnesses, jurors and others	Part 18
51.	Liability of directors, etc.	Part 2
52.	Amendment of existing Ordinances	--
53.	No retrospective effect	Part 26

Schedule 1: English Acts applied to the Falkland Islands
See the Derivation Table

Contempt of Court Ordinance

1.	Short title and commencement	--
2.	Application of Contempt of Court Act 1981	Part 18

Sexual Offences Ordinance 2005

All the provisions of Part 1 of the UK Sexual Offences Act 2003 applied by this Ordinance are reproduced, duly adapted, in Part 10 of this Bill. The provisions of Part 2 of the 2003 Act are reproduced, with recent UK amendments, in Part 11 of this Bill.

Police Ordinance

Section 55	Clause 72
Section 57	Clause 453

Road Traffic Ordinance

Section 30	Clause 363
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UK ACTS LISTED IN SCHEDULE 1 TO THE CRIMES ORDINANCE

Many of these have been replaced or amended in the UK. They will all cease to have effect in the Falkland Islands by the repeal of the Crimes Ordinance. Equivalent provisions (if not the actual text) can be found in the Parts listed opposite. If no Part is shown, the provision is no longer required.

Treason Acts 1351, 1495, 1695, 1790, 1795, 1814, 1842	Part 16
Treason Felony Act 1848	
Sale of Offices Act 1551, 1809	Part 20
Public Bodies Corrupt Practices Act 1889	
Prevention of Corruption Acts 1906 and 1916	
Piracy Acts 1698, 1721, 1837, 1850	Part 4
Disorderly Houses Act 1751	--
Servants Characters Act 1792	--
Incitement to Mutiny Act 1797	Part 17
Unlawful Drilling Act 1819	
Incitement to Disaffection Act 1934	
Libel Act 1843 (repealed in UK)	--
Gaming Act 1845	Part 12
Malicious Damage Act 1861	Part 9
Criminal Damage Act 1971	
Forgery Act 1861	Part 12
Forgery & Counterfeiting Act 1981	

Offences against the Person Act 1861	Part 4
Newspapers etc. Repeals Act 1869 (spent)	
Conspiracy and Protection of Property Act 1875	Part 3
Explosive Substances Act 1883	Part 8
Perjury Act 1911	Part 19
Firearms Act 1920	Part 8
Judicial Proceedings (Regulation of Reports) Act 1926	Part 18
Infant Life Preservation Act 1929	Part 4
Infanticide Act 1938	
Children and Young Persons Acts 1933 and 1963	Part 10
CYP (Harmful Publications) Act 1955	Parts 10 and 25
Post Office Act 1953	Part 25
Indecency with Children Act 1960	Part 10
Tattooing of Minors Act 1969	Part 4
War Charities Act 1940 (repealed in UK)	
Fraudulent Mediums Act 1951	Part 12
Prevention of Crime Act 1953	Part 7
Restriction of Offensive Weapons Act 1959	
Sexual Offences Acts 1956, 1967 and 1976	Part 10
Street Offences Act 1959	
Obscene Publications Acts 1959 and 1964	Part 25
Indecent Displays (Control) Act 1981	
Suicide Act 1961	Part 4
Theft Acts 1968 and 1978	Part 12
Unsolicited Goods and Services Act 1971	Part 12
Public Order Acts 1936 and 1986	Part 4

Criminal Justice and Public Order Act 1994	
Protection of Children Act 1978	Part 10
Criminal Attempts Act 1981	Part 3
Video Recordings Act 1984 (repealed in UK)	--
Child Abduction Act 1984	Part 4
Malicious Communications Act 1988	Parts 14 and 6
Computer Misuse Act 1990	Part 14
Broadcasting Act 1990	Part 22
Theatres Act 1968	
Auctions (Bidding Agents) Acts 1927 and 1969	Part 12
Mock Auctions Act 1961	
Criminal Law Act 1977	Part 3
Criminal Justice Act 1925	Parts 18 and 19
Criminal Justice Act 1972	--
Criminal Justice Act 1988	Various
Criminal Justice Act 1993	Part 2

Schedule 1 also lists a number of UK Acts dealing with the protection and control of animals. These will be the subject of a separate Bill.