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Explanatory Memorandum to the Criminal Procedure and Evidence Bill 2014; and

Criminal Procedure and Evidence Bill 2014

CRIMINAL PROCEDURE AND EVIDENCE BILL 2014

EXPLANATORY MEMORANDUM

GENERAL INTRODUCTION

Background

It was recognised by Executive Council in 2012 that the laws of the Falkland Islands are in an unsatisfactory state. The Falkland Islands does not have a complete suite of domestic legislation on which it can rely. As a consequence it is necessary to apply English legislation. However in doing so it was decided in 2005 that a cut-off date would be implemented of 31 July 2004 for all English legislation. This had the effect of freezing at that date a substantial part of the law as it applied in the Falkland Islands. Consequently Falkland Islands law has become increasingly out of date. In addition in many areas the laws of the Falkland Islands have not been consolidated for many years so amendments and corrections have been inserted, making it difficult to be certain exactly what provisions apply.

It was noted the unsatisfactory state was particularly acute in relation to criminal law and procedure. There are significant gaps in the law and procedure is badly out of date, making the law difficult to interpret and to apply.

Accordingly approval was given by the Executive Council to draft a Criminal Procedure and Evidence Ordinance (Paper 247/12 refers). It is a companion Bill to the Crimes Bill which will be introduced in the Legislative Assembly at the same time (and is referred to in these Notes as the 'Crimes Ordinance 2014'.)

The project commenced in January 2013. A consultation process identified key areas of policy and a draft Bill was prepared. A consultation group was formed comprising two MLAs, Mr. Dick Sawle and Mrs. Sharon Halford, representatives from the police, legal practitioners and the Court. Draft Parts were sent to the group and then revised in the light of feedback received. The project stalled in August 2013 due to personnel changes but recommenced in December 2013 when a further detailed consultation process was undertaken. Two new MLAs, the Honourable Roger Edwards and the Honourable Mike Summers, replaced Mr Sawle and Ms Halford on the consultation group and the process of revision of the Parts recommenced. The Bill is now ready to present to the Legislative Assembly for approval and subsequent enactment.

This Bill is for an Ordinance to consolidate a large number of provisions relating to the investigation of crime, the bringing of criminal proceedings, the trial of offences and the sentencing of offenders. It is a codifying and consolidating measure but also introduces several new provisions into the laws of Falkland Islands as set out in Appendix 1 to these Explanatory Notes. (Appendix 2 sets out the rationale for listing indictment-only offences and for setting the penalty levels for other offences.)

The new provisions are designed to address the distinct features of the existing criminal justice system and to enable the system to adapt to change and possible increase in the volume and nature of criminal work in the future.

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 Crimes Bill.

Derivation

The Bill incorporates the provisions of most of the current Falkland Islands criminal procedure laws, but updated and modified in line with the equivalent UK provisions. They are –

- Criminal Justice Ordinance (except Proceeds of Crime provisions)
- Criminal Justice (Evidence) Ordinance
- Criminal Justice (Amendment) (Miscarriages of Justice) Ordinance 2006
- Criminal Jurisdiction (Offshore Activities) Order 1998
- Criminal Procedure and Investigations Ordinance
- Administration of Justice Ordinance to the extent that it applies to criminal proceedings
- Jury Ordinance

The local laws are then repealed, but the Destination Table shows where equivalent provisions are found in the Bill, if they have been replaced.

The Bill also incorporates a large number of UK statutory provisions dealing with criminal procedure and applying to the Falkland Islands (or which usefully could apply.) Some of the main UK statutes are –

- Rehabilitation of Offenders Act 1974
- Magistrates' Courts Act 1980
- Police and Criminal Evidence Act 1984 ('PACE')
- Criminal Procedure & Investigations Act 1996
- Youth Justice & Criminal Evidence Act 1999
- Powers of Criminal Courts (Sentencing) Act 2000
- Criminal Justice & Police Act 2001
- Criminal Justice Act 2003

The UK laws are as amended to the end of 2013 and include recent amendments made by the. Policing & Crime Act 2009, Coroners & Justice Act 2009, Crime & Security Act 2010, Protection of Freedoms Act 2012, Legal Aid, Sentencing and Punishment of Offenders Act 2012, etc., some of which are not yet in force in the UK.
(Note: A reference to 'UK' is in fact to the law in England and Wales.)

The Bill incorporates adaptations and changes to some of the UK laws to make the provisions more applicable to the Falkland Island context. Where this occurs the Notes on Clauses below highlight the changes.

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 without the amendments in the Derivation Table.

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.

Contents
As mentioned, the Bill includes several new features, as listed in Appendix 1 to these Notes. It also includes provisions for Jury Trial which are at present in a separate Ordinance.

The Bill omits some existing features of the Falkland Islands criminal justice system which are no longer required, such as probation orders. It does not replace e.g. exclusion orders for drinkers under Licensing Ordinance. Nor does it deal with regulatory offences, such as road traffic, environmental, shipping, aviation and fishery offences. The Bill does not include emergency powers provisions**.**

Provisions relating to international co-operation and proceeds of crime have also been omitted from the Bill. These areas of criminal law are extensive and complex subjects, and are currently covered in separate Ordinances which require revision. Extradition law is not covered as this is currently under review across the Overseas Territories and awaits FCO guidance. It is anticipated that this issue will be the subject of a separate Ordinance in the near future.

Appeals to the Court of Appeal have been omitted as these are governed by the Criminal Appeals Ordinance. Appeals to the Privy Council are governed by the Judicial Committee orders.

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

Role of the Governor
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. As 'Governor' is defined in the IGCO to mean the Governor after consulting ExCo, a reference to 'the Governor' alone means the Governor after consulting ExCo. However, if a provision requires the Governor to consult some other person or body, such as the CJC, the Advisory Council or the Chief Justice, the requirement to consult ExCo is displaced. To avoid this, the term 'Governor in Council' is used whenever the Governor is required to consult ExCo as well as another body. The term 'Governor in Council' is then defined in clause 2. The Governor must report to the Legislative Assembly any disagreement with the advice given, as provided by clause 788. The obligation under section 67 of the Constitution to report to Secretary of State any disagreement with ExCo's advice remains.

Style and structure
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.

The Bill is divided into 13 Chapters and 36 Parts. There are also 15 Schedules, which are set out at the end of the whole Bill, in line with the usage in the UK.

After the preliminary clauses, the Bill follows as closely as possible the sequence of events in a criminal case. It first sets out the PACE powers of the police in respect of the investigation of

crime, the detention, treatment and questioning of suspects and charging. Next come provisions as to diversion i.e. conditional cautioning. The Bill then continues with Chapters on court jurisdiction, the events in a trial, sentencing and appeals. It ends with repeals and savings and other supplementary provisions.

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

CHAPTER 1 - PRELIMINARY

PART 1 – PRELIMINARY

Introduction

Part 1 sets out general principles governing the interpretation and application of the Ordinance. It is based on provisions of the common law, the Criminal Justice Ordinance, the Administration of Justice Ordinance and UK statute law. It includes some general interpretative provisions. Other general powers are contained in Part 36.

Notes on clauses

Clause 1 gives the Bill a short title, and enables the Governor (i.e. the Governor after consulting the Executive Council) to appoint one or more commencement dates.

Clause 2 contains definitions of terms used throughout the Bill; other terms are defined in individual Parts. Terms defined in the Interpretation & General Clauses Ordinance are not defined here unless they are given a different meaning e.g. 'document'. Some new terms are defined, such as 'Criminal Justice Council' (which is established by Part 35) and 'criminal procedure rules'. They are defined as rules made by the Chief Justice after consulting the Criminal Justice Council as required by clause 785. The clause also has other interpretative provisions, include sub-clause (5) which states that gender-specific wording of a provision does not preclude the application of the provision to a corporation.

Bail terms e.g. surety, recognisance etc. have the meaning given them by Part 9.

Clause 3 defines 'criminal proceedings' and says when they start and finish.

Clause 4 states the common law rule about not being punished twice for the same offence. It complements the rule stated in section 6(6) of the Constitution

Clause 5 says that if a matter is not provided for by the Ordinance or by criminal procedure rules or practice directions made under it, reference can be made to the relevant provisions of English criminal procedure and law. It is expected that this will rarely be needed, however, as there will be local criminal procedure rules and practice directions.

CHAPTER 2 – POLICE POWERS

PART 2 – POWERS TO STOP AND SEARCH OR ENTER AND SEARCH

Introduction

Part 2 is based on Parts I and II (Sections 1 to 18) of the UK Police & Criminal Evidence Act 1984 ('PACE') as amended, but omitting sections 6 and 7 which are not required (they relate to

statutory undertakings.) It replaces sections 168 to 170 and 179 to 189 of the Criminal Justice Ordinance with minor modifications and in more modern language.

The Part deals with police powers to stop and search people or vehicles and to enter and search premises. It does not deal with powers of seizure of items or arrest in general, which are contained in later Parts.

The Part includes additions to PACE made by the UK Anti-terrorism, Crime & Security Act 2001 and the Serious Crime Act 2007 – clauses 8 and 9. It also includes amendments made by the Crime & Security Act 2010 clause 10. An additional offence created by the Legal Aid, Sentencing & Punishment of Offenders Act 2012 is included in Part 7 (Offensive weapons) of the Crimes Ordinance 2014 and is reflected in clause 6(7).

Following changes in the UK law, the Part replaces the concept of an 'arrestable offence' by 'imprisonable' offence as defined in clause 2 – "an offence for which a sentence of imprisonment can be imposed on conviction, other than for non-payment of a fine." This change is reflected in the other PACE Parts also.

The relevant text of PACE is annotated at Archbold 2013 Ed. paras.15-39 to 15-91.

Judicial officers

The Part makes provision as to who should have the power to grant access to excluded material etc. under Schedule 1. The Schedule gives the power to the 'judicial officer' who is defined in para. 16 to mean the Senior Magistrate, but if necessary the Chief Justice in chambers, (which would enable the Chief Justice to deal with an application outside the Falkland Islands) or, in the last resort, 3 justices of the peace. A similar formulation is adopted for the power to order return of material under Part 3 – see clause 40 and the definition in clause 25(3).

Similar powers relating to detention are at present given to 2 justices in closed court by the Criminal Justice Ordinance – see Part 5.

Notes on clauses

Clause 6 confers powers on police officers to stop and search persons and vehicles for stolen or prohibited articles if they reasonably suspect they will find such articles. Prohibited articles are offensive weapons, sharp or pointed articles, and articles intended for use in burglary etc. There are limitations in respect of private premises.

Clause 7 contains various rules about the exercise of the power to stop and search, such as producing documentary evidence that the officer is a police officer. The clause provides that an application for compensation in respect of a searched vehicle should be made in writing to the Chief Police Officer.

The UK extension to vessels and aircraft is not needed in view of the definition of 'vehicle' proposed for the Interpretation section – see clause 2.

Clause 8 confers power on a police officer to stop and search persons or vehicles in anticipation of, or after, violence. The power can only be exercised if an authorisation is given in respect of the relevant locality by a police officer of the rank of inspector or above, and only for up to 24 hours, unless the authorisation is extended by a more senior officer). This power was added by the Criminal Justice and Public Order Act 1994 and extended the previous powers of stop and search already included in PACE. It was not included in the Criminal Justice Ordinance but is part of the UK law and appears to be a useful additional power, although stop and search powers are sometimes criticised in the UK. See below in Policy Issues for further discussion and proposed alternative wording for this clause.

Clause 9 contains provisions supplementing clause 8.

Clause 10 requires officers to keep a record of searches made under the Part. The UK version does not include a duty to record the identity of the person or vehicle seized, but it is in the Criminal Justice Ordinance and seems appropriate to retain – sub-clauses (2) to (5).

Clause 11 governs the conduct of roadside checks of vehicles that are stopped under section 45 of the Road Traffic Ordinance (which empowers a police officer to stop a vehicle but not to search it). The officer must suspect that a person in the vehicle has committed an imprisonable offence or is a witness to such an offence or intends to commit such an offence or is unlawfully at large. The power to authorise action under this section is given to an officer of the rank of inspector or above. This provision was not in the Criminal Justice Ordinance but is in line with modern policing policy.

Clause 12 requires the Chief of Police to make an annual report of searches and road checks. This does not appear in the Criminal Justice Ordinance but follows section 5 of PACE.

Clause 13 empowers the Senior Magistrate or two justices of the peace to issue a search warrant on the application of a police officer if there are grounds for believing an imprisonable offence has been committed. The warrant may be for specific premises, or for all premises a occupied and controlled by a specified person. The power does not extend to items subject to legal privilege, excluded material or special procedure material. These terms are defined in clauses 15, 16, and 19 respectively.

The term “relevant evidence” is defined in clause 2 to mean anything that would be admissible in evidence at a trial for the offence.

Clause 14 prescribes a special procedure for making of orders for access to excluded material or special procedure material. The details are in Schedule 1 which is based on Schedule 1 to PACE and is attached to this Chapter for reference. (The abolition of other powers of search of premises in section 180(2) of the Criminal Justice Ordinance does not need repeating as it has had effect).

Clause 15 defines items subject to legal privilege as communications between a legal practitioner and his or her client and associated items. The term “legal practitioner” is defined in clause 2 by

reference to the Legal Practitioners Ordinance and means a person who has a right of audience in the courts of the Falkland Islands.

Clause 16 defines "excluded material" to mean personal records created in the course of a trade, profession or business or created in an unpaid office and held in confidence; human tissue taken for the purpose of diagnosis or treatment and held in confidence; and journalistic material held in confidence.

Clause 17 defines personal records as meaning records about a person's health or spiritual counselling or welfare assistance.

Clause 18 defines journalistic material as material acquired or created for the purpose of journalism.

Clause 19 defines "special procedure material" as meaning personal records and journalistic material that are not excluded material, but are still held in confidence. It could include e.g. material created in the course of a trade, business or profession etc. and acquired by an employee from the employer. There is a reference in (6) to associated companies which is defined in the UK by reference to the UK Corporation Tax Act 2010.

Clause 20 sets out rules for the issue of a search warrant. It must relate to entry on one occasion only (unless it specifies that it authorises multiple entries) and identify the articles or persons to be sought etc. As mentioned under clause 13, the warrant may be for specific premises, or for all premises occupied and controlled by a specified person.

Clause 21 sets out rules for the execution of a search warrant. It must be executed within a month of issue, be executed at a reasonable hour and so on.

Clause 22 confers on police officers power to enter and search premises without a warrant for a number of specified purposes. They include arresting a person for an imprisonable offence, recapturing an escaped prisoner, preventing death or serious personal injury or preventing serious damage to property. The references to the Crimes Ordinance 2014 will need to be inserted when that is enacted.

Arresting persons for offences of criminal trespass with elements of damage or violence also justifies entry and search without warrant. (The abolition by section 188(4) of the Criminal Justice Ordinance of common law powers to enter premises does not need to be repeated as it has had effect).

Clause 23 confers on police officers power to enter and search premises occupied or controlled by a person who has been arrested for an imprisonable offence if they suspect there is evidence on the premises relating to that offence or a connected imprisonable offence. A police inspector is stated as the appropriate rank for supervising this power.

Clause 24 confers on police officers powers at an airport to stop and search airport employees, vehicles carrying airport employees, and aircraft, and to make arrests. This removes any doubt

that employees and aircraft at an airport, which has its own security provisions, are subject to stop and search provisions. Other PACE provisions apply in the normal way to airports, which are 'premises' and to aircraft, which are 'vehicles'.

Schedule 1 sets out the procedure for obtaining an order for access to excluded material on a search under clause 14. The Schedule is also referred to in later Parts of the Bill. The power to make an order for access is given to a judicial officer, defined as the Senior Magistrate, or if necessary a judge in chambers, or in the last resort 3 justices of the peace by a majority.

Policy issue - Clause 8 amendment

Clause 8 gives a police officer above the rank of sergeant the power to authorise the use of stop and search powers anywhere in the Falkland Islands for up to 24 hours if the officer "reasonably believes that –

(a) incidents involving serious violence may take place in any locality in the Falkland Islands; and

(b) it is expedient to give an authorisation under this section to prevent their occurrence."

The clause is based on s.60 of the Criminal Justice and Public Order Act 1994.

Under the authorisation, police can stop and search an individual for weapons, without suspicion that the individual is involved in wrongdoing, if a senior officer reasonably believes that serious violence may take place or that people are carrying offensive weapons. This provision is controversial and has recently been subject to an unsuccessful legal challenge in the United Kingdom (*R on the Application of Ann Juliette Roberts v The Commissioner of the Metropolitan Police v The Secretary of State for the Home Department* [2012] EWHC 1977 (Admin).

Stop and search powers generally have long been at the centre of tensions between ethnic minority groups and the police in the UK. A Metropolitan Police review has resulted in recent changes to policy in London, including a more intelligence-led and targeted approach. In July 2013, the Home Secretary, Theresa May, announced a public consultation on the use of the powers. Responses are currently being analysed. A Home Affairs briefing paper on this issue can be found at: www.parliament.uk/briefing-papers/sn03878.pdf

A proposed amendment to the section has been made so that the test for use of the power is that incidents "will" take place (not "may") and that it is "necessary and expedient" to give an authorisation. To date the amendment has not been introduced in the UK.

Clause 8 could be amended so that a police officer above the rank of Inspector has the power to authorise the use of stop and search powers anywhere in the Falkland Islands for up to 24 hours if the officer "reasonably believes that –

(a) incidents involving serious violence *are likely* to take place in any locality in the Falkland Islands; and

(b) it is *necessary and* expedient to give an authorisation under this section to prevent their occurrence."

PART 3 - POWERS OF SEIZURE, ETC.

Introduction

Part 3 confers powers of seizure on police officers. It is derived from sections of the UK PACE Act and of the Criminal Justice and Police Act 2001 ('the 2001 Act') as amended by the Proceeds of Crime Act 2002.

The powers of seizure extend to property in a person's possession or on or in premises, including a ship or aircraft (see the definition of 'premises' in clause 2.) The powers are in addition to any other powers of seizure in the laws of the Falkland Islands, but those other powers must be exercised in accordance with this Part.

Clauses 27 to 30 are based on sections 19 to 22 of PACE and replace sections 190 to 193 of the Criminal Justice Ordinance. The remaining clauses are based on sections 50 to 62 of the 2001 Act. Clauses 25 and 26 are also based on the 2001 Act. The Criminal Justice Ordinance does not include the 2001 Act provisions and they were not included in the 2006 draft Police & Criminal Evidence Bill.

Sections 190 to 193 of the Criminal Justice Ordinance are reproduced in clauses 27 to 30. Sections 194 to 196 *Investigation into the proceeds of criminal conduct* do not have any equivalent in PACE and need to be considered separately. They relate to Proceeds of Crime.

The Part deals with police powers to seize and retain property found on a person who has been stopped and searched or on premises, vehicles, ships or aircraft that have been searched under the powers in Part 2. The powers of seizure conferred by this Part are in addition to any other powers of seizure in Falkland Islands laws, but those other powers must be exercised in accordance with this Part.

One issue that should be noted is the scope of the additional powers of seizure in clauses 31 and 32. In the 2001 Act there is a Schedule with 3 parts, listing the UK enactments that confer powers of seizure to which the additional powers under equivalent sections of the Act apply. The distinction between the 3 parts of the UK Schedule makes operational decisions difficult for police officers and listing powers in a Schedule means that if they are amended or added to or deleted by another enactment, the Schedule needs to be amended. Another problem is that if any powers are missed, there is a doubt as to whether the powers conferred by Part 2 apply. In the light of these considerations, it seems appropriate that the additional powers in clauses 31 and 32 should apply in relation to powers of seizure contained in any enactment. The same reasoning applies to the obligation to return excluded and special procedure material under clause 36; it will apply to all powers of seizure in Falkland Islands laws.

The Codes of Practice are included in Schedule 3 – see Part 7 below.

The relevant text of PACE is annotated at Archbold 2013 Ed. paras.15-92 to 15-102.
The CJPA 2001 provisions are annotated at paras.51-103 to 51-126.

Notes on clauses
Clause 25 defines terms that are used in this Part but are not defined in clause 2, including the 'relevant time' when something is in a person's possession. It is based on s.66 of the 2001 Act.

The term 'document' is defined in the Interpretation & General Clauses Ordinance to mean "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."

Clause 26 provides that seizure of a document can include taking a copy and can include electronic copies. It is based on s.63 of the 2001 Act.

Clause 27 confers on a police officer who is lawfully on premises the power to seize anything on the premises if the officer reasonably believes the thing has been obtained by an offence, or that it is evidence in relation to an offence, and that it is necessary to seize it to prevent it being hidden, lost, damaged, altered or destroyed. The power does not extend to items subject to legal privilege as defined in clause 15 i.e. communications between a lawyer and a client.
The clause also empowers a police officer to require any information stored in electronic form which the officer believes as mentioned to be produced in a form in which it can be taken away and read.

Clause 28 extends the powers of seizure under this Ordinance or any other Falkland Islands legislation to computerised information on the same basis as in clause 27.

Clause 29 requires the officer to give the occupier of the premises or owner of the thing a record of what was seized, and to allow the person access to it for the purpose of making a copy. However, there is no duty to grant access to material or to allow copying of it, if to do so would prejudice the investigation or any resulting criminal proceedings.

Clause 30 provides that a thing that has been seized may be retained for as long as is necessary in the circumstances, e.g. for use in a trial, or to establish the identity of the lawful owner. If something was seized because it might be used to cause injury or damage or to interfere with evidence or assist escape it cannot be retained if the person from whom it was seized is released without charge or on bail. Nor can a thing be retained as evidence if a photograph of it would suffice as evidence.

Clause 31 provides an additional power to seize things found on premises that are being searched under the powers in Part 2, in order to ascertain whether they might contain something that can be seized under section 27. This additional power includes anything in which or on which the suspect item is found if the suspect item cannot readily be separated from it in order to check whether the suspect item is something that can be seized.

Clause 32 provides an additional power of seizing things found on a person who is being searched under the powers of search in Part 2, in order to ascertain whether they might be or contain something that can be seized under section 27.
Clause 33 requires written notice to be given to occupiers of premises and to persons from whom things are seized of the exercise of a power of seizure under clause 31 and 32. The notice must

tell the person about the right to be present at an examination of the thing and the right to apply to the court for the return of the thing under sections 40 to 42.

Clause 34 regulates the examination and return of property that has been seized under the additional powers conferred by clauses 31 and 32. The examination must be carried out as soon as possible, and any item not suspect (i.e. an item that cannot be seized under clause 27) must be separated from suspect items if that is reasonably practicable.

Clause 35 imposes an obligation to return items that have been seized but are found to be subject to legal privilege, as defined in clause 15. They must be returned as soon as reasonably practicable.

Clause 36 regulates the return of items that are excluded or consist of special procedure material, as defined in clauses 16 to 19. It creates an obligation in certain circumstances to return excluded and special procedure material that has been seized under a relevant power and the retention of which is not authorised under clause 37.

Clause 37 authorises the retention of property that has been seized if there are reasonable grounds to suspect that it has been obtained in the commission of an offence, or is evidence in relation to an offence, and it is necessary to retain it to prevent it being hidden, lost, damaged, altered or destroyed (i.e. the same grounds as for seizure under clause 27).

Clause 38 limits the power of retention in relation to property seized under the additional powers in clauses 31 and 32. Such property can only be retained if the item itself could be seized under the powers in clause 27 i.e. it is itself evidence of an offence etc. In the CJPA there is a list of UK laws that also confer powers of retention of seized property. This clause adopts a more broad-brush approach by referring to all written laws and enactments in force in the Falkland Islands that confer powers to seize property.

Clause 39 specifies the persons to whom seized property is to be returned, if there is an obligation to return property. It must be returned to the person from whom it was seized (or the occupier of the premises, if it was seized from premises), unless some other person appears to have a better right to the property. If there is a dispute, the property can be retained until the dispute is resolved.

Clause 40 entitles any person with an interest in seized property to apply to the Magistrate's Court for return of it and specifies the grounds. The grounds are that there was no power to make the seizure; or that the property included items that have legal privilege, or excluded material or special procedure material. The court can give directions about examination of the property, etc. The court can order the retention of the property if it would be liable to be seized again on being returned. The 'persons with an interest' in the property include the person from whom it was seized and a person who had custody of it at the time of seizure.

Clauses 41 and 42 impose an obligation to ensure that property that has been seized is made secure if a court so orders on an application made under clause 40. This is so that e.g.

commercial advantage cannot be taken of the seizure of property, or it cannot become a security risk etc.

Clause 41 sets out the circumstances in which there is a duty to ensure the security of the seized property if a person applies for its return.

Clause 42 describes the duty as being the duty to ensure that the item is not examined, copied or put to any unauthorised use except with the consent of the applicant or an order of the Magistrate's Court.

Clause 43 regulates the way in which property that is inextricably linked to seized property is to be dealt with. It extends the duty to secure to property that has been seized under the additional powers in clauses 31 and 32 but which has been retained, even though not itself suspect in terms of clause 27, if the reason for retaining it is that it is inextricably linked to property that has been seized and is suspect. The test for being inextricably linked is the same as for not being able to separate property to which a suspect item is attached under clauses 31 and 32.

PART 4 – POWERS OF ARREST WITHOUT WARRANT

Introduction

Part 4 confers powers of arrest without warrant on police officers and other persons. It does not displace other statutory powers of arrest without warrant. Powers of arrest on warrant contained in various enactments are also not affected, though the procedure in police detention after such an arrest is governed by Parts 5 to 9. Common law powers of arrest without warrant are preserved.

Part 4 is based mainly on Part III (sections 24 to 32) of the UK PACE Act 1984 as amended by various UK Acts, namely the Children Act 1989, the Criminal Justice & Police Act 2001, the Police Reform Act 2002, the Criminal Justice Act 2003, the Courts Act 2003, the Criminal Justice & Public Order Act 2004 and the Serious Organised Crime & Police Act 2005.

This Part will replace and amplify Part XIII (sections 198 to 205) of the Criminal Justice Ordinance. However, section 201 relating to the use of force in making an arrest will appear in a later part, as a general provision, based on s.117 of PACE.

The relevant text of PACE is annotated at Archbold 2013 Ed. paras.15-127 to 15-152.

Place of custody

A policy issue raised by this Part is whether places other than Stanley Police Station should be designated for purposes of taking persons arrested, or requiring arrested persons to report. The UK uses the phrase 'a police station' and the Criminal Justice Ordinance follows that, but it does not make sense in the Falkland Islands context. It would be appropriate to have other places designated for receiving arrested persons and answering to bail and even detaining for short periods. See also Parts 5 and 6 for further implications.

This Part therefore uses the phrase 'lawful place of custody' (which is used sometimes in the UK legislation). It is defined in clause 2 to mean any police station, or any other place designated in

writing by any police officer of the rank of inspector or above in relation to a particular investigation. The term 'police station' is defined to mean Stanley Police Station or the Mount Pleasant Guard Room or any place designated by the Governor as a police station.

Notes on clauses

Clause 44 empowers a police officer to arrest without warrant a person who is about to commit an offence, is committing an offence or whom the officer reasonably suspects is about to commit or is committing an offence. The power applies to any offence, but is limited to situations where the officer reasonably believes the arrest is necessary for one of a number of specified purposes e.g. to obtain the person's name or address, to prevent the person causing injury or damage, to protect children etc. (sub-clause (5)). There is no power to arrest without warrant a person committing an offence merely because the person is not ordinarily resident in the Falkland Islands but that might be a relevant consideration under sub-clause (5)(f).

Clause 45 empowers persons other than police officers to arrest without a warrant, but the grounds are narrower, so that e.g. the offence that is about to be committed must be an imprisonable offence, and the justifications are limited to preventing the person from causing or suffering injury, causing loss or damage, or 'making off' i.e. running or driving away before a police officer can take charge.

Sub-clause (5) excludes offences under sections 536 to 547 of the Crimes Ordinance 2014. These are offences of stirring up racial or religious or sexual orientation hatred. The reason for excluding them is to avoid inflaming racial or religious or sexual orientation tension by removing the right of the public to arrest someone for e.g. a race hate speech. Private arrests for racially aggravated assaults etc. will however still be possible.

Clause 46 saves existing powers of arrest without warrant conferred on police officers or other persons by other written laws of the Falkland Islands (i.e. not UK applied laws.). This reverses the repeal effected by s.201 of the Criminal Justice Ordinance but is appropriate as such powers are needed in the context of their respective laws e.g. arrest by customs officers, or arrest for being drunk and disorderly in a public place. The exercise of the powers will however be governed by Parts 5 to 9 and other provisions of this Ordinance.

Clause 47 is based on section 63A of UK PACE Act which was introduced by the Crime & Security Act 1010 and replaced section 27. It gives effect to Schedule 2 which is based on Schedule 2A to PACE – see also clause 95(11). The Schedule refers to powers to take fingerprints contained in Part 6.

Clause 48 says that a person who is arrested must be told that he or she is under arrest and must be given the reasons for it, even if the fact of arrest and the reason for it are obvious. This rule does not apply if the person escapes from arrest before being told the reason.

Clause 49 says that a person who attends voluntarily at a place of lawful custody to assist an investigation must be allowed to leave unless arrested.

Clause 50 provides that a person who is arrested elsewhere than at a place of lawful custody must be taken to the place of lawful custody as soon as practicable, and released if there are no

grounds for keeping him or her. The UK provisions about desiginating a police station are replaced by the concept of a place of lawful custody.

Clauses 51 to 54 are based on sections of the UK PACE Act which enable bail to be given by police officers elsewhere than at a place of lawful custody, e.g. at the scene of a crime or in hospital. (This is sometimes known as 'street bail').

Clause 51 says that a police officer may release on bail a person who is arrested elsewhere than at a place of lawful custody.

Clause 52 requires a notice to be given setting out the conditions of bail. They are limited to a requirement to attend a place of lawful custody.

Clause 53 says that a person who is released on police bail can be re-arrested without warrant if new evidence justifies it.

Clause 54 enables a custody officer to vary the conditions of bail on request by the person to whom bail was granted at a place of lawful custody.

Clause 55 enables the Magistrate's Court or Summary Court to vary the conditions of bail granted by a custody officer, on request by the person to whom bail was granted.

Clause 56 enables a police officer to arrest without a warrant a person who has been released on bail under Clause 51 but fails to attend the place of lawful custody at the specified time.

Clause 57 says that if a person is detained for an offence and is about to be released, but a police officer wishes to arrest the person for another offence, that arrest must be done before the release; this avoids a 'cat and mouse' situation.

Clause 58 enables the police to search a person who is at a place other than a place of lawful custody after an arrest. The search is limited to anything the person might use to assist the person to escape from lawful custody or that might be evidence relating to an offence. If the person was arrested on premises, the premises can be searched, but only for things for which the person could be searched. The power to search a person does not include removal of clothing (except a coat, jacket or gloves) or search of the mouth. The power to search premises is limited to a dwelling place. The powers of retention are also limited.

Schedule 2 is given effect by clause 47 and is also applied by clause 95(11). It relates to attendance at a place of lawful custody for the taking of fingerprints and samples.

PART 5 – POLICE DETENTION

Introduction

Part 5 regulates police detention (as distinct from detention by a court.) It is based on Part IV of the UK PACE Act (sections 34 to 47) as amended by various UK Acts. It replaces and amplifies Part X (sections 150 to 164) of the Criminal Justice Ordinance. It is similar to Chapter 4 of Part II of the Falkland Islands draft PACE Bill of 2006 duly updated. There is material from recent

UK statutes, including the Children Act 1989, Criminal Justice & Public Order Act 1994, Criminal Justice & Police Act 2001, Police Reform Act 2002, Criminal Justice Act 2003, Courts Act 2003, Serious Organised Crime & Police Act 2005, Drugs Act 2005, Police and Justice Act 2006, Coroners & Justice Act 2009, Police (Detention & Bail) Act 2011 and Police Reform & Social Responsibility Act 2011.

The PACE Act provisions about designating police stations where arrested people can be held in custody are omitted, as there is only one police station in the Falkland Islands. The concept of a 'place of lawful custody' adopted in Part 4 is carried over to this Part.

The PACE Act requires a custody officer to be appointed for each place of lawful custody who will make initial decisions about the detention of arrested persons brought to that place. The requirement is adopted, but modified by making the desk officer successively on duty at each such place the custody officer. The more senior officer on call at each such place becomes the 'reviewing officer', with power to review the decisions of custody officers.

The PACE Act requires custody officers to obtain the advice of the Crown Prosecution Service on whether detained persons should be charged or released. This requirement becomes a requirement to consult the Attorney General.

The Part gives functions about bail decisions and extension of detention to the Summary Court as well as the Magistrate's Court.

The Part sets time limits on the period of detention without charge ('custody time limits'). The basic rule is that a person must be charged within 24 hours of being arrested, but a senior officer may authorise detention for up to 36 hours, and a court may allow extensions of up to a maximum of 96 hours. (The Part requires the courts to sit on weekends and public holidays for considering extensions beyond 36 hours). A person who is in custody must then be brought to court within 72 hours of being charged.

The Part does not provide for the use of video conferencing for decisions about detention; nor does it provide for 'live link bail', though it does provide for bail away from a place of lawful custody.

The Part recognises the right of a detained person to the services of a legal practitioner (i.e. a lawyer), at the person's own expense. The term 'legal practitioner' is defined in clause 2 by reference to the Legal Practitioners' Ordinance.

As with other PACE Parts of the Bill, there is a Code of Practice governing the detention of arrested persons. (See Code C in Schedule 3).

As with other PACE Parts, the rank for the performance of many police functions is reduced from Inspector to sergeant. However, continued detention after 24 hours can only be authorised by an officer of the rank of inspector or above.
The relevant text of the UK PACE Act is annotated at Archbold 2013 Ed. paras.3-136 to 3-172.

The relevant UK rules are in Part 18 (Warrants for arrest, detention or imprisonment) and Part 19 (Bail and custody time limits) of the Criminal Procedure Rules 2012.

Notes on clauses

Clause 59 requires there to be custody officers at each place of lawful custody. They will be responsible for making and keeping the custody record at that place and making decisions about detention. The 'custody record' is a record of particulars relating to the custody of a person who is arrested and brought to the place of lawful custody. The 'custody officer' is each police officer who is on desk duty when an arrested person is brought to the place of lawful custody and when decisions about the person's detention fall to be made and recorded. The 'reviewing officer' for a place of lawful custody is an officer of the rank of sergeant or above who is on call for that place when custody decisions are to be reviewed. A custody officer or reviewing officer should not be involved in the investigation of the offence for which a person was arrested.

Clause 60 imposes limitations on keeping an arrested person at a place of lawful custody. A custody officer must release a person once it becomes apparent that the original grounds for detention have ceased to apply and there are no other grounds for detention. A person who was unlawfully at large when arrested need not be released.

Release must be without bail unless further investigations are needed or proceedings are likely for the offence. The decision whether to grant bail, and if so, on what conditions, is governed by Part 9.

The provisions also apply to people arrested for failing a breath test under the Road Traffic Ordinance, and a person who attends the place of lawful custody to answer to bail.

Clause 61 sets out the functions of custody officers in relation to persons in custody. They must make various decisions as to whether continued detention is justified, release people, on bail if appropriate, and keep a record of the decisions and action taken.

The custody officer must decide whether there is sufficient evidence to charge the person with an offence and may detain the person for as long as is necessary to make that decision. If the officer decides there is not enough evidence the person must be released either on bail or without bail, unless there is a need to secure and preserve evidence or to question the person, in which case the person may be detained.

If the custody officer decides that there is sufficient evidence to charge the arrested person, the person must be charged and released with or without bail. Persons released on bail must be informed as to whether a decision to prosecute has been made.

A person may be detained if a sample is required to be taken or if the person is not in a fit state to be released.

The duties under this section must be carried out as soon as practicable. The term "relevant time" used in (11) is defined in clause 69(2).

Clause 62 is new, but appears in the Falkland Islands PACE Bill of 2006 and is based on UK PACE Act 1984 ss.37A and 37B inserted by CJA 2003. It gives a role to the Attorney General (acting as the DPP) in the formulation of charges by a custody officer. The AG can issue guidelines as to the information required for such decisions to be made.

Clause 63 prescribes what happens if a person fails to answer to bail, after being released under clause 61. Further bail can be granted if appropriate. It also provides for the situation where the AG's decision has not been given under clause 62.

Clause 64 makes further provisions about release on bail under clause 61 or 63. Decisions under this clause and clauses 65 and 66 are made by the custody officer. Under sub-clause (1) the officer can appoint a different or additional time from that set under the original bail. (The setting of time is a normal condition of bail, as clause 77 makes clear). This further condition must be made in writing and does not otherwise affect the conditions of bail. Sub-clauses (4) and (5) make provision for the keeping in custody of a person, in particular if the person is not in a fit state to be dealt with.

Clause 65 sets out what should happen to a person detained at the police station once he or she has been charged, other than on a warrant endorsed for bail. The person should be released unless one of a number of conditions is met. They include situations where the person's name or address cannot be ascertained; there are grounds for believing the person will not answer to bail, or will commit another imprisonable offence; a sample is required (in which case detention for up to 6 hours is allowed); there is a need to prevent harm to others or property; or detention is for the person's own protection.

In the case of a youth, he or she should be sent to a segregated area of the police station.

The term "warrant endorsed for bail" has its natural meaning. The term 'youth' means a child or young person as in clause 2. "Imprisonable offence" is defined in clause 2 to mean an offence for which imprisonment can be imposed as a penalty (other than for non-payment of a fine.) A written record must be kept of decisions under this section.

Clause 66 requires persons who are detained to be treated in accordance with this Ordinance and any relevant code of practice issued under it. All matters relating to such persons which are required to be recorded must be recorded in the custody record.

The custody officer may transfer custody of a person to an investigating officer or other officer but on the person being returned into the custody of the custody officer, he or she must also receive a report from that officer as to how the Ordinance and codes have been complied with during that time.

If a higher ranking officer orders a person to be treated differently, the custody officer must report the matter to the Chief Police Officer.
Clause 67 requires reviews of detention to be carried out every few hours by the reviewing officer, and requires the officer to consider representations by or on behalf of the person detained (unless the person is asleep or unfit to make them due to his or her condition or behaviour). In

certain circumstances the reviews may be postponed and in such cases they must be carried out as soon as practicable.

If the reviewing officer is given conflicting directions by a higher ranking officer, the reviewing officer must refer the matter to the Chief Police Officer.

Clause 68 provides that the telephone may be used for the purpose of a review under section 67. It sets out the manner in which this is to be conducted, who has a duty to make the required record and how representations are to be heard.

Clause 69 provides that a person cannot be detained for longer than 24 hours without being charged, unless the period is extended by authorisation under clause 70 or order of a court under clause 71. The custody time limit runs from when the person arrives at the place of lawful custody unless the person was arrested outside the Falkland Islands or attends the place voluntarily. Different considerations apply when the person is removed to a hospital for treatment. Sub-clause (7) prohibits persons released from police detention being rearrested for the same offence without warrant unless new evidence has come to light since their release.

Clause 70 enables detention of a person without charge to be continued for up to 36 hours if a police officer of the rank of inspector or above considers it necessary in order to secure or preserve evidence relating to an offence for which the person is under arrest or to obtain such evidence by questioning the person. The officer must be satisfied that the offence is imprisonable and that the investigation is being carried out diligently and expeditiously. The authorisation can be given by telephone. A legal practitioner can also make representations by telephone. The person detained must be informed of the grounds of continued detention and this must be recorded. The person must be reminded of the right to have legal representation and to have someone informed of their arrest, if that has not already been done. At the end of the 36 hours the person must be released unless charged or unless further detention is authorised under clause 71.

Clause 71 allows detention for a further period on a warrant by the Magistrate's Court or the Summary Court. This is an informal hearing, not a court session, and in the Summary Court can be conducted by two justices of the peace – see clause 73(1).

The application is made on oath by a police officer. A copy of the information on which the application is based (including the nature of the offence, the nature of the evidence, the inquiries undertaken and proposed and the reasons for requesting an extension) must be provided to the person detained and the person must be brought before the court. Sub-clause (3) states the person's entitlement to be legally represented at the person's own expense. Further detention may be authorised under this section for up to 36 hours.

Clause 72 allows for further detention on a warrant by the court in certain circumstances. See clause 73(1) for the composition of the court. Such extension can take detention up to 96 hours from the "relevant time". The basis for the making of such an extension is similar to that of the original warrant (although of course the police will need to justify their actions since that warrant was issued).

Clause 73 says that an application under section 71 or 72 can only be made on the authority of an officer of the rank of inspector or above. It also states the composition of the courts that can issue warrants under those sections. They sit otherwise than in open court, and the Summary Court consists of 2 justices only. The clause requires the courts to sit on weekdays and public holidays for hearing an application under section 71 or 72. The clause further says that any reference to a period of time or a time of day is to be treated as approximate only.

Clause 74 requires a person who has been charged to be brought before the Magistrate's Court or the Summary Court as soon as practicable, and in any event within 72 hours. (This means the full court sitting as such). Sub-clauses (2) and (3) provide for situations where the court might not be sitting at the required time or the person is in hospital and not well enough to be brought before the court.

Clause 75 confers on police officers a power of arrest without warrant of a person who fails to answer bail, or who has breached the conditions of the police bail.

Clause 76 deals with the grant of bail by police officers after arrest. Normal bail conditions available in criminal proceedings apply to release on bail under this section i.e. appointing of a time and place for appearance, taking of recognizances and sureties. The general rules about bail in criminal proceedings are in Part 9. The clause provides for the setting of a date to appear before the court, which must be the first date that is convenient to all parties on which the appropriate court can sit.

The court can then set bail, and in doing so can vary the conditions attached by the police.

Clause 77 applies to police bail the rules about conditions of bail in Part 9 with certain modifications. The police officer granting bail must give reasons in order to assist persons who may later review the decision.

Clause 78 provides that a person who is re-arrested for jumping bail is subject to the same rules as a person who is arrested for an offence.

Clause 79 is a requirement for police records to be kept about persons in police detention. The Chief Police Officer must keep written records listing annually the numbers of persons detained for over 24 hours, the number of warrants for further detention applied for and the results of the applications.

Clause 80 is a saving for the prerogative writ of *habeas corpus.* It also saves powers of detention for immigration offences.

Clause 81 relates to the detention of youths. It requires the custody officer to inform the parent or guardian or other relevant person whenever a youth is detained. The supervisor must also be informed if there is an extant supervision order in relation to the youth.

PART 6 - QUESTIONING AND TREATMENT OF PERSONS BY POLICE

Introduction

Part 6 deals with the questioning and other treatment by the police of arrested persons at the police station and other approved places. In particular it deals with the taking of samples and the searching of persons. It replaces and expands Part XI of the Criminal Justice Ordinance. It is similar to Chapter 5 of Part II of the Falkland Islands draft PACE Bill of 2006, but with recent UK changes included.

Part 6 is based on Part V (sections 53 to 64) of the UK PACE Act as amended and expanded by various Acts, including the Criminal Justice Act 1988, Children Act 1989, Criminal Justice & Police Act 2001, Police Reform Act 2002, Extradition Act 2003, Criminal Justice & Public Order Act 2004, Drugs Act 2005 and Serious Organised Crime & Police Act 2005. Clauses QT17 to QT33 on retention and destruction of samples and DNA profiles are based on recent UK law in Part 1 of the Protection of Freedoms Act 2012. This replaced the law introduced by the Crime & Security Act 2010 and is intended to comply with the human rights norms established in the EU.

The Protection of Freedoms Act has not yet come fully into operation in the UK but is presumably intended to become the law in England & Wales on the destruction and retention of samples and DNA profiles.

The Part does not give any powers to justices of the peace or the Summary Court.

The Part allows searches etc. to take place at any place of lawful custody. This term is defined in clause 2 as meaning a police station, or any other place designated in writing by a police officer of the rank of inspector or above in relation to a particular investigation.

The Part retains the requirement for consent to be given before an intimate sample can be taken, but does not require consent before an intimate search is undertaken. A search can be conducted, but not for the taking of an intimate sample.

The Part differs from the UK law in not having a concept of ‘recordable offence’ or ‘arrestable offence’ or ‘indictable offence’. The distinction is between imprisonable offences (i.e. those for which a sentence of imprisonment can be imposed, as distinct from only a fine) and others.

The Part also differs from the UK law in reducing the seniority of the police officer by whom certain action can or must be taken. If authorisation is required for an action by another police officer it must be given by an officer of the rank of sergeant or above, but in some cases requires the rank of inspector or above.

The Part removes the requirement for a ‘trigger offence’ to justify a sample being taken for a drug search. See the formulation in clause 96(2) and (3). There is therefore no Schedule of trigger offences. However, there is still a requirement for consent to be given before a drug search can be conducted.

The Part differs from the UK law in respect of offences committed outside the Falkland Islands. In UK law, an offence committed outside the UK which would be an offence in a place outside the UK can justify taking of samples and searching. This means that behaviour by a person which is not an offence in the Falkland Islands, such as adultery, could justify taking of samples and searching the person. The preferred approach for the Falkland Islands is that only behaviour which would also be an offence in the Falkland Islands renders the person liable to the taking of samples or searching. The Part therefore inserts an 'and' in the relevant paragraphs. See clauses 85(10), 91(13), 94(9) and 113(3).

The Part does not include provisions about a Biometric Data Commissioner, national DNA database, or Secretary of State guidelines, as in the UK. It does however give the Governor, after consulting the Criminal Justice Council, power to make regulations about the storage of and access to samples and databases – see clause 117.

This Part, and the PACE parts generally, do not include special provisions relating to drug trafficking offences as in the UK Drug Trafficking Act 1994. Nor do they incorporate the additional powers under the Regulation of Investigatory Powers Act 2000 or the Terrorism Act 2000.

Codes of Practice governing criminal investigations, searches and taking of samples are in Schedule and will have the force of law in the Falkland Islands under the authority of Part 7.

There is a commentary on the relevant UK PACE Act provisions at Archbold 2013 Ed. paras. 15-155 to 15-203

Notes on clauses
Clause 82 defines various terms used in the Part that are not defined in clause 2 or in the Interpretation & General Clauses Ordinance. It also explains what is meant by an insufficient sample.

The term 'relevant material' is used to mean section 98 material i.e. fingerprints and DNA profiles.

Clause 83 abolishes existing powers of search of detained persons by police officers. Although the existing powers were abolished by s.165 of the Criminal Justice Ordinance, there might be new UK powers that have become part of the Falkland Islands law since then so the abolition is repeated. The abolition of common law powers is stated to be retained, only.

The abolition does not apply to searches of stopped and arrested persons under Part 5. Nor does it apply to searches by non-police officers e.g. customs officers. Specific search rules in other Parts or in the Crimes Ordinance 2014 are not needed, unless there are other powers related to a search which should remain in effect. Any power to search persons detained at a place of lawful custody given by a future enactment will need to match with this Part.

Clause 84 requires the custody officer to ascertain and record everything which a detained person has with him or her. If necessary for this purpose, the person may be searched i.e. the disclosure

of property will be voluntary in the first instance. Anything that might be used to cause injury or damage or to assist an escape can be seized. Searches must be by an officer of the same gender.

Clause 85 enables an officer of the rank of sergeant or above to authorise a search of a person to ascertain the person's identity. This can include the taking of photographs; but see clause 115 for further rules on photographing suspects.

Clause 86 enables an officer of the rank of inspector or above to authorise an intimate search of a person if the officer believes the person might have concealed drugs or things that could be used to cause injury. Intimate searches can only be carried out at a place of lawful custody or a medical establishment. An adverse inference can be drawn from failure to consent. People who are searched must be given reasons, and the Chief Police Officer must make an annual report about intimate searches made under this section.

Clause 87 enables an officer of the rank of inspector or above to authorise the taking of X- rays and ultrasound scans if the officer thinks a person has swallowed drugs. The consent of an appropriate person is required, and the procedure can only be carried out at a medical establishment. An adverse inference can be drawn from failure to consent. The Chief Police Officer must make an annual report about X-rays and scans taken under this section.

Clause 88 provides that a person who is arrested has the right to have a person informed of the arrest. Delay in informing a person is permitted in certain circumstances.

Clause 89 provides additional protection for children and young persons who are arrested. The identity of the person responsible for welfare of the child or young person must be ascertained if possible, and that person told of the arrest.

Clause 90 provides that an arrested person is entitled to have access to legal advice if the person so requests, but delay in providing such access is permissible in certain circumstances.
Under the present Legal Aid scheme a person in custody at the police station is entitled to free legal advice and assistance. However this has not been referred to in the Bill to avoid amendments having to be made should the Legal Aid scheme be altered in the future. Arrangements will be made with the Chief of Police to ensure that the suspect's Notice of Rights includes the information that legal representation will be free under the Legal Aid scheme, which can then be easily altered should the position ever change.

Clause 91 prohibits the taking of a person's fingerprints without the written consent of the person unless the person is arrested for an imprisonable offence or has been charged with such an offence, and had not had his or her fingrprints taken previously. Fingerprints can also be taken of a person who is convicted of an imprisonable offence, or if there is a doubt about the identity of a person who answers to bail. Sub-clause (16) provides for electronic fingerprinting by a device approved by the Governor in Council.

Clause 92 permits impressions of footwear to be taken, but only with the appropriate consent unless the person is detained for an imprisonable offence. The term 'appropriate consent' is defined in clause 82.

Clause 93 permits the taking of intimate samples on the authority of an office of the rank of inspector or above, and with the appropriate consent. The manner and place of the taking of a sample are prescibed. The court may draw adverse inferences from a person's refusal to consent to the taking of an intimate sample.

Clause 94 permits the taking of other samples from a person without the appropriate consent in certain circumstances. The terms 'intimate sample' and 'non-intimate sample' are defined in clause 82. Sub-clause (18) provides for electronic taking of impressions by a device approved by the Governor in Council.

Clause 95 enables fingerprints, footwear impression and samples to be compared with similar evidence taken previously in the Falkland Islands by other public authorities, or taken by an equivalent authority outside the Falkland Islands. This is known as a 'speculative search' as the section heading indicates. Schedule 2 governs the taking of fingerprints and taking of samples at a police station or other place of lawful custody.

Clause 96 provides additional powers for the taking of urine samples or non-intimate samples from a person who has been arrsted for or charged with an offence under the Misuse of Druges Ordinance or if an officer suspects that misuse of a Class A drug or Class B drug caused or contributed to an imprisonable offence for which the person has been arrested or charged. The clause does not include the requirement as in the UK Act for the Governor to notify the Chief Police Officer that the place of lawful custody has the necessary facilities, as if they do not exist, testing will not be done.

The terms 'Class A drugs' and 'Class B drugs' are defined in clause 82 by reference to the Misuse of Drugs Ordinance.

Clause 97 is supplementary to clause 96. It creates an offence of failing to provide a sample under that section. It also requires the authorisation to be given in writing and recorded

Clauses 98 to 114 are expanded versions of provisions that were originally sections 176 and 177 of the Criminal Justice Ordinance based on section 64 of the UK PACE Act. They are now replaced by sections 63D to U of PACE by Part 1 of the UK Protection of Freedoms Act 2012. They require fingerprints and DNA profiles to be destroyed after 3 years if the person from whom they were taken is not convicted. Footwear impressions must also be destroyed. However, such material can be retained if a person is convicted, or if the Chief Police Officer judges that there is a need to retain them. Provision is made for application to a court for an extension of the period. Samples and DNA profiles obtained unlawfully must be destroyed. Copies must also be destroyed or rendered inaccessible. Nothing is said about computer records, as such, but they would be records like any others and subject to the general rules.

Clause 100(5)(c) gives power to the Governor in his or her discretion the power to authorise retention of DNA material on a written application by the Chief Police Officer. In the UK it is the Commissioner for the Retention and Use of Biometric Material.

Clauses 106 and 113 use the term 'national security'. This is defined in clause 2 to include the Falkland Islands, other Overseas Territories, the Crown dependencies and the UK. (The UK PACE Act uses 'national security' but does not define it).

Clause 114 excludes from the rules about retention and destruction certain other material which is governed by other legislation.

Clause 115 is based on section 64A of PACE but is placed after the later sections as it does not relate to the taking and destruction of samples. It permits a person who is detained at a place of lawful custody to be photographed with or without the appropriate consent. It also permits a person who is elsewhere than at a place of lawful custody to be photographed without consent if the person has been arrested for an offence or given a fixed penalty notice under the Road Traffic Ordinance. The purposes for which the photograph can be used are specified in sub-clause (4). (A CCTV camera at a place of lawful custody would probably not count as a 'photograph' which is a permanent record of a face).

Clause 116 is a reminder that audio and visual recordings of interviews with suspected may be made, but that they are governed by the relevant Code of Practice.

Clause 117 enables the Governor, after consulting the Criminal Justice Council, to make regulations about the storage of and access to samples and DNA profiles.

Schedule 2 is given effect by clause 47 and is also applied by clause 95(11). It relates to attendance at a place of lawful custody for the taking of fingerprints and samples.

PART 7 – CODES OF PRACTICE

Introduction

This Part gives effect to Schedule 3 which contains a number of Codes of Practice for the guidance of the police in the performance of their functions under the PACE Parts of the Ordinance. The Part is based on provisions of the UK PACE Act and the Criminal Procedure & Investigations Act 1996 as amended. There are no equivalent provisions in the Criminal Justice Ordinance, although Codes of Practice 'A' to 'E' were issued some years ago purporting to be made under s.137 of the Criminal Justice Ordinance 1989. That Ordinance (now Title 24.1) does not in fact give power to issue codes of practice, and it is a mystery as to how the existing PACE Codes of Practice came into being or what their status is. This situation was remedied earlier in 2014 by publishing abbreviated Codes of Practice (See ExCo Paper 42/14).

Part III of the Criminal Procedure & Investigations Ordinance (Title 24.4) is based on sections 23 and 24 of the UK CPI Act 1996 and contemplates the issuing of a code of practice on criminal investigations. It refers to an 'English code' being used meanwhile; this was the Home Office code issued under the CPI Act which was adopted, with minor modifications, as the Falkland Islands code by the Code of Practice in Relation to Disclosure Order 2003 (Title 24.4.1). That has become the 'Disclosure Code' included in Schedule 4 pursuant to clause 120.

The Falkland Islands PACE Bill of 2006 included (at clauses 76 and 77) provisions similar to sections 66 and 67 of UK PACE and this Part does the same. It also has provisions similar to

sections 21A to 25 of the CPI Act and section 60 and 60A of PACE. However, rather than empowering the Governor to issue Codes of Practice, it sets them out in Schedule 3 so that they are enacted by the legislature. The Governor is then given power, after consulting the CJ Council, by order to amend Schedule 3 by amending, adding or deleting any Code of Practice.

The UK Acts have been amended by the Criminal Justice & Court Services Act 2000, Criminal Justice & Police Act 2001, Police Reform Act 2002, Criminal Justice Act 2003, Serious Organised Crime & Police Act 2005 and Protection of Freedoms Act 2012. Provisions of the UK Terrorism Act 2000 which require a code of practice are not included as the additional powers of arrest, search etc. in that Act are not included in the Bill. Provisions of the UK Equality Act 2010 which are not being enacted as Falkland Islands law are nonetheless reflected in Code G on powers of arrest.

There are 9 codes in Schedule 3. The first 5 will replace existing Codes A to E supposedly made under the Criminal Justice Ordinance, as mentioned above. The Codes are based on similar codes issued by the Home Office but adapted to the circumstances of the Falkland Islands, and with references to the CPE Ordinance 2014.

Part 7 does not make any mention of Home Office Circulars or Attorney General's Guidelines on these topics as they are too ephemeral to codify and are not legislative in nature. They can of course be referred to by judges and practitioners.

Codes of practice are discussed in Archbold 2013 Ed. paras. 15-2 to 15-17. See also paras. 15-173 to 15-177. The text of the codes is in the First Supplement 2013. The Falkland Islands texts are set out in Schedule 3 to the present Bill.

Notes on clauses

Clause 118 requires there to be one or more codes of practice on search, arrest, seizure, etc. This requirement is met by Codes A to D and Code G in Schedule 3.

Clause 119 requires the issue of one or more codes of practice on the recording of interviews. This requirement is met by Codes E and F in Schedule 3 which relate to audio recording and visual recording respectively. These codes also meet the requirement in Clause 116 for codes of practice in relation to tape recording and visual recording of interviews.

Clause 120 requires there to be one or more codes of practice on criminal investigations and records generally. The clause provides examples of disclosure provisions. This requirement is met by the 'Disclosure' Code in Schedule 3.

Clause 121 requires there to be one or more codes of practice on interviews with witnesses who have been notified to the police by the defendant. This requirement relates to the obligation on the defence under clauses 220 and 222 to disclose the identity of witnesses they intend to call. The requirement is met by the 'Defence Witnesses Code' in Schedule 3.

Clause 122 empowers the Governor, after consulting the CJ Council, by order to amend, delete or add to the codes of practice in Schedule 3. The amendment must be published in draft, revised

if necessary, and submitted to the Legislative Assembly under the negative resolution procedure (i.e. approved if not negative within 30 days after commencement of the next sitting).

If not disapproved, the code is published in the Gazette and comes into force by order of the Governor, after consulting the CJC. There is no requirement for consultation with any particular person or body.

Clause 123 provides that a code of practice is admissible in evidence in all criminal proceedings and is to be taken into account in deciding any question. Failure to observe a code of practice by a police officer or any other person to whom it applies does not invalidate action taken but a provision or failure may be taken into account in deciding any question. Failure by a police officer to observe a provision of a code can also amount to a disciplinary offence. Sub-clause (6) provides that any Code of Practice purporting to have been issued under the Criminal Justice Ordinance 1989 and the Code of Practice set out in the Code of Practice in Relation to Disclosure Order 2003 cease to have effect upon the commencement of the Part (because the Schedule 3 codes will then come into force).

Clause 124 requires Codes of Practice to be published on government websites and made available at civic locations. They must also be available at police stations and other places designated as places of lawful custody.

CHAPTER 3 - CAUTIONING

PART 8 – SIMPLE AND CONDITIONAL CAUTIONS

Introduction

This Part deals with the giving of a caution to a person who has admitted a criminal offence. A caution is an 'out-of-court disposal', an alternative to prosecution, but becomes part of the police record relating to the person. It is to be distinguished from the term 'to caution' which informs a suspect of the possible consequences of answering or not answering questions in the course of a criminal investigation. Out-of-court disposals allow the police to deal quickly and proportionately with low-level, often first-time offending which does not merit prosecution. This allows the resources of the criminal justice system as a whole to be focused on more serious offending behaviour. It is important that out-of-court disposals are used appropriately and that their use is understood by practitioners; the Attorney General will be issuing guidance on their use as a part of the reform programme.

Cautions have been part of police practice in the Falkland Islands for some years, but have not been governed by Falkland Islands legislation up to now. In the UK, cautions are regulated by sections 22 and 23 of the Criminal Justice Act 2003 for adults. For young offenders, the previous system of reprimands and warnings was abolished from 8 April 2013 and replaced with youth cautions (s.135(1) Legal Aid Sentencing and Punishment of Offenders Act 2012).

This Part provides for one system for adults and youths, in line with current UK law.

There are two types of caution – simple and conditional. A simple caution is to the effect that although the person admits the offence no prosecution will follow on this occasion. A conditional caution means that although the person admits the offence, there will be no

prosecution provided certain conditions are adhered to. The conditions that may be attached must be appropriate, proportionate and achievable. The aims should be rehabilitation of the offender, and reparation to the victim of the offence or to the community generally (as, for example, if the offence is damaging public property). Further guidance can be found at http://www.justice.gov.uk/out-of-court-disposals

Provision is made in the Part for both types of caution to become spent i.e. to cease to have any relevance for evidentiary purposes. A simple caution becomes spent immediately, but a conditional caution only after 3 months, or, if the offence is subsequently prosecuted, at the end of any rehabilitation period for the offence – see clause 136.

The form of cautions will be included in the published guidelines under clause 135.

Part 29 contains provisions about the use of spent cautions in court – see clauses 637 and 638. Clause 372 allows spent cautions to be adduced as evidence of bad character in court. These are exceptions provided for by clause 136.

Archbold 2013 Ed. does not deal with cautions of this kind. There is a commentary in Blackstone 2013 Ed. at D2.23 to 44. Reference should also be made to the DPP's guidelines and various Home Office circulars.

Notes on clauses
Clause 125 contains definitions of terms used in the Part that are not defined elsewhere in the Bill or in the Interpretation & General Clauses Ordinance.

Clause 126 explains the nature of cautions generally. The decision on whether to give a caution, rather than prosecute or take no proceedings, is for the AG. Sub-clause (6) provides that a signed caution becomes part of the police records in respect of the offender and may be produced in any proceedings as rebuttable evidence of its contents.

Clause 127 sets out in more detail the nature of simple cautions.

Clause 128 sets out the nature of conditional cautions and the contents of a 'notice of caution'.

Clause 129 says what kind of conditions can be attached to a conditional caution. It limits the hours that the offender can be required to spend at any specified place.

Clause 130 goes into more detail about the nature of financial reparation conditions. The amount that can be required to be paid is limited to a fine at level 1 on the standard scale, which is £250 at present.

Clause 131 enables the variation of conditions of a conditional caution in certain circumstances.

Clause 132 says that if the offender fails to comply with the conditions of a conditional caution, he or she is liable to be prosecuted.

Clause 133 says that if a person is to be prosecuted for breach of a conditional caution, he or she is liable to be arrested.

Clause 134 makes various modifications to the PACE provisions of the Ordinance so that an arrest under clause 132 is treated as an arrest for all purposes.

Clause 135 enables the Governor, after consulting the CJC, to publish guidelines about the giving of conditional cautions.

Clause 136 defines 'spent caution' and prohibits questioning of a person about a spent caution. The Governor, after consulting the CJC, can create exceptions to some of the prohibitions. The clause does not extend to 'ancillary circumstances' as in the UK. Nor does it prevent evidence of a spent caution being adduced in evidence under other specified provisions.

Clause 137 prohibits the unauthorised disclosure of spent cautions for any purpose.

CHAPTER 4 – BAIL

PART 9 – BAIL IN CRIMINAL PROCEEDINGS

Introduction

Part 9 regulates the granting of bail in criminal proceedings, up to the point of sentencing. The principles stated apply equally to the grant of bail by a court and by a custody officer at a police station under Part 5. They do not apply to a police officer arresting a person elsewhere than at a police station (sometimes called 'street bail') as to which see clauses 51 to 53 in Part 4. There are linkages to Part 5 in relation to persons granted bail by the police; see e.g. clause 60(10).

The Part replaces in modern language most of the provisions relating to bail in Part IX of the Criminal Justice Ordinance. (Some of the Part IX provisions deal with committal for sentence etc). The Criminal Justice Ordinance provisions were derived from common law or UK statute.

The Part sets out in clauses 141 to 143 a number of principles for the grant of bail. They are essentially the same as those in the Schedule to the UK Bail Act 1976 and are already part of Falkland Islands law by virtue of section 143 of and Schedule 3 to the Criminal Justice Ordinance. These principles have long been observed in the courts in the Falkland Islands.

The Part incorporates many of the provisions of the UK Bail Act 1976 as amended by subsequent Acts, including the Criminal Justice & Police Act 2001, Criminal Justice Act 2003, Courts Act 2003, Criminal Justice & Immigration Act 2008, Coroners & Justice Act 2009 and the Legal Aid, Sentencing & Punishment of Offenders Act 2012**.** The Part also incorporates some provisions of the UK Magistrates' Courts Act 1980 relating to bail.

The Part deals with bail granted by a court. Bail granted by the police after arrest is governed by the PACE provisions and is dealt with in Part 5. Section 3A of the Bail Act is at clause 76 and the limit in section 142 of the Criminal Justice Ordinance on police powers to impose conditions of bail e.g. place of residence, is relaxed.

The Part does not include provisions of the UK law relating to residence in a bail hostel, or 'associated persons'. It does include a power to require electronic monitoring as a condition of bail. It is anticipated that the electronic monitoring equipment will be readily available for use by the police.

The Part restates the UK rule that recognisances cannot be taken from persons granted bail, but only from their sureties. A recognisance is a promise to pay cash, which is pointless if the defendant absconds. A defendant may however be required to provide non-cash security or a surety.

The Part refers to 'conditions' of bail rather than the 'requirements' of bail, except in reference to a requirement for a surety etc. It enables electronic monitoring of adults as well as youths to be a condition of bail.

The Part provides that the Magistrate's Court and Summary Court have the same powers on bail; but if JPs other than the Senior Magistrate are making a bail decision other than as a court, there must be two JPs sitting together (and called a 'judicial authority'). Powers given to a 'judicial authority' under this Part can be delegated to the Clerk of the court if desired, by criminal procedure rules made under Part 36.

The provisions of the UK Acts other than the PACE provisions are discussed in Archbold 2013 Ed. paras. 3-1 to 3-134 and 3-173 to 3-218.

Notes on clauses

Clause 138 defines some terms used in the Part and makes general statements about how the bail system works.

Clause 139 sets out some general principles for the grant of bail. No recognisances (i.e. cash) can be taken from the person in question, but he or she can be required to give security, or to provide sureties from whom recognisances can be taken. Sub-clause (6) provides for bail decision by the Supreme Court or a judge to be made on the papers if necessary.

Clause 140 provides that if a court has power to remand a person the court may either remand the person in custody or on bail. The Magistrate's Court has the same options when sending a person for trial or committing a person for sentence. The clause also provides for the continuation of bail if a person is remanded because of illness or accident.

Clause 141 provides that a person who appears before any court charged with an offence is entitled to bail, up to the point where the person is convicted, subject to the rules in clause 142. There are exceptions for cases involving treason and murder, and offences involving the misuse of drugs call for special consideration.

Clause 142 sets out the grounds on which a court can refuse bail. Sub-clauses (2) to (4) are derived from the Schedule to the UK Bail Act 1976 and include specific examples of the general rules. A person who is refused bail is entitled to a written statement of the reasons and to be told of his or her right to apply to the Supreme Court for bail.

Clause 143 sets out the kind of conditions that can be attached to the grant of bail, and the considerations that can apply. The conditions must be only such as will ensure that the person surrenders to custody, does not commit an offence while on bail, does not interfere with witnesses, and makes himself or herself available for any report that the court requires. The court can order a person to surrender his or her passport. A court or a police officer of the rank of sergeant or above can also order electronic monitoring of compliance with bail conditions. The list is not exhaustive but sets out the most common conditions of bail.

Clause 144 sets out the conditions under which electronic monitoring of compliance with bail conditions can be imposed.

Clause 145 is based on the Schedule to the UK Bail Act 1976. It sets out the factors that the court must have regard to in considering whether to grant bail and on what conditions. They are – the nature and seriousness of the offence; the character etc. of the defendant; the defendant's record in relation to previous bail; and the strength of the evidence, plus any other factors that appear relevant, including any misuse of controlled drugs.

Clause 146 requires a police officer or a court when granting or refusing bail or varying the conditions of bail to keep a written record of the decision. The officer or court must give a copy of the record to the defendant or his or her legal practitioner, whether or not it is requested. The court must also issue a certificate if it hears a fully argued bail application.

Clause 147 deals with bail in relation to youths. They must be granted bail unless the case is one of treason, homicide, rape or other serious crime, in which case clauses 161 and 162 apply, or there are other compelling reasons for refusing it. A parent or guardian who consents may be required to stand surety for a youth.

Clause 148 enables any court to vary the time at which a person given bail by the police at a place of lawful custody is to appear. It also enables any court to vary the conditions of police bail, on application by the Attorney General or the defendant. (Note that variation of police bail given elsewhere than at a place of lawful custody is governed by clauses 54 and 55).

Clause 149 enables any court to reconsider a bail decision by that court, on the application of the Attorney General or defendant. It also enables the Magistrate's Court to vary a bail decision of the Summary Court when a case is committed for sentence to the Magistrate's Court, and enables the Supreme Court to vary a bail decision of either court when a case is sent for trial to the Supreme Court.

Clause 150 sets out some general principles governing the variation of bail conditions. In general, it can only be done if new information comes to light. If the person is not before the court and a decision is made to refuse bail, the court must order the person to surrender to the court; the person will be arrested if he or she fails to surrender. Reasons for a change of a bail decision must be given. When an application for variation of bail is made, the court must give notice of the application and of the grounds for it to the other party. The form of notice can be prescribed by criminal procedure rules, if desired.

Clause 151 enables the Attorney General or defendant to appeal to the Magistrate's Court from a bail decision of the Summary Court. The defendant may appeal by way of written notice within 14 days of the court decision to withhold bail. If the Attorney General is going to appeal, oral notice must be given to be given to the court immediately, and the court must remand the defendant in custody pending hearing of the appeal. The hearing of the appeal must commence within 2 days of the notice of intention to appeal being received. This is a new provision giving the Magistrate's Court appellate jurisdiction as recommended in the 2013 Court Review.

Clause 152 enables a person who applied for bail to the Magistrate's Court or the Summary Court to appeal to the Supreme Court against a refusal of bail, or against conditions of bail which are 'unacceptable' to the defendant. The appeal does not require a judge to be in the Falkland Islands as the appeal can be dealt with on the papers or via a video link, although the hearing would be in person if there is a judge in the Falkland Islands at the time.

There is no right for the Attorney General to appeal to the Supreme Court against a bail decision. This is similar to the position in the UK where the prosecution does not have a right of appeal against the grant of bail by the Crown Court (except, rarely, by way of judicial review). Nor is there any right of appeal on bail decisions to the Court of Appeal, though that court can grant or refuse bail in a case which comes before it on appeal, under the Court of Appeal Ordinance.

Clause 153 enables the Magistrate's Court or Summary Court to grant bail to a person who is appealing against a decision of the court or who has asked for a case to be stated for the opinion of the Supreme Court.

Clause 154 empowers the Supreme Court to grant bail to a person who appears before it in custody on committal or sending from the Magistrate's Court or who is awaiting disposal of his or her case or who is appealing to the Court of Appeal. A decision on bail if the person has been sent or committed from the Magistrate's Court must be made within 28 days.

Clause 155 describes the system of sureties and sets out the principles for fixing them and the procedure for taking them. In deciding whether sureties are sufficient, regard may be had to the surety's financial resources; his or her character and any convictions; and his or her proximity to the defendant, in kinship or residence or otherwise. Sureties must be taken by the court or a police officer of the rank of sergeant or above.

Clause 156 provides for the forfeiture of the recognisances of sureties, or for forfeiture of the defendant's security, if the defendant fails to appear as required. If the recognisance or security is money it must be paid as if it were a fine. Otherwise, it is enforceable as a civil debt.

Clause 157 states the general duty to surrender to bail and makes it an offence for a person to abscond i.e. fail to appear in answer to bail. The Magistrate's Court or Summary Court can commit a person for sentence to the Supreme Court for absconding on a serious offence charge. (Note that the sending to the Supreme Court would not be for a higher penalty but for consideration of the totality of the offences.)

Clause 158 empowers police officers to arrest without warrant a person who absconds or breaks the conditions of bail. A person on bail can also be arrested if a surety notifies the police that he or she no longer wishes to stand surety. The court must then decide whether to continue the bail or remand the person in custody.

Clause 159 creates the offence of agreeing to indemnify sureties in criminal proceedings.

Clause 160 provides that time spent on bail does not count towards a sentence if the person is sentenced to a custodial sentence.

Clause 161 limits the circumstances in which a person can be granted bail in cases of treason or murder. It can only be granted by a judge, who will deal with the application on the papers if necessary. Bail must not be granted unless the court is of opinion that there is no significant risk of the defendant committing another imprisonable offence while on bail. Bail in a treason or murder case can only be granted by a judge, and must include a condition that the defendant undergoes a psychiatric examination, unless a report has already been obtained.

Clause 162 limits the circumstances in which a person can be granted bail in a case of other serious crime i.e. attempted murder, manslaughter, rape or attempted rape. If the defendant has been previously convicted and imprisoned for an offence in the Falkland Islands, the UK or a BOT or a Crown dependency, bail can only be granted if there are exceptional circumstances justifying it. This is in line with rulings of the European Court of Human Rights on the grant of bail.

Clause 163 states that a court or justice of the peace when issuing a warrant of arrest can endorse it for bail if appropriate i.e. add a direction that the arrested person be released on bail to appear before a court at a specified time (a "warrant endorsed for bail").

Clause 164 enables the Chief Justice to make criminal procedure rules relating to bail, so as to supplement the provisions of the Part. In the UK, the relevant rules are in Part19 of the Criminal Procedure Rules 2012. See Archbold 2013 Ed. paras. 3-118 to 3-134.

CHAPTER 5 – JURISDICTION

PART 10 – CONTROL OF PROSECUTIONS

Introduction

This Part deals with the control of the prosecution process. It codifies some common law provisions on the subject and incorporates some provisions of the UK Prosecution of Offences Act 1985. The Falkland Islands does not have a Director of Prosecutions, but the Attorney General has general supervision of the prosecution process. The main principles are set out in the 2008 Constitution at section 72 -

"Powers of Attorney General in relation to criminal proceedings

72.—(1) The Attorney General shall have power in any case in which he or she considers it desirable to do so—

(a) to institute and undertake criminal proceedings before any court of law (not being a court established by a disciplinary law);

(b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and

(c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or herself or any other person or authority.

(2) The powers of the Attorney General under sub-clause (1) may be exercised by the Attorney General in person or through other persons acting in accordance with his or her general or special instructions.

(3) The powers conferred on the Attorney General by sub-clause (1)(b) and (c) shall be vested in him or her to the exclusion of any other person or authority; but, where any other person or authority has instituted criminal proceedings, nothing in this sub-clause shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the court.

(4) In the exercise of the powers conferred on him or her by this section the Attorney General shall not be subject to the direction or control of any other person or authority.

(5) For the purposes of this section, any appeal from any determination in any criminal proceedings before any court of law, or any case stated or question of law reserved for the purposes of any such proceedings to any other court of law shall be deemed to be part of those proceedings."

This Part seeks to supplement that section, by stating certain principles derived from English case law. The Part also incorporates some UK statute law. In particular, it provides for the setting of time limits for the conduct of prosecutions once a charge has been laid. (This is as distinct from the time limits for the bringing of proceedings which are set out in Part 11).

For a commentary on the UK provisions, see Archbold 2013 Ed. paras. 1- 324 to 1-366.

Notes on clauses

Clause 165 empowers the Attorney General to appoint any counsel as a prosecuting counsel. It also sets out the powers of prosecuting counsel, including directing any other counsel appointed in a private prosecution. Prosecuting counsel is subject to the directions of the Attorney General.

Clause 166 provides that any police officer, or any public officer who has power to initiate proceedings, may prosecute cases in the Magistrates' Court or the Summary Court that are instituted by the police or the service to which the officer belongs, subject to the directions of the Attorney General.

Clause 167 retains the rule that private persons can bring prosecutions, but subject to the control of the Attorney General.

Clause 168 deals with consents to prosecutions that are required in some statutory provisions. If such consent is necessary, it does not prevent a person being arrested for the offence. Evidence of the Attorney General's consent is admissible in the same way as evidence of a *nolle prosequi* – see clause 165(5).

Clause 169 sets out the time limits for the commencement of prosecutions, including against youths. This is to ensure that prosecutions are conducted with due despatch and that defendants are not remanded in custody for long periods awaiting trial. The Chief Justice is given power to amend the time limits by criminal procedure rules and to make rules implementing them in particular cases. (In the UK the limits are set by regulations made by the Secretary of State).

Clause 170 provides that the court may extend a time limit on a number of grounds, including the absence of the judge. This might occur if the Chief Justice was not available to conduct an indictment-only trial. It is consistent with case law, including Raeside v. Luton Crown Court.
The clause provides that if the time-limits are exceeded, the defendant must be released on bail, with or without conditions.

Clause 171 enables the Chief Justice to make additional rules relating to the timing of trials involving persons who are youths at the time of their arrest.

Clause 172 provides for the re-institution of proceedings that have been stayed by a court as a result of the time limits in sections 169 or 170 being overrun.

Clause 173 gives the Attorney General power to enter a *nolle prosequi* (i.e. a direction to discontinue the prosecution) in all criminal cases, including those brought by a private person.

Clause 174 provides for discontinuance of proceedings in the Magistrates' Court or Summary Court. There is no bar to proceedings being reinstated but such a decision would be subject to close scrutiny by the court and possible abuse of process arguments from the defence.

Clause 175 provides for the discontinuance of trials in the Supreme Court. There is no bar to proceedings being reinstated.

PART 11 – CRIMINAL JURISDICTION

Introduction

This Part sets out the general criminal jurisdiction of the Supreme Court, the Magistrate's Court and the Summary Court.

The Part is derived from and replaces sections of the Administration of Justice Ordinance dealing with criminal jurisdiction. That Ordinance was amended by the AOJ (Amendment) Ordinance 2013 and the AOJ (Amendment) (No.2) Ordinance 2013, both of which are reflected in this Part. The new Schedule 4 on Sending for Trial is incorporated in a separate Part 12.

The Administration of Justice Ordinance provisions were based on criminal law provisions of the UK Senior Courts Act 1981 (as it now is) and the Magistrates' Courts Act 1980 and, more recently, the Crime and Disorder Act 1998. The civil jurisdiction provisions of the Ordinance will need to be dealt with in due course by way of a separate Bill.

This Part does not include appeals and cases stated which is dealt with in Part 31 on appeals. Nor does it include committal for sentence which is dealt with in Part 13.

The Part does include extradition powers of the Senior Magistrate in clause 178 by reference to the UK Extradition Act 2003. It also includes offshore jurisdiction in clause 179.

The Part does not set out the procedure of the Magistrate's Court and Summary Court which is dealt with in Part 16 and by criminal procedure rules. Until such rules are made, the practice and procedure is equated to that of equivalent courts in England. The Part therefore omits references to the UK Magistrates' Courts Act 1980 and omits Schedules I and II of the AOJO, as the relevant provisions are in other Parts, or will be incorporated in criminal procedure rules.

The Part provides that until relevant criminal procedure rules are made, the practice and procedure of the Supreme Court in its appellate jurisdiction will be equated to that of the Court of Appeal and in its original jurisdiction to that of the Crown Court – see clause 176.

The Part abolishes the role of assessors, but empowers the Senior Magistrate to invite justices of the peace to sit with him or her during criminal proceedings as observers. They do not take any part in the proceedings but are there for training purposes only. The justices of the peace have been consulted on this change and are content with the proposal in the light of their extended role in the Summary Court which will result in them sitting much more frequently than at present.

All courts can deal with offences committed in the face of the court e.g. breach of confidentiality rules in Part 14, contempt of court etc. if empowered to act on their own initiative. (This is not stated but implied). A judge or the Senior Magistrate can exercise certain judicial functions while outside the Falkland Islands in certain circumstances – see clause 183. Cases may also be transferred from the Summary Court to the Magistrate's Court and vice versa – see clauses 186 to 188. The Chief Justice (but not the Senior Magistrate) is given power to issue practice directions in relation to transfer of cases. The power to issue practice directions generally is included in Part 36. These provisions are designed to ensure maximum flexibility for court proceedings to go ahead given the geographic isolation of the Falkland Islands and the low number of legal practitioners resident here.

The Part does not include provisions for all summary matters to be first listed in the Summary Court to determine venue. These provisions are in Part 16.

There are no specific Archbold references for this Part, but see under various UK provisions for a commentary.

Notes on clauses

Clause 176 sets out the criminal jurisdiction of the Supreme Court. There is a reference to the practice and procedure of the English courts, but only if there are no local criminal procedure rules. There is no limit to the power to impose a custodial sentence or a fine up to the prescribed maximum (or both, if so indicated by a penalty provision).

Clause 177 sets out the criminal jurisdiction of the Magistrate's Court, and provides that the practice and procedure are equated to that of an English District Judge (in a magistrate's Court) until relevant criminal procedure rules are made by the Chief Justice after consultation with the CJC. There is no limit on the sentencing power up to the prescribed maximum. But the Magistrate's Court cannot deal with indictment-only offences. The Senior Magistrate has the

power of a District Judge under the UK Extradition Act 2003 (which will be localised in due course).

Clause 178 sets out the criminal jurisdiction of the Summary Court and provides that the practice and procedure are equated to that of a magistrates' court in England until relevant criminal procedure rules are made. The Summary Court is restricted to imposing a maximum sentence of imprisonment of 6 months and there is a cross-reference to Part 27 in relation to the limit on the power to fine.

Clause 179 incorporates an order made under the Offshore Minerals Ordinance 1994 as to offshore jurisdiction.

Clause 180 is based on a provision in the Criminal Justice Ordinance, as amended by the Administration of Justice (Amendment) Ord. 2013. It says that lower courts can try any offence except an indictment-only offence, and that only indictment-only offences go to the Supreme Court for trial. This in effect abolished the distinction between indictable, summary and either-way offences.

Clause 181 says that certain offences are triable on indictment only. They are offences stated in the Crimes Ordinance 2014 or in this or any other Ordinance or in a UK law applying to the FI to be triable on indictment only. Attempts and conspiracy and other ancillary offences in relation to those offences are also indictment-only. The indictment-only offences include murder, manslaughter, piracy, treason, genocide, sexual offences that carry a life sentence, serious offences against the person, serious explosives offences, and corporate manslaughter. All other offences are summary offences although they include offences with a maximum sentence of imprisonment of up to 18 years. Appendix 2 to these Notes sets out the rationale for listing indictment-only offences and for setting the penalty levels for other offences.

Clause 182 sets out the rules for the time-limit for commencing criminal proceedings. The rules are simplified from those in the Criminal Justice Ordinance which were extremely complex and differ from those in the UK. In the UK there is a 6-month time limit for offences that can only be tried in a magistrates' court; there is no time limit for either-way or indictable offences. The proposal in this Bill is that for imprisonable offences (including indictment-only ones) there is no time limit; for all other offences there is a 12-month time limit from the date of the offence. The period is increased to allow for the complexities of evidence gathering on the Islands, sometimes necessitating work to be done abroad, such as statement taking, interviewing and forensic testing.

Clause 183 says where courts can sit and when proceedings can be conducted while a judge or the Senior Magistrate is outside the Falkland Islands, whether by electronic means or otherwise. It incorporates some of the provisions of the AOJO as amended in 2013 with regard to the Senior Magistrate sitting outside the Falkland Islands.

(Note that the Falkland Islands Constitution is silent on place of sitting of the Supreme Court. Section 86 says the Court of Appeal can sit outside the Falkland Islands i.e. convene in London or elsewhere.)

Clause 184 empowers the Senior Magistrate to invite justices of the peace to sit with the Senior Magistrate during criminal proceedings as observers. They do not take any part in the proceedings but are there for training purposes only. They may retire with the Senior Magistrate and may attend when the court is sitting in private. This facilitates an appeal if either party is aggrieved by the judgment or ruling. The record may be kept electronically, i.e. by tape-recording, if facilities are available.

Clauses 185 to 187 regulate the transfer of cases between the Summary Court and the Magistrate's Court. This is for administrative convenience only. It may be done before a trial begins, or after it has been concluded (e.g. for the enforcement of a fine.) It does not constitute a fresh trial, or affect the powers of sentencing of either court.

Clause 188 gives the Chief Justice (but not the Senior Magistrate) power to issue practice directions on this topic.

Policy issues
It is for consideration whether the 12 month limitation period for non-imprisonable offences too long and should be only 6 months.

PART 12 – SENDING FOR TRIAL

Introduction
This Part says how cases that are to be tried on indictment are sent to the Supreme Court. Part 13 deals separately with committals for sentence from the Summary Court to the Magistrate's Court.

In the UK, committal for trial has been replaced by sending for trial of certain offences, which has been in force countrywide for over 12 months following a staged introduction commencing in June 2012. In the Falkland Islands, a policy decision to adopt the sending procedure for all indictment-only offences was taken and reflected in the Administration of Justice (Amendment) Ordinance passed in February 2013. That Ordinance created a new Schedule 4 to the Administration of Justice Ordinance and this Part is largely based on that Schedule.

Schedule 4 was in turn based on Schedule 3 to the UK Crime & Disorder Act 1998, as replaced by the Criminal Justice Act 2003. This Part adds some provisions to make the scheme more complete, based on provisions of the UK Magistrates' Courts Act 1980, the Criminal Procedure Rules 2013 and the practice of the courts. They relate to avoidance of delay, public notice, filing of the indictment, etc. as in Clause 196 to 198.

There are rules supplementing the UK statutory provisions at Part 9 of the Criminal Procedure Rules 2012. For a commentary on the UK legislation see Archbold 2013 Ed. paras. 1-21 to 1-56

Notes on clauses
Clause 189 states the extent of the application of the Part and defines some terms that are not defined elsewhere in the Bill.

Clause 190 states the power and obligation of the lowers courts to send adults for trial to the Supreme Court if they are charged with an indictment-only offence. It derives from ss.16 and 27 of the Administration of Justice Ordinance. Indictment-only offences are defined in clause 181 above.

Clause 191 states the power and obligation of the lower courts to send youths to the Supreme Court for trial.

Most of the remaining clauses are derived from Schedule 4 to the Administration of Justice Ordinance as amended in February 2013. That Schedule was in turn based on Schedule 3 of the UK Crime & Disorder Act 1998 as amended. For a detailed explanation of the clauses, see the Objects and Reasons note to the Administration of Justice (Amendment) Bill.

Clause 192 provides for an adjournment of a summary trial if the offence is linked to an indictment-only offence and sent to the Supreme Court.

Clause 193 requires the lower court to give a sending notice when sending a person for trial. No time-limit is prescribed, but the notice must be issued as soon as practicable.

Clause 194 provides that the person may be sent for trial either in custody or on bail

Clause 195 says that the documents containing the evidence must be sent to the Supreme Court within 56 days, or any longer period allowed by the judge on application. It also says what documents are admissible. They include written statements, depositions and other statements admissible under Part 20 on hearsay evidence.

Clause 196 is not in Schedule 4. It requires public notice to be given of the outcome of sending proceedings.

Clause 197 is also not in Schedule 4. It requires the lower court and the Supreme Court to avoid delay in dealing with cases involving child witnesses. The case should be brought before the next sitting of the Supreme Court unless the Chief Justice directs otherwise.

Clause 198 is also new. It requires the Attorney General to file the indictment within 56 days of receiving the sending notice, or any longer time the judge allows.

Clause 199 enables persons sent for trial to apply to the Supreme Court to dismiss the charge or charges. This was introduced by Schedule 4 and replaced the previous system of ‘no case to answer’ submissions. However, the principle on which a charge would be dismissed is the same i.e. that no jury properly directed would convict the person on the charge.

Clause 200 restricts the reporting of the sending proceedings as well as on dismissal applications.

Clause 201 restricts the reporting of applications for dismissal.

Clause 202 applies to both types of restriction and lists the things that can be reported.

Clauses 203 to 205 allow reporting of dismissal applications in certain circumstances.

Clause 206 creates offences for a breach of the reporting restrictions and specifies the maximum penalty (a fine at level 5 i.e. of £4,000).
[Note that although there are criminal penalties for breaching reporting restrictions in this and other Parts, they can also be punished as contempt of court if committed in the face of the court i.e. in the presence of the judge. See Part 18 (Judicial proceedings) of the Crimes Ordinance 2014].

Clause 207 empowers justices of the peace, when a person has been sent for trial, to take additional depositions of persons who are potential witness in the trial, whether they have already made a statement or not.

Clause 208 empowers the justices to issue summonses and commit people to custody for refusing to give evidence.

Clause 209 says that such depositions can be used as evidence in the trial.

PART 13 – COMMITTAL FOR SENTENCE

Introduction

This Part enables the Summary Court, after convicting a person of an offence, to send the person to the Magistrate's Court for sentencing, if the Summary Court considers its powers of sentencing to be inadequate. It incorporates, in a revised form, sections 14 and 15 of the Administration of Justice Ordinance, and part of section 58 of the Criminal Justice Ordinance.

Like the existing Falkland Islands law, the Part broadly reflects sections 1 to 7 of the UK Powers of Criminal Courts (Sentencing) Act 2000, as amended by the Criminal Justice Act 2003. However, the complex provisions of the 2003 Act relating to dangerous offenders and youths are not included, as they are not yet fully in force in the UK and are not appropriate for the Falkland Islands.

Section 58 of the Criminal Justice Ordinance refers to the Supreme Court dealing with cases committed to it for sentence by the Summary Court or the Magistrate's Court. It does not give the power and it does not say what the authority is. In fact, there is no reason for the Summary Court to be able to send cases to the Supreme Court for sentence, as the Senior Magistrate has full sentencing powers. By the same token, there is no reason for the Senior Magistrate to be able to commit a person to the Supreme Court for sentence. Section 58 can therefore be ignored, except for sub-clause (2) relating to youths, which this Part incorporates in clause 213.

Section 146(5) of the Criminal Justice Ordinance enables the Summary Court to send a person to the Supreme Court for sentencing for an offence of absconding (jumping bail) but there seems no reason to retain that power as the sentencing powers of the Magistrate's Court are adequate to deal with that offence.

The reason for the Summary Court committing a person to the Magistrate's Court for sentence would be that the Summary Court considers that its powers of sentencing are insufficient in a

particular case. As all first appearances will in future be in the Summary Court there may be cases which the justices feel require a higher sentence than they can impose; or a case might be transferred from the Magistrate's Court for administrative reasons after a plea of guilty so needs to go back to the Magistrate's Court for sentence.

In sentencing a youth, the Summary Court will be bound by rules about the age of the offender, and although these rules will apply also to the Magistrate's Court, that court could impose a higher sentence on a youth.

For a commentary on the UK legislation see Archbold 2013 Ed. paras. 5-25 to 5-41. Rule 42.10 of the UK CPR says what documents should be sent by the committing court and will be reflected in local criminal procedure rules.

Notes on clauses

Clause 210 enables the Summary Court to commit a person to the Magistrate's Court for sentence if the person has been convicted of an offence for which the maximum sentence is higher than the Summary Court can impose (6 months imprisonment or a fine of £5,000). The clause does not mention violent and sexual offences as in s.14 of the AOJO because it adds nothing to the power.

Clause 211 says that other offences and suspended sentences and breaches of conditional discharges can be included in a committal for sentence.

Clause 212 sets out the powers and duties of the Magistrate's Court on a committal for sentence.

Clause 213 regulates the position if the person is a youth.

Clause 214 contains supplementary provisions relating to giving of notice, copies of court records and the provision of legal aid.

CHAPTER 6 - TRIAL

PART 14 - DISCLOSURE OF MATERIAL

Introduction

The aim of this Part is to reduce the possibility of either side in the adversarial process springing surprises that might cause an application to be made for an adjournment or that might have the appearance of unfairness.

The Part restates with modifications the provisions about disclosure of material that were enacted in 2003 in the Criminal Procedure and Investigations Ordinance. That Ordinance was based on the UK Criminal Procedure and Investigations Act 1996, which has been amended by the Crime & Disorder Act 1998 and the Criminal Justice Act 2003. The Part therefore includes all the provisions of the Criminal Procedure & Investigations Ordinance, but omits sections that are no longer relevant (e.g. as to commencement dates) or which were based on UK sections that have been repealed.

The Part includes clauses based on sections that were added by the CJ Act 2003 – see clauses 219 to 223. It also includes provisions of the Sexual Offences (Protected Material) Act 1997 to sexual offences; that Act only came into force in the UK in 2012. Some of the UK provisions have not yet been brought into force but this Part includes those that will be brought into force soon.

The Part provides sanctions for acting in contravention of the confidentiality provisions. In the UK a contravention is treated as contempt of court; in Falkland Islands it is a summary offence.

The UK provisions are supplemented by a Home Office code of practice on the retention and disclosure of evidentiary material. The equivalent Falkland Islands Code will be the Code of Practice on the recording, retention and disclosure of material obtained in a criminal investigation ('Disclosure Code') included in Schedule 3 under Part7.

The annotated UK texts are in Archbold 2013 Ed. paras. 12-45 to 12-122. See also the First Supplement paras.12-52 to 12-113 which deal with the SO (PM) Act 1997 which only came into force in November 2012. See also Archbold paras. 12-2 to 12-44f for a discussion of the privilege against self-incrimination, legal professional privilege and public interest immunity. Note that sensitive material is dealt with at para.6.12 of the Disclosure Code.

Notes on clauses

Clause 215 sets out the scope of the Part i.e. the situations in which the duty to disclose arises. They extend to persons charged with imprisonable summary offences to which they plead not guilty, and persons charged with indictment-only offences. The Part is limited to alleged offences into which a criminal investigation has not been commenced prior to the commencement of the Part.

Clauses 216 and 217 set out the initial duty on the prosecutor. It is to disclose to the defendant any prosecution material which has not previously been disclosed and which might undermine the case for the prosecution or assist the case for the defendant. If there is no such material, the prosecutor must give the defendant a written notice to that effect. The prosecutor may apply to the court to refuse disclosure of material in the public interest. Disclosure must be made as soon as is reasonably practicable taking into account the nature and volume of the material.

Clauses 218 to 223 impose obligations on the defendant in respect of documents and expert witnesses. There is a duty on the defence in certain circumstances to provide a defence statement to the prosecution. It must contain the nature of the defence or defences to be relied upon, matters of fact in dispute, matters of fact on which the defence intends to rely, points of law that may be raised and, if it contains an indication of there being an alibi, details of the witnesses the defence will rely on.

Clause 221 imposes an obligation on the defence to disclose the names of its witnesses. (This obligation only came into effect in the UK on 1 May 2010.) A Code of Practice regulating the interviewing of defence witnesses by the police is in Schedule 3 – the 'Defence Witnesses Code'.

Clause 224 imposes a continuing duty on the prosecutor to disclose new material which comes to light. The duty may arise either independently or in response to defence disclosures.

Clause 225 provides for the defendant to apply for disclosure from the prosecution if the defence believes that the prosecution has failed to comply with its duty to respond to the defence statement.

Clauses 226 to 228 deal with the situations where the prosecutor or defence fail to observe time limits, or there are defaults in disclosure by the defendant. Failure to observe time limits by the prosecution is not in itself a ground for a stay of proceedings (nor is it contempt of court) but it does constitute such grounds if the delay is such that the defendant is denied a fair trial.

Clause 227 provides that faults in disclosure by the defendant may be the subject of appropriate comments and the court or jury may draw appropriate inferences in deciding whether the defendant is guilty of the offence concerned (although it cannot be the only reason for conviction).

The periods mentioned in clause 228(2) are prescribed and cannot be amended by order, as in the UK where the Secretary of State can amend them.

Clauses 229 to 234 are based on the UK Sexual Offences (Protected Material) Act 1997 as amended by the CJ Act 2003. They create a more restricted regime for the disclosure of protected material i.e. material relating to sexual offences. The material must not be shown directly to the defendant, but only to a legal practitioner or other appropriate person who must ensure that the defendant does not copy or otherwise misuse the material. The term 'sexual offence' is defined in clause 2.

Clauses 235 and 236 provide for review of decisions that material is not to be disclosed for reasons of public interest. Clause 235 relates to summary trials and clause 236 to trial on indictment.

Clauses 237 and 238 impose a duty on defendants not to use material that is disclosed except in connection with the criminal proceedings. A contravention is a summary offence (in the UK it is a contempt of court with an unlimited fine).

Clause 239 sets out some procedural requirements. It requires the court to give a person who is applying for disclosure or review an opportunity to be heard. It also gives effect to Schedule 4 which incorporates Rule 22 of the UK Criminal Procedure Rules.

Clause 240 empowers the Chief Justice to make criminal procedure rules relating to disclosure of material, in addition to the rules in Schedule 4.

Clause 241 is a saving provision for other duties of disclosure, including the public interest principle. (See para. 5 of Schedule 4 for applying for a public interest ruling).

Clause 242 repeats the provisions of Part 7 relating to the Disclosure Code in Schedule 3 and says that that code applies to police officers making decisions under this Part.

Schedule 4 incorporates the main provisions of Rule 22 of the Criminal Procedure Rules of England and Wales about serving of documents and the making of applications under the Part. The forms are not prescribed but could be included in criminal procedure rules made under clause 240 or in a practice direction, as in the UK.

PART 15 – PRELIMINARY HEARINGS

Introduction

This Part enables courts to hold preliminary hearings in criminal cases and to order the parties to a criminal trial to do certain things before the trial commences. It applies in a trial on indictment or a trial of an imprisonable offence. The power to order a preliminary hearing therefore extends to the Summary Court when dealing with offences that are less than serious, and to that extent is wider than the UK power.

The Part is based on Part IV of the Criminal Procedure & Investigations Ordinance, which was based on Part IV of the UK Criminal Procedure & Investigations Act 1996. Other provisions of that Act were also included in the CPI Ordinance and have been restated in Part 14 on disclosure of material.

In England, the power to conduct pre-trial hearings of the kind provided for in this Part is only available to a Crown Court judge. Magistrates' pre-trial hearings are limited to matters of evidence on a committal and choice of venue etc. In the Falkland Islands, the power to hold preliminary hearings needs to be extended to the Magistrate's Court and Summary Court, as they deal with most offences, including offences that in England are indictable. It was considered appropriate to simplify the process and have one procedure applying to all courts rather than different procedures for each.

The Part adapts Part IV of the CPI Ordinance to remove the distinction between preparatory hearings and pre-trial hearings. The only reason for the distinction was that the Summary Court could not make rulings in preliminary hearings on evidence and other matters of law, whereas the Senior Magistrate can do so, as well as a judge. The Part therefore provides for only one type of hearing – a preliminary hearing, in which orders can be made by all courts, including rulings on evidence and law. (All courts can also make such rulings in the course of a trial).

The Part combines various provisions about restrictions on reporting, which were duplicated in the CPI Ordinance.

The Part follows the CPI Ordinance in providing for an appeal only on rulings; there is no appeal against the making of an order to hold a hearing under clause 246.

A power for the Supreme Court and Court of Appeal and Senior Magistrate to hear appeals on preliminary hearing rulings outside of the Falkland Islands is included in clause 183.

The Part incorporates the rule-making power into Clause 247, rather than having it as a separate power. It will be exercised by the Chief Justice after consulting the Criminal Justice Council in accordance with section 783.

This Part provides for only one type of hearing, with power for all courts to make rulings, and no appeal on orders, but only on rulings.

For a commentary on the English provisions see Archbold 2013 Ed. paras.4-112 to 4-156. Note that many topics dealt with in the English law are not needed in Falkland Islands, as there is no choice of venue.

Notes on clauses

Clause 243 says how the Part applies and defines certain terms. The term 'imprisonable offence' is defined in clause 2 to mean punishable by a fine at level 5 or imprisonment for 12 months or more. The term 'linked offence' is also defined in clause 2.

Clause 244 enables a judge (i.e. a judge of the Supreme Court, the Senior Magistrate or justices of the peace comprising a Summary Court) to order a preliminary hearing when there is to be a trial of a not guilty plea to an indictment-only offence or an imprisonable summary offence.

Clause 245 makes provision about the timing of a preliminary hearing, etc.

Clause 246 lists the orders that can be made at a preliminary hearing, including listing of documents, witnesses, etc.

Clause 247 makes further provision about such orders, including a power for criminal procedure rules to do certain things. The Chief Justice is given power to make such rules to resolve any problems, including the relationship between this Part and Part 14 on disclosure.

Clause 248 says what happens in the later stages of a trial if an order under section 246 is not complied with.

Clause 249 enables a Supreme Court judge or the Senior Magistrate (but not lay justices) any court to make rulings on points of evidence and law before a trial begins.

Clause 250 provides for appeals against such rulings; to the Court of Appeal, the Supreme Court or the Senior Magistrate, as the case may be. This is needed as appeals to the Court of Appeal on rulings are not provided for in the Court of Appeal Ordinance. The appeal can be conducted by a judge or the Senior Magistrate while outside the Falkland Islands.

Clause 251 imposes restrictions on reporting of preliminary hearings and orders made at them, and of rulings on evidence or law, until after a trial has concluded. The restrictions are similar to those in relation to sending for trial in Part 12.

Clause 252 sets out certain exceptions to the rule against reporting of preliminary hearings, etc.

Clause 253 makes it an offence to publish a report in contravention of the restrictions and prescribes the maximum penalty.

PART 16 – SUMMARY PROCEDURE

Introduction

This Part deals with both the Magistrate's Court and the Summary Court procedure. It supplements Part 11 on criminal jurisdiction so as to provide for the proceedings of the lower courts. Part 17 deals with the procedure in the Supreme Court, including adjournments.

There are no equivalent provisions in the present Falkland Islands laws and no Ordinance specifically dealing with the lower courts. The Administration of Justice Ordinance makes a few jurisdictional provisions, but otherwise incorporates into Falkland Islands law provisions of the UK Magistrates' Courts Act 1980. (Precisely which provisions of the Act as amended it is difficult to ascertain).

English procedure as contained in the 1980 Act therefore governs the lower courts at present. This Part sets out the key features of that procedure and thus reduces the need for reliance on the 1980 Act, except where there remain gaps. These will be filled by criminal procedure rules made by the Chief Justice after consulting the Criminal Justice Council.

Decisions on the role of justices of the peace e.g. how they will be chosen for each case, whether 2 or 3 justices should sit, will be taken by the Head of Courts, subject to relevant criminal procedure rules. The members of a Summary Court will choose their own Chair for the duration of a case.

There is no need for the complexities of indication of plea etc. in an either-way offence case. In the UK, the choice of venue is a matter for the court, and the defendant can elect jury trial even if the court proposes summary trial for an either-way offence. In the Falkland Islands there is no choice – certain serious offences are indictment-only; other offences are triable summarily, unless an offence is a linked offence. The only issue on a summary offence is whether it should be heard by the Summary Court, the Magistrate's Court or the Supreme Court (see below).

Transfer between the Magistrate's Court and the Summary Court as provided in the recent amendment to the Administration of Justice Ordinance is dealt with in Part 11. Sending for trial is dealt with in Part 12. Preliminary Hearings are in Part 15. Committal for sentencing is dealt with in Part 13 and bail in Part 9. Appeals to the Supreme Court are dealt with in Part 31. Evidence and sentencing dealt are also dealt with separately.

Provisions of this Part have been mainly derived from the Magistrates Courts Act 1980, as amended by a number of enactments, principally the Criminal Justice Act 2003.

The Part provides that all cases commence in the Summary Court and at the first hearing the bench determines the venue for the trial, whether the Magistrate's Court, the Summary Court, or (in the case of an indictment-only offence) the Supreme Court. This process is known as 'allocation'.

The Part prescribes the periods for which the lower courts can remand a person in custody or on bail. They are the same as in the UK.

The Part provides for a defendant to plead guilty to a minor offence without attending court. This is the system now in use, but the provisions are clarified and made more consistent and include corporations. A power to order the payment of costs is included, and the scheme can apply to corporations as well as individuals.

The Part does not include the new procedure used in some parts of the UK of a written charge and requisition as they are of no particular benefit in the Falkland Islands circumstances. (See the UK Criminal Justice Act 2003 ss.29, 30).

For a commentary on summary procedure, reference can be made to Archbold – Magistrates' Courts Criminal Practice 2013.

Notes on clauses

Clauses 254 to 256 are preliminary provisions about interpretation and application of the Part, and the composition and sittings of the lower courts. They must sit at places in the Falkland Islands as directed by the Chief Justice and at times decided by the Head of Courts. The Summary Court must have a legally qualified or trainee legal advisor when in attendance when sitting.

Clauses 257 to 262 say how a person can be brought before the Magistrates' Court or the Summary Court. The basic methods are either an information and summons or an arrest and charge.

Clause 258(3) includes a provision on territorial jurisdiction, which is consistent with the rule in clause 179.

Clause 263 provides that all cases commence in the Summary Court and at the first hearing the bench determines the venue for the trial, whether the Magistrate's Court, the Summary Court, or the Supreme Court (in the case of an indictment-only offence).

Clause 264 says that there can be an adjournment if the court conducts a preliminary hearing, as provided for by Part 15.

Clauses 265 to 270 set out the procedure on the summary trial of an information, including of either party does not appear.

Clause 271 provides for a plea of guilty in the absence of the defendant. It restates the Magistrate's and Summary Courts (Guilty Pleas in Absence) Rules made under the Administration of Justice Ordinance.

Schedule 5 contains the Forms prescribed by those Rules, with modifications.

Note that the provision is not limited to road traffic offences but is limited to offences for which the penalty is no more than 3 months imprisonment. The provision applies to corporations as well as individuals.

Clause 272 deals with the situation where the defendant appears even after pleading guilty in absence.

Clauses 273 to 277 set out the powers of the Magistrate's Court and the Summary Court to remand persons brought before them. Remands for longer than 8 days are possible in certain circumstances, up to a limit of 28 days.

Clauses 278 and 279 regulate the power of justices of the peace to summon witnesses, etc. See Archbold para. 9-137 and cases there mentioned. There are similar provisions in Part 17 in relation to the Supreme Court.

Clauses 280 and 281 restate the ancient power to bind over persons to keep the peace.

Clauses 282 and 283 deal with the postponement of taking recognisances and the forfeiture of a recognisance. See also Part 27 for fines and recognisances generally.

Clauses 284 and 285 relate to proceedings against corporations.

Clause 286 enables the court to re-open a case to rectify a mistake.

Clause 287 empowers the Chief Justice to make criminal procedure rules to implement the Part, in particular in relation to guilty pleas in absence and the functions of the Clerk of the court, and to make rules governing summary procedure generally.

Schedule 5 prescribes the Forms for use in connection with clause 271 on pleas of guilty in absence.

PART 17 - SUPREME COURT PROCEDURE

Introduction

This Part sets out some provisions about trials in the Supreme Court. It parallels Part 17 on trials in the Magistrate's Court and Summary Court and supplements other Parts which govern aspects of the procedure, such as Part 34 on mentally disordered offenders, and Part 9 on the grant of bail.

Section 48(3) of the Admin. of Justice Ord. provides that practice and procedure of the Supreme Court in criminal proceedings is that of the Crown Court in England. That rule is restated in clause 176. This Part therefore incorporates relevant UK legislation such as the Indictments Act, 1915, Criminal Justice Act 1988 and Criminal Procedure (Attendance of Witnesses) Act 1965. Other UK law only applies to the extent that a matter is not provided for in this Part or the Ordinance generally.

The Part provides that in general only the AG can prefer an indictment, but provides for indictments on the direction of the Court of Appeal or a judge and for 'voluntary bills'.

Provisions on orders by the Supreme Court as to tainted acquittals etc. are in Part 32 on retrials etc.

The Part includes the provisions in Schedule 4 to the Administration of Justice Ordinance giving the Supreme Court power to deal with summary offences which are related to indictment-only offences.

See UK CPR Rules Part 14 as to indictments and Rule 28 as to witnesses. See also the Indictments Rules 1971 and the Indictments (Procedure) Rules 1971. All these will be replaced by criminal procedure rules.

Archbold 2013 Ed. paras. 1-177 to 1-269 and 1-309 to 1-314 as to indictments. Also paras. 8-1 to 8-39 as to summoning witnesses.

Notes on clauses

Clause 288 is a statement about jury trial. The defendant will be tried by a judge and jury unless the defendant elects to be tried by the judge alone. If there is more than one defendant, the trial will be by judge and jury unless all the defendants elect to be tried by judge alone – see clause 298. For the details of jury selection and jury trial, see Part 18.

Clause 289 regulates the times and places of sitting of the Supreme Court. It must sit in Stanley, except for matters that can be dealt with by a judge outside the Falkland Islands as set out in Clause 183.

Clauses 290 to 294 deal with the rules for the framing of indictments. See also the Indictment (Procedure) Rules 1971 as to voluntary bills. The rules are saved in Part 36 and will be re-made as criminal procedure rules under that Part.

> Clause 290 says who can prefer an indictment. It is normally the Attorney General unless the indictment is at the direction of the Court of Appeal or Supreme Court or by an individual with the consent of a judge (known as a "voluntary bill").
>
> Clause 292 on joining of counts in an indictment is based on section 40 of the Criminal Justice Act 1988 but adapted in view of the provisions of this Part as to choice of mode of trial. It does not affect the provisions in Part 12 as to summary offences being included in cases sent for trial to the Supreme Court.

Clauses 295 to 297 provide for the various kinds of plea that can be entered. Clause 297, based on section 122 of the UK Criminal Justice Act 1988, says it is for the judge to decide issues of *autrefois acquit* or *autrefois convict.*

Clauses 298 and 299 are local provisions that were originally in the Jury Ordinance. They enable a defendant who is sent for trial to elect whether to have trial by a jury or by judge alone.

Clause 298 provides that a defendant will be tried by a judge and jury unless the defendant elects to be tried by the judge alone. If there is more than one defendant, the trial will be by judge and jury unless all the defendants elect to be tried by judge alone.

Clause 299 makes further provisions about the choice of mode of trial, which takes place after the plea. The defendant is bound once the jury is sworn or a witness is called.

Clauses 300 to 308 provide for the attendance of witnesses, based on the UK Criminal Procedure (Attendance of Witnesses Act) 1965 as amended in 1996. These provisions are part of existing Falkland Islands laws by virtue of s.48(3) of the AOJO which adopts the practice and procedure of the Crown Court in England and they reflect the practice in the Falkland Islands.

Contempt of court as referred to in clause 306 is dealt with in Part 18 (Judicial proceedings) of the Crimes Ordinance 2014.

Clause 308 makes explicit provision for the payment of expenses to witnesses which currently is only an administrative practice. See clause 279(6) for expenses in the lower courts.

Clauses 309 to 311 enable the Supreme Court to deal with summary offences that are sent for trial as being linked to an indictment-only offence.

Clause 310 enables the Supreme Court to proceed in the absence of the defendant if the defendant is disorderly, or if the defendant's legal practitioner indicates that that procedure is acceptable to the defendant.

Clause 311 deals with the situation if a person has been convicted of a summary offence which was linked to an indictment-only offence and that offence is dismissed on appeal.

Clause 312 empowers the Supreme Court to compel the appearance of defendants. There are equivalent powers in relation to the Magistrate's Court and Summary Court in Part 16.

Clause 313 restates the rules in the Falkland Islands on adjournment of proceedings. There are similar rules in relation to the Magistrate's Court and Summary Court in Part 16 – see clause 266.

Clause 314 empowers the Chief Justice to make criminal procedure rules to implement the Part, in particular in relation to the functions of the Registrar, and to make rules governing Supreme Court procedure generally.

PART 18 – JURY TRIAL

Introduction

This Part incorporates into the CPE Bill most of the provisions of the Jury Ordinance. It also includes some provisions of the Administration of Justice Ordinance about juries in criminal cases. Sections 16 and 17 of the Jury Ordinance on choice of mode of trial are now in Part 11 on

criminal jurisdiction where they fit more logically with other provisions about indictment-only offences.

The Part includes some new provisions shown as derived from 'common law' i.e. case law. They reflect the practice in the English (and Falkland Islands) courts and were included in a revised Jury Ordinance in a similar exercise for Gibraltar.

The Part includes a Schedule 6 based on the Schedule to the Jury Ordinance.

For clarity, the sequence of clauses is varied from the sequence of sections in the Jury Ordinance. Some sections are combined. Clause 339 about rules and directions is new. The statements of penalty have been simplified. The phrase 'in pursuance of the summons' is replaced by 'in response to the summons'.

The Jury Ordinance was based largely on the UK Juries Act 1974 as amended up to 2001. The relevant UK rules are in the CPR 2012 Part 19. There is a commentary on the Act in Archbold 2013 Ed. Paras. 4-266 to 328 and 4-502 to 509.

Section 40 of the AOJO giving the judge power to summon jurors is not included.

Section 8 of Jury Ordinance relating to talesmen (i.e. people in the vicinity of the court being called for jury service) has been omitted following consultation.

The Part includes a requirement for the Governor, after consulting the CJ Council, to issue a code of practice about the summoning of jurors, to ensure fairness and that undue hardship is not caused - see clause 319(6).

The Part provides for the appointment of a foreman which is not in the Jury Ordinance but is current practice and is in the UK Juries Act. As in the UK, the term 'foreman' is retained.

Note that clause 339 gives the Chief Justice power to make rules about views by the jury.

Notes on clauses
Clause 315 defines some terms used in the Part. Other terms are defined in the Interpretation & General Clauses Ordinance or in clause 2 of the Bill.

Clause 316 sets out the qualification for jury service. The exemptions are in Schedule 6.

Clause 317 requires certain information to be provided by immigration officers to the Registrar. This is a local requirement.

Clause 318 states the general liability of all qualified persons in Falkland Islands to perform jury service.

Clause 319 says how persons are to be summoned for jury service. Sub-clause (6) requires the Governor, after consulting the Criminal Justice Council, to issue a code of practice about the summoning of jurors.

Clause 320 says how notices are to be served. This is a local provision.

Clause 321 provides for the empanelling of jurors.

Clause 322 provides for excusal for previous jury service.

Clause 323 provides for excusal for certain persons as listed in Schedule 6, and for discretionary refusal.

Clause 324 states the circumstances in which a jury summons can be discharged.

Clause 325 regulates the size and composition of juries. They should have 12 members for murder and other serious offences , and 7 members for lesser offences. This is a local provision.

Clause 326 regulates the taking of the ballot and the swearing of jurors. The same jury can deal with a second case within 24 hours of the end of the first. The jury does not deal with special pleas (*autrefois acquit* or *autrefois convict* or pardon) nor does it decide the issue of fitness to be tried, as implied by the present Jury Ordinance.

Clause 327 allows a defendant to challenge jurors. Peremptory challenge was abolished in the UK in 1988 and in the Falkland Islands by the Jury Ordinance. For the avoidance of doubt, this clause states the fact. The right of the prosecution to ask jurors to 'stand by' for the Crown is not included.

Clause 328 requires a foreman of the jury to be appointed and states the duties. (The term 'foreman' is retained as it is still used in England and Wales).

Clause 329 limits the circumstances on which documents produced as exhibits can be taken by the jury to the jury room. This is not in the Jury Ordinance but is current practice and is in the UK Juries Act.

Clause 330 enables the judge to allow the jury to separate after being sworn and before they give a verdict. The need for a warning on separation is not statutory in the UK but is well established in case law. The clause also enables the judge to allow jurors to have refreshment at the court's expense.

Clause 331 provides for the continuation of a trial on the death or discharge of a juror, but with minimum numbers specified.

Clause 332 enables the judge to discharge a jury if there is reason to suspect that it has been tampered with. Jury tampering will be an offence under the Crimes Ordinance 2014.

Clause 333 says that the verdict must be delivered in open court.

Clause 334 enables the judge to take a majority verdict after 2 hours of deliberation.

Clause 335 enables the judge to discharge a jury without giving a verdict if it is unable to agree; a minimum period of 3 hours must elapse.

Clause 336 says that judgment after the verdict cannot be stayed or reversed just because of formal defects in the process for empanelling a jury. Personation of a juror is a common law offence and is included in the Crimes Ordinance 2014.

Clause 337 authorises the payment of jurors for their service. It differs from the provision in the Juries Ordinance by making payment a right, subject to amounts fixed by criminal procedure rules.

Clause 338 creates a number of offences relating to juries and jurors, including impersonating a juror – see R v Kelly [1950] 2 K.B. Sub-clause (6) comes from the Administration of Justice Ordinance. The penalty for contempt is stated in the Crimes Ordinance 2014.

Clause 339 is new; it gives the Chief Justice power to make criminal procedure rules and give directions as contemplated by earlier clauses. The rule-making power includes the power to regulate juries viewing the scene of the crime, etc.

Schedule 6 sets out the categories of people that are ineligible for, disqualified for and excused from jury service.

Policy issues

A number of policy issues were resolved in preliminary consultations with MLAs. Those remaining include –

- In Schedule 6, whether to remove the struck through items from the lists of exemptions, etc. in line with current UK jury rules. (Note that in the UK the rules have been relaxed so that lawyers etc. are eligible for jury service which gives a wider pool of candidates for jury selection.) This is an important consideration in the Falklands where the population is small and the pool of potential jurors needs to be as wide as possible to ensure sufficient candidates for selection.
- In Schedule 6, whether to narrow the group of people ineligible on grounds of mental disorder, as shown, so that people receiving treatment for e.g., depression, bi-polar disorder and possibly epilepsy can still do jury service if capable of doing so.
- Whether to have deferral of jury service.

CHAPTER 7 – EVIDENCE

PART 19 – EVIDENCE: GENERAL PRINCIPLES

Introduction

This Part brings together a number of rules relating to the admission and reception of evidence in criminal proceedings. It restates the provisions of the Criminal Justice (Evidence) Ordinance other than those dealing with vulnerable witnesses, which are included in Part 22. It also restates the provisions of the Criminal Justice Ordinance relating to evidence.

The Part includes some principles about reception etc. of evidence derived from UK case law that were codified in the criminal procedure laws of Gibraltar and St Helena. These are noted as 'case law summarised'.

The Part includes new material based on recent UK legislation on the subject. In particular, it includes provisions as to when evidence of bad character can be introduced and restrictions on the making of derogatory assertions in the course of mitigation.

The Part assumes that all the provisions of the CJ (Evidence) Ordinance have been brought into force, or are wanted, although the Ordinance contains a deferred commencement provision (section 1). The Part does not include the provisions of the Criminal Justice Ordinance that are spent, or that refer to UK legislation now incorporated in the Part. Section 101 of Criminal Justice Ordinance is not needed as it is a spent provision relating to Parts VII and VIII of UK PACE Act 1984.

The CJ (Evidence) Ordinance incorporated into Falkland Islands law the UK Youth Justice and Criminal Evidence Act 1999, which has been amended or replaced in a number of respects since 1999, and this Part incorporates those amendments. Section 48 of the CJ (Evidence) Ordinance says that other provisions of the Youth & Criminal Justice Act 1999 are not part of Falkland Islands law, but this Part does not restate that; it is in the repeals and disapplication provisions in Part 36.

The Part also has provisions based on the Magistrate's Courts Act 1980, the Criminal Procedure (Attendance of Witnesses) Act 1965, the Police & Criminal Evidence Act 1984 ('PACE') and the Criminal Procedure & Investigations Act 1996, all as amended.

Other provisions relating to the admissibility of evidence in criminal proceedings are contained in Part 20 on hearsay and documentary evidence, in Part 21 on live links, and in Part 22 on vulnerable witnesses.

There is no definition clause in this Part as all relevant terms are defined in clause 2.

The Part does not mention the powers in respect of evidence of magistrates sitting as examining justices as the committal for trial procedure is replaced by the sending procedure, as in Part 12. It does mention committal for sentence, as provided by Part 13.

Several different sections of Archbold 2013 deal with evidence. The relevant paragraphs can be found by reference to the Table of Statutes and the Contents.

Various provisions of the UK Criminal Procedure Rules 2013 also apply, in particular Rule 33. These will be reflected in criminal procedure rules to be made by the Chief Justice after consulting the Criminal Justice Council as required by section 36.

Notes on clauses

Clauses 340 to 342 set out some basic principles for admission of evidence, derived from the UK PACE Act 1984 as amended.

Clause 340 sets out the principles for the admission of statements. Sub-clause (1) allows a court to refuse to admit a statement otherwise admissible under Part 20 (hearsay evidence) if in its opinion the interests of justice are best served by not admitting it. Sub-clause (2) says what the court needs to take into account in coming to its decision, including the nature and sources of the document concerned, the extent to which the statement appears to supply evidence which would otherwise not be readily available, the relevance of the evidence and the risk that the admission or rejection would cause unfairness to the defendant.

Clause 341 is a general rule regarding the exclusion of unfair evidence. It says that in any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it. This is in addition to any other rule of law that requires a court to exclude evidence.

Clause 342 retains the rule that a defendant must prove an exception, etc., which has been held by the House of Lords to be not inconsistent with the right to a fair trial.

Summoning and calling of witnesses

Clauses 343 to 347 are derived from the UK Magistrates Courts Act 1980 and case law, but applied to all courts. They govern the power to summon and examine witnesses, in addition to the specific rules in Part 16 as to the lower courts and Part 17 as to the Supreme Court. Criminal procedure rules will need to prescribe the rates of costs and expenses to be tendered to witnesses summoned to appear in court.

Clause 343 sets out a general power to examine witnesses etc. It allows a court, at any stage of criminal proceedings, to examine any person in attendance whether summoned as a witness or not and recall and re-examine any person already examined. Sub-clause (3) gives parties the right to cross-examine witnesses and allows the court to adjourn proceedings if in its opinion the adjournment is necessary to allow the cross-examination to be adequately prepared.

Clause 344 empowers the court to order the Chief of Police to bring a witness who is in custody before the court.

Clause 345 provides for the arrest and punishment of recalcitrant witnesses. This section empowers the courts to deal with persons who appear before them as witnesses and refuse to give evidence or fail to appear at all.

Clause 346 deals with the giving of evidence by the defendant in criminal proceedings. The evidence will usually be given from the witness box (unless the court orders otherwise) and failing to do so may not be made the subject of any adverse comment by the prosecution, except under Clause 366 below.

Clause 347 states when a defendant is to gives evidence in a trial if he or she chooses to give evidence. The general rule is that a defendant will be the first witness for the defence.

Clause 348 sets out the general rule that, subject to any provision allowing the reception of unsworn evidence, evidence given before a court in criminal proceedings must be given on oath. An oath includes an affirmation or declaration where appropriate (see clause 2).

Competence and compellability

Clauses 349 to 356 are about the competence and compellability of witnesses. They replace and expand sections 40 to 43 of the Criminal Justice (Evidence) Ordinance. Some of the provisions are based on UK case law and existing Falkland Islands practice, while others come from the UK PACE Act 1984 or the Youth Justice & Criminal Evidence Act 1999.

Clause 349 states the general rule that, subject to exceptions, all persons regardless of age are competent to give evidence at every stage of criminal proceedings. Sub-clause (2) makes an exception for persons who cannot understand questions put to them and give understandable answers. Sub-clause (3) says that a person charged is not competent to give evidence for the prosecution even if the person is only one of two or more persons charged. This exception does not include persons who have pleaded guilty already or are otherwise no longer liable to be convicted. Part 1 includes a general provision about interpretation of evidence – see clause 2(7).

Clause 350 says how the competence of witnesses is to be decided. It is for the party calling the witness to satisfy the court that on the balance of probabilities the witness is competent.

Clause 351 deals with whether or not a witness can be sworn. A witness may not be sworn unless he or she is at least 14 years of age and has a sufficient appreciation of the solemnity of the occasion and of the particular responsibility to tell the truth that the taking of an oath entails.

Clause 352 provides for the reception of unsworn evidence. The penalty for false unsworn evidence is in section 480 of the Crimes Ordinance 2014.

Clause 353 abolishes the right of the defendant to make an unsworn statement (a statement from the dock). This comes from the UK Criminal Justice Act 1982. Subject to the provisions of this section a defendant who wishes to make a statement must be sworn and is liable to cross-examination. This does not affect the right of a person to represent himself or herself and thereby make any representation that a legal practitioner could make, or any right to make a statement conferred by any other law, or to plead in mitigation. This clause will not affect trials or proceedings which began before its commencement.

Clause 354 states the rules about the competence of persons charged and their spouses. The general rule is that a person charged with an offence, and the spouse of the person, is a competent witness for the defence at every stage of proceedings. However, a person charged may not be called as a witness in proceedings except on his or her own application and the spouse may not be called as a witness except on the application of the person charged unless so provided in this Part. Sub-clause (4) says that nothing in this Part compels a spouse to disclose any communications made during the marriage by the other spouse. Sub-clause (5) allows for incriminating questions to be put to a defendant.

Clauses 355 and 356 state the rules about the compellability of defendants' spouses. A defendant's spouse can be compelled to give evidence on the defendant's behalf (unless the spouse is also a defendant). The spouse can be compelled on behalf of a co-defendant or the prosecution if the evidence against the defendant relates to a specified offence. Former spouses are treated as if they had never been married to the defendant.

The term "specified offence" is defined in clause 358 as an offence which involves an assault on, or injury or threat of injury to the spouse or a person under the age of 16, or it is a sexual offence committed against a person under the age of 16.

The term 'spouse' is defined in clause 2 to include civil partners, although these are not provided for in Falkland Islands law, as people from the UK may well have such partners.

Convictions and acquittals

Clause 357 provides that in the Magistrates' Court and Summary Court, evidence of previous convictions is admissible after conviction, if notice of them has been served on the defendant. They will be relevant to sentencing.

Clause 358 sets out the procedure to be followed to prove a conviction or an acquittal. It can be done by production of a certificate of conviction or acquittal from the proper officer of the relevant court.

Clause 359 explains how convictions can be evidence of the commission of an offence. The general rule is that in any proceedings where the fact is admissible the fact that the defendant or a person other than the defendant has been convicted of an offence in the Falkland Islands or elsewhere is admissible in evidence for the purpose of proving that such person committed the offence unless the contrary is proved.

Clauses 358 and 359 both apply to convictions in the Falkland Islands or elsewhere in the world, not limited to the EU, and include convictions in a court martial.

Clause 360 says how fingerprints can be adduced as evidence in criminal proceedings. It is based on case law as there is no statutory provision on the subject and is similar to a provision in the Gibraltar CPE Act.

Admissions and confessions

Clauses 361 to 364 are about the evidentiary value of admissions and confessions. They come largely from the UK PACE Act 1984, as amended by the Criminal Justice Act 2003. The term 'confession' is defined in clause 2 as in s.82 of the PACE Act 1984, i.e. a statement wholly or partly adverse to the person who made it, whether made to a person in authority or not and whether made in words or otherwise.

Clause 361 sets out the circumstances in which a party may formally admit a fact and the use to which such an admission may be put by the parties. (See CPR Rule 37.6 on this point.)

Clause 362 provides that in any proceedings a confession made by a defendant may be given in evidence against the defendant in so far as it is relevant to any matter in issue in the

proceedings, unless it is excluded by the court. There is an exception with regard to confessions obtained by oppression or as a result of something said or done that may render it unreliable. The exclusion of a confession does not render anything discovered as a result of it inadmissible and parts of it may still be used for particular purposes (such as to prove that the defendant express himself or herself in a particular way).

Clause 363 sets out how confessions made by a defendant may be used by a co-defendant. The rules governing this are similar to those governing the use by the prosecution.

Clause 364 deals with a confession made by a mentally handicapped person. Special care must be taken by the court if it is the only evidence against the person, and a particular direction must be given to the jury if the confession was not made in the presence of an independent person (i.e. a person other than a police officer or a person employed for police purposes).

Inferences from silence

Clauses 365 to 370 are about inferences that can be drawn from a defendant's silence on various matters and at various stages of the proceedings. While not abolishing the right of silence, these provisions give a right to draw adverse inferences from silence, which has not been the case in Falkland Islands law to date. The provisions are derived from the UK Criminal Justice & Public Order Act 1994 as amended by the Youth Justice & Criminal Evidence Act 1999. These clauses are not inconsistent with the right to remain silent contained in section 5(5) of the Constitution because the right of silence is preserved, but the judge gives an appropriate direction.

Clause 365 provides that in proceedings for an offence, if evidence is given that the defendant before being charged with the offence, when questioned under caution by a police officer, failed to mention a fact relied on in defence in the proceedings or failed to mention a fact that the defendant could reasonably have been expected to mention, the court or jury may draw any inference from the failure that appears proper. The police caution given to a suspect upon arrest and/or interview is modified to reflect the inferences which can be drawn.

This provision, when introduced in the UK, was controversial and attracted a substantial amount of debate in Parliament. The reason for the introduction was to try and reduce the number of 'ambush' defences which were occurring during trials. An 'ambush' defence occurs when a suspect exercises the right to silence at the police station then at trial seeks to adduce evidence in support of a defence of which the prosecution has had no warning and no opportunity to explore by way of investigation or evidence collection. The impact is significant: had the police received notice of the defence assertions then enquiries could have continued which might have resulted in no charge being brought (because evidence supporting the suspect's innocence was found) or might result in an early guilty plea from the suspect (because evidence rebutting the assertions and determining that there is no proper defence to the charge has been found). Without proper opportunity to investigate such assertions the prosecution are severely disadvantaged and a fair trial becomes less likely. This could result in an offender not being properly brought to justice.

Michael Howard, Home Secretary at the time of the introduction of the provisions in the UK said: *The provisions will allow a court to draw proper inferences from a suspect's refusal to*

answer police questions in circumstances which cry out for an innocent explanation, if there is one, or from a defendant's refusal to give evidence in court. That does not mean that a suspect or defendant will be compelled to speak under threat of a criminal penalty. Defendants can still remain silent if they choose. In future, the judge and jury will be able to weigh up why the defendant decided to stay silent and the jury will be able to draw reasonable inferences from that silence. In short, it is not about the right to silence; it is about the right to comment on silence.

The converse argument is that a suspect is innocent until proven guilty and that as a result is under no obligation to incriminate himself, assist in the police investigation or take any action to establish his innocence – it is for the prosecution to accumulate enough evidence to prove him guilty.

The Hansard record of the House of Commons debates on these provisions can be accessed at: http://hansard.millbanksystems.com/commons/1994/jan/11/criminal-justice-and-public-order-bill

The provisions have now been in daily use in the UK for some 20 years without difficulty. A body of case law has been developed and there are directions for Judges in respect of the approach to take in addressing the issues of inferences which can be drawn and the directions to be given to a jury on such matters.

Clause 366 is about the defendant's silence at trial. If the defendant does not give evidence or fails without good cause to answer any question, inferences that appear proper may be drawn.

Clauses 367 and 368 enable inferences to be drawn in cases where the defendant has failed or refused to account for objects, substances or marks on his or her person, in his or her possession or at any place at which he or she was arrested etc. and for failure or refusal to account for his or her presence at a particular place.

Clause 369 is an interpretation and saving provision for the previous clauses about inferences from silence.

Clause 370 is about inferences in homicide cases, which also have charges for the offence of causing or allowing the death of a child or vulnerable adult in respect of the same death. Sub-clause (3) ensures that in cases of murder or manslaughter submissions of no case to answer may only be made at the conclusion of all the evidence. The clause is based on section 6 of the UK Domestic Violence, Crime and Victims Act 2004. Other provisions of section 6 on the relationship between common assault and murder or manslaughter are included in Part 4 (Offences against the Person) of the Crimes Ordinance 2014.

Evidence of bad character

Clauses 371 to 385 are new in the Falkland Islands. They enable a defendant's bad character to be adduced in evidence in certain circumstances and are based on Chapter 1 of Part 11 of the UK Criminal Justice Act 2003.

There always have been some exceptions to the rule that a defendant's bad character is not admissible in evidence. If all parties agreed; or if the defendant either attacked the character of a

witness or put his or her own in issue were such examples, with the leave of the judge. The Criminal Justice Act 2003 expanded the circumstances when evidence of bad character can be adduced; but only with the leave of the judge and when certain circumstances apply. The provisions are based primarily upon the recommendations of the Law Commission, paper number 273 which can be accessed at:
http://lawcommission.justice.gov.uk/publications/evidence-of-bad-character-in-criminal-proceedings.htm

The main thrust of the Law Commission arguments, accepted by Parliament, was that by changing the rules on the admissibility of bad character evidence the following benefits would result:

(1) All the rules will be in one statute and will therefore be accessible.
(2) They will give greater protection for non-defendants.
(3) They will result in the elimination of "tit-for-tat" unfairness, thereby giving greater protection for defendants. (Under the current law, a defendant's criminal record can be admitted on a "tit-for-tat" basis where the defendant has attacked the character of a prosecution witness.)
(4) A co-defendant with a criminal record is less likely to suffer the admission of that record where it is not warranted.
(5) Judges will have to give and juries seek to comply with fewer nonsensical directions drawing bizarre and unreal distinctions between credibility and propensity.
(6) The establishment of consistent statutory tests coupled with guidance for courts when ruling on admissibility will result in greater consistency of decisions.

The House of Commons debate on the Bill can be found at:
http://hansard.millbanksystems.com/commons/2002/dec/04/criminal-justice-bill-1

The provisions have been in use in the UK for nearly 10 years. A substantive body of case law has been developed regarding the appropriate circumstances when such evidence can be admitted.

Clause 371 contains interpretative provisions for the following clauses on evidence of bad character. It includes signposts to definitions and explanations given in other clauses. The clause also clarifies the scope of these clauses by reference to similar and related topics in other clauses and Parts (including impeaching the character of one's own witnesses etc).

Clause 372 defines "bad character" as evidence of or of a disposition towards misconduct other than that in the alleged facts of the offence charged or in connection with the investigation or prosecution of that offence. A previous conviction, including one resulting in an absolute or conditional discharge, and a caution, may be adduced as evidence of bad character, even if any relevant rehabilitation period has expired. But the admissibility of any bad character evidence is subject to clauses 374 to 385.

Clause 373 abolishes the common law rule that bad character cannot be adduced in evidence. (This is needed as the status in Falkland Islands of the provision of the CJ Act 2003 which abolished the rules is not clear).

Clause 374 enables evidence to be given of the bad character of a person who is not a defendant. It is admissible if it is important explanatory evidence, it has substantive probative value or all parties agree to it being admitted.

Clause 375 enables evidence to be given of the defendant's bad character if all parties agree; if the evidence is adduced by the defendant; if it amounts to important explanatory evidence relating to a matter in issue between the defendant and the prosecution, or a matter in issue between the defendant and a co-defendant; if it corrects a false impression given by the defendant; or if the defendant attacks another person's character.

Clause 376 defines the term "important explanatory evidence".

Clause 377 defines the term "matter in issue between the defendant and the prosecution". The test is whether evidence of bad character would tend to show a propensity to commit the kind of offence with which the defendant is charged. Evidence that a person has committed a specified offence, as listed in Schedule 7, can be given to show such a propensity.

Clause 378 defines the term "matter in issue between the defendant and a co-defendant".

Clause 379 enables evidence to be given to correct a false impression.

Clause 380 enables evidence of a defendant's bad character to be given if the defendant attacks another person's character.

Clause 381 provides that if in a jury trial the evidence has been contaminated by the wrongful admission of evidence of bad character, the court must either direct the jury to acquit or, if it considers there should be a retrial, discharge the jury.

Clause 382 deals with the admission of evidence of offences committed by a defendant when a child. If the conviction relates to an offence committed when the defendant was under 14 and the defendant is now over 21 the evidence may only be admitted if both offences were indictment-only and the court is satisfied that it is in the interests of justice that the evidence should be admitted.

Clause 383 creates a presumption of truth when the relevance or probative value of evidence of bad character is being assessed.

Clause 384 requires a court to give reasons for its rulings on the admission of evidence of bad character.

Clause 385 enables the Chief Justice to make criminal procedure rules relating to the admission of evidence of bad character, with particular reference to requiring a prosecutor to serve on the defendant a notice of intention to adduce evidence of bad character of the defendant or, through cross-examination, of a witness.

Expert evidence

Clause 386 provides for the admissibility of expert reports and for their admission without oral evidence with the leave of the court.

Clause 387 provides for the form in which expert evidence is to be given and for a glossary of technical terms to be provided in a jury trial.

Clause 388 enables evidence to be given by an expert on the basis of work prepared by another person unless the court otherwise orders. The court must take into account the cost of calling the original person and the interests of justice.

Clause 389 requires advance notice of expert evidence to be given by the party proposing to call the expert. Criminal procedure rules may be made on this aspect.

Proof of non-payment of sum adjudged

Clause 390 is about evidence of non-payment of sums adjudged and is based on the Magistrates' Courts Act 1980.

Schedule 7 lists the offences that can be regarded as offences of the same description for the purpose of adducing evidence of a propensity to commit an offence under clause 377. There are 2 categories - offences of theft, etc. and sexual offences. It is necessary to have a list as not all offences of either category are relevant for this purpose. (In the UK the categories are prescribed by Statutory Instrument; see the list in S.I. 2004 No.3346).

PART 20 – HEARSAY AND DOCUMENTARY EVIDENCE

Introduction

This Part sets out the rules which allow evidence other than first-hand evidence to be given in criminal proceedings. The two main categories are hearsay evidence and documentary evidence, but within those categories there are various types of evidence, including evidence given by signs, video camera evidence and so on.

There are no local statutory provisions specifically about hearsay evidence in Falkland Islands law at present, but many of the rules are already observed in the Falkland Islands courts as they are based on common law and conventional practice of the English courts.

The hearsay provisions of the Part are largely based on the codification of the hearsay rules as contained in Chapter 2 of Part 11 of the UK Criminal Justice Act 2003. It also includes provisions of the UK Criminal Procedure Act 1865 which are part of the practice of the courts in the Falkland Islands (clauses 401 and 402).

The provisions on documentary evidence are derived from various sources, including the UK Criminal Justice Act 1967 and the Police & Criminal Evidence Act 1984, as well as some provisions of the Gibraltar Criminal Procedure Act.

Other aspects of hearsay evidence, such as confessions and admissions, expert evidence and the use of statements are dealt with in other Parts of the Bill.

The Part does not include any provisions about the admissibility of computer evidence. Section 69 of the UK PACE Act 1984 (which restricted the use of computer records) was repealed by s.60 of the Youth Justice & Criminal Evidence Act 1999. The CJ (Evidence) Ordinance at s.45 stated the position correctly –

> "Evidence from computer records
> Any provision of the written law of the Falkland Islands which would or might render evidence from computer records inadmissible unless conditions relating to proper use and operation of the computer are shown to be satisfied shall cease to have effect and the common law in relation to the admissibility of such evidence shall again apply."

It is not necessary to retain that provision as evidence from computer outputs will normally be admissible as a record under the general rules. It must be given appropriate weight, like any other evidence, and evidence that the computer was working correctly etc. is only one of the factors.

Section 122 of the Criminal Justice Act 2003, which is about documents produced as exhibits accompanying the jury when they retire, is in Part 18 on jury trial (see clause 329). It is therefore also omitted from this Part.

The provisions of this Part apply to all courts and do not need express extension to lower courts as in the UK.

For a commentary on hearsay evidence see Archbold 2013 Ed. paras. 11-1 to 11-76. See also Chapter 9 on documentary evidence.

Notes on clauses
Clause 391 provides definitions of terms that are not defined in clause 2.

Hearsay: Main provisions
Clause 392 says that hearsay evidence is not in general admissible but that it can be admitted if all parties agree, or if the court is satisfied that it is in the interests of justice to admit the evidence. The test for the interests of justice includes the probative value of the evidence; what other evidence has been or can be given; how important the evidence is in the context of the case as a whole; the circumstances in which the statement was made; how reliable the maker of it appears to be; whether oral evidence of the matter can be given and if not, why not; how difficult it would be to challenge the statement; and whether that difficulty would prejudice the party facing it.

Principal categories of admissibility
Clause 393 says what is meant by a statement or matter stated. It can include for example a sketch or photofit of a person.

Clause 394 says a hearsay statement is admissible if the witness is unavailable because dead or unfit to attend court; is outside the Falkland Islands and cannot easily be brought to court; cannot be found after taking reasonable steps to find the witness; or is afraid to come to court. The court must consider the interests of justice, having regard to any risk that excluding the statement

would result in unfairness to any party, and having regard to the possibility of special measures being available to protect a witness. (See clause 429 below).

Clause 395 allows the admission of statements contained in documents created or received by a person in the course of business. The court can refuse to admit such a statement if there is doubt about its contents, the source of the information, the way in which it was supplied or the way in which the document was created.

Clause 396 preserves existing categories of admissible hearsay, including public information, evidence of reputation, *res gestae* (things said at the time), confessions, admissions and expert evidence. Detailed provisions on some of these categories are in Part 19.

Clause 397 makes previous inconsistent statements admissible in certain circumstances as set out in the following 2 clauses.

Under clause 398, if a witness proves adverse (i.e. gives evidence against the party calling the witness) a previous inconsistent statement made by the witness can be put in evidence by that party in order to discredit the witness. (The result in practice is that the witness' evidence counts for nothing).

Under clause 399 a previous inconsistent statement of a witness can be put in evidence by a cross-examining party in order to discredit the witness.

Clause 400 provides that a previous consistent statement of a witness can be put in evidence in order to rebut an allegation that the witness' evidence in court is fabricated.

Hearsay: Supplementary

Clause 401 imposes an additional requirement for admissibility of multiple hearsay (i.e. hearsay evidence intended to make other hearsay evidence admissible.) It provides that such hearsay is only admissible if it is admissible under the previous rules, or the parties agree to its admission, or the court is satisfied that the value of the second hearsay evidence is so high that the interests of justice require it to be admitted.

Clauses 402 and 403 deal with capability and credibility of witnesses. Hearsay evidence is only admissible if given by a witness who is capable and credible.

> Capability is explained in clause 402 to mean the witness must be capable of understanding questions and giving understandable answers. If there is a jury, this issue has to be tried in the absence of the jury. There are similar provisions in Part 19 and a provision about interpreters as an aid to understanding is included in Part 1 – see clause 2(7).
>
> Clause 403 enables the credibility of a hearsay witness to be tested in the same way as that of a witness giving oral evidence.

Clause 404 enables a court to stop a case if it is based wholly or mainly on hearsay evidence and that evidence is unconvincing. This applies equally to trials with a jury and to trials by judge alone and summary trials.

Clause 405 gives the court a general discretion to exclude hearsay if to admit it would involve undue waste of time, having regard to the value of the evidence.

Clause 406 provides for representations other than by a person e.g. by a diagram or machine. They are admissible but only if it is proved that the information fed in was accurate. The presumption that a mechanical device works correctly is not affected.

Clause 407 enables criminal procedure rules to be made on the topic, including rules about giving notice of an intention to adduce such evidence. The UK rules are in Part 34 of the CPR 2013.

Documentary evidence

Clauses 408 to 414 are provisions about the admissibility of documentary evidence of various types.

Under clause 408 a written statement by a witness is admissible if it is signed by the person making it and contains a declaration that it is true to the best of the maker's knowledge and belief. A copy must be served on the other party, who is entitled to object within 7 days. The party adducing the statement can still call the maker of it, as can the court.

Clause 409 makes various certificates and statutory declarations admissible. They include a police certificate about a map or plan, a certificate of ownership of a motor vehicle, and a declaration about the despatch of a mail package. Sub-clause (2) makes a statement by a person under the Road Traffic Ordinance, that the person was the driver of a vehicle on a particular occasion, admissible in evidence.
(Some other Falkland Islands Ordinances also provide for certified documents of various kinds to be admissible in evidence and clause 417 preserves these provisions.)

Clause 410 enables copies of a document containing an admissible statement to be adduced in evidence if authenticated in a manner the court approves.

Clause 411allows a witness to refresh his or her memory from a statement or record made by the witness earlier. This might be in the form of a police officer's notebook or the transcript of a recorded statement.

Clause 412 is about microfilm copies. It enables a document to be produced in evidence by a microfilm copy, authenticated in a manner the court approves.

Clause 413 provides for the admissibility of copies of statements or documents that are admissible in evidence by virtue of this Part.

Clause 414 sets out 3 supplementary principles about documentary evidence based on common law principles.

Video recordings

Clauses 415 and 416 enable video recordings of someone making a statement to be used as evidence in criminal trials in all courts.

Under clause 415, a video recording of an account of an event given by a witness to the event is admissible in evidence if the court so directs. The court must be satisfied that the video recording is likely to provide a more accurate account than oral evidence by the witness in court, and must have regard to the time and quality of the recording and the views of the witness in deciding what the interest of justice require.

Clause 416 allows part recordings to be admitted if they would not prejudice the defendant. It also says that a court cannot direct a video recording to be admitted unless the court is satisfied that there are facilities in the court for playing such a recording.

PART 21 – LIVE LINK EVIDENCE

Introduction

This Part makes provision for the use of television or other forms of live link for the giving of evidence in criminal proceedings in all courts when a witness is not available. The Part incorporates with appropriate modifications provisions of the UK Criminal Justice Act 2003 on this topic.

There are other provisions about the use of live link evidence in Part 22. They enable live link evidence to be given as a way of protecting vulnerable witnesses. There are also provisions in Part 19 allowing the use in evidence of video recordings of persons making statements, but this is not live link evidence as provided for in this Part.

The Part confers powers on justices of the peace when sitting as a Summary Court, as well as on the Senior Magistrate and a judge.

For a commentary on the UK provisions see Archbold 2103 Ed. paras. 8-139 to 8-144.

The UK CP Rules 2013 Part 29 has some provisions on live link evidence.

Notes on clauses

Clause 417 provides a definition of “live link” and makes savings for other powers of the courts. The live link must be capable of being seen by relevant persons in the court, as defined. The list is similar to but more extensive than that in clause 446.

Clause 418 provides for a witness (but not a defendant) who is outside the Falkland Islands to give evidence by live link with the leave of the court. It is based on section 32 of the UK Criminal Justice Act 1988.

Clause 419 provides for any witness (but not a defendant) to give evidence by live link if the court is satisfied, after hearing representations from the parties, that it is in the interests of the justice for the person concerned to give evidence in the proceedings through a live link and that suitable facilities for receiving evidence through a live link are available. It is based on section 51 of the UK Criminal Justice Act 2003. These two clauses would enable expert evidence to be given by live link in appropriate cases.

Clauses 420 and 421 are additional provisions about the giving of evidence by live link pursuant to clause 422. They are based on sections 52 and 54 of the 2003 Act.

Clause 422 states two procedural rules based on the rule-making powers in section 55 of the 2003 Act.

Clause 423 is based on section 55 of the same Act applied generally. It enables the Chief Justice to make criminal procedure rules relating to live links. (In the UK, Part 29 of the Criminal Procedure Rules 2013 is relevant.)

Clause 424 is based on part of section 32 of the Criminal Justice Act 1988 applied generally. It makes it clear that giving false evidence on oath by live link is the same as if it were given in court i.e. it is an offence of perjury.

PART 22 – VULNERABLE WITNESSES

Introduction

The main aim of the Part is to protect vulnerable witnesses and vulnerable defendants in court proceedings from situations that might make them reluctant to testify or might negatively affect the quality of their evidence. In so doing it seeks to ensure that the court has access to the evidence necessary to reach the best possible decision in a criminal case.

The particular problems that the Part seeks to avoid include over-intrusive cross-examination of a witness by or on behalf of a defendant; unsettling and intimidating encounters by victims with their alleged attackers; inappropriate exposure to the media of the details of certain offences; and witnesses reluctant to give evidence because of fear of reprisals from defendants. The Part empowers a court to vary the normal rules of procedure and evidence in order to protect witnesses and defendants from harassment, etc. but only in specified circumstances and to a limited extent.

The Part restates sections 4 to 39 of the Criminal Justice (Evidence) Ordinance, but taking into account recent amendments to the UK laws on which those were based i.e. the Youth Justice & Criminal Evidence Act 1999, the Sexual Offences (Amendment) Act 1992, the Courts Act 2003 and the Coroners and Justice Act 2009.

The 2009 Act repealed and replaced the Criminal Evidence (Anonymity of Witnesses) Act 2008 which introduced the new concept of anonymity for witnesses in certain situations. That Act was in response to the House of Lords judgment in *R v Davis* (18 June 2008) which held that the use of anonymous witness evidence in a trial was not permissible at common law. It replaced the rules of the common law with a statutory framework to secure anonymity of witnesses in those

proceedings, where to do so is compatible with the defendant's right to a fair trial guaranteed by Article 6 ECHR.

The Part provides for the Summary Court as well as the Magistrate's Court and Supreme Court to have power to make special directions orders and other orders.

The Part sets the age of 18 as the age of a child witness.

The Part imposes restrictions on the reporting of the identity of victims of certain offences and of witnesses. Following current UK law, the Part does not impose restrictions on the reporting of the identity of adult defendants

Some key definitions are in clause 2 e.g. 'picture', 'recording'

For a commentary on the UK provisions see Archbold 2013 Ed. paras.8-71 to 8-144; also 8-147 to 8-179 as to anonymity orders and 8-225 to 8-252 as to cross-examination etc). The commentary on reporting restrictions is at paras. 4-30 to 4-39. The anonymity provisions are at paras. 20-257 to 20-262.

The relevant UK Rules are in Parts 29 and 31 and 36 of the CP Rules 2012. Local rules will be made by the Chief Justice after consulting the Criminal Justice Council.

The UK Practice Direction on video recorded evidence in chief is incorporated in clause 439. There is also UK Ministry of Justice guidance on 'good practice' – see Archbold paras. 8-91 to 8-92. There is also a UK Practice Direction about witness anonymity orders - see paras 8-167 to 8-175.

Notes on clauses
Clause 425 defines certain terms used in the Part that are not defined in clause 2 or in the Interpretation and General Clauses Ordinance. It also makes general interpretative provisions for the Part.

<u>Special measures</u>
Clauses 426 to 444 provide that courts may give special measures directions in relation to eligible witnesses. Such measures may be made available for child witnesses, witnesses who have mental disorders, learning difficulties, physical disabilities or disorders. They may also be made available in respect of witnesses who are fearful or distressed about giving evidence, for example because of the behaviour of the defendant or the family of the defendant towards the witness. A witness in a sexual case is automatically eligible for special measures unless he or she indicates they are not needed.

Clauses 426 and 427 set out the criteria for eligibility.

Clause 428 requires the court to be satisfied that special measures facilities are available before making a direction.

Clauses 429 and 430 say how the courts are to exercise the power to give a special measures direction.

Clauses 431 to 433 make particular provisions for children or young persons where the offence is a sexual offence or an offence of violence and the witness is under 18 years old. (These terms are defined in clause 2 to mean offences in Schedule 3 and 4 respectively to the Crimes Ordinance 2014).

Clauses 434 to 441 set out the various special measures directions which can be made where appropriate. They include the removal of wigs and gowns in court, the giving of evidence through video, a live television link or an intermediary and the giving of evidence in private.

Clause 439 is derived from a UK practice direction about editing and production of video recordings issued in 1992 and repeated in 2002. See Archbold para. 8-90.

Clause 440 allows for the video recording of the cross-examination or re-examination of a witness. This is based on section 28 of the UK Youth Justice and Criminal Evidence Act 1999 as amended by the Courts Act 2003 s.109. It is not yet fully in force in the UK. The other Special Measures in the 1999 Act have been commenced gradually since the Act was passed and section 28 was commenced on 30 December 2013 but only for a pilot evaluation in 3 areas (the Crown Courts in Liverpool, Leeds and Kingston upon Thames.) The policy division of the Crown Prosecution Service are monitoring and evaluating the pilot together with the Ministry of Justice. The pilot will end on 30 June 2014 and will then be evaluated. More information should be available by the time the provision falls to be considered by the legislature in September 2014.

Clauses 443 and 444 define the status of evidence given under special measures.

Protection of witnesses generally

Clauses 445 to 448 provide for the use of live links and intermediaries for the evidence of certain defendants so that vulnerable defendants may be permitted by the court to give evidence by live television link or through an intermediary.

Clauses 449 to 454 empower the court to prohibit defendants from directly cross-examining certain witnesses – for example a person charged with a sexual offence would be prohibited from directly cross-examining the alleged victim of the offence. In connection with sexual offences the Part allows the court to restrict the evidence which can be given about the complainant's sexual behaviour.

Clause 453 requires the court to appoint a legal practitioner, payable out of public funds, to cross-examine a complainant on behalf of a defendant in a sexual case who is not allowed to cross-examine. Criminal procedure rules to implement this obligation will be needed.

Reporting restrictions

Clauses 455 to 467 restrict the reporting that can be done of certain types of proceedings. They limit the reporting of offences and alleged offences involving children and in relation to other

criminal offences. Publications which breach these provisions are liable to prosecution for a criminal offence.

Clauses 458 and 459 impose reporting restrictions that go beyond those currently in force in the UK, but are contained in the YJCE Act 1999.

Clauses 465 to 467 provide that in cases involving sexual offences, no matter relating to the victim may during that person's lifetime be included in any publication, if it is likely to lead members of the public to identify that person as the person against whom the offence is alleged to have been committed. This rule can be displaced in the public interest, but the mere fact of acquittal of the defendant does not itself displace it.

No provision is made for restricting the identity of a defendant accused of sexual offences because there is no provision for this in either UK or FI law at present. MLA Summers has indicated during the consultation that this is an issue which he wishes the Members to consider for inclusion in the Bill.

Brief Background to the issue of Defendant Anonymity in Sexual Offences

The Sexual Offences (Amendment) Act 1976 provided for a ban on the press identification of both complainants and defendants in rape cases. Anonymity for complainants only had been recommended by the Heilbron Committee report in 1975 due to the potential harm and distress caused by publicity which could discourage complainants from bringing proceedings. The Committee did not consider that defendants in rape cases should have anonymity. Anonymity for defendants in sexual offence cases was repealed under the Criminal Justice Act 1988. It is important to note that the restrictions had caused practical difficulties: for example, if a man escaped custody before conviction, the police could not warn the public he was a suspected rapist unless the judge exercised the power to lift the reporting restrictions. Since then periodically there have been suggestions that defendant anonymity should be reinstated. In December 2000 the Association of Chief Police Officers (ACPO) issued guidance to all police forces, applying to all offences, which makes it clear that anyone under investigation, but not charged, should not be named, or details provided, which might lead to their identification before they are charged. This guidance still applies.

The courts have powers to act under the Contempt of Court Act, if there is a particular need to avoid a substantial risk of prejudice to proceedings. In such cases, the court may order the postponement of the publication of any report of those proceedings for whatever period the court considers necessary. In addition, where a court decides to withhold a name from the public during the trial, the court has power to prohibit publication of that name. However, mindful of the need to preserve the principle of open justice, the courts have held that this power should only be used in limited circumstances, such as the safeguarding of the identity of children and young persons, witnesses who might later be exposed to violence or blackmail, or the revelation of whose identity might prejudice national security. These powers apply in the Falkland Islands as well as in the UK.

The identification of victims by the media is only prohibited in sexual offence cases, and lasts for their lifetime. This is because many victims of these crimes would simply not come forward if

they thought their identity might be revealed. However, even in these cases, the court has the power to lift the prohibition on publicity if it is necessary to encourage witnesses to come forward and the defence is likely to be prejudiced if it stays in place, or it would unreasonably restrict reporting and it is in the public interest to remove or relax the prohibition. The law also allows the reporting of criminal proceedings other than for the relevant offences. So, for example, the complainant's protection from identification would not extend to any proceedings for perjury or wasting police time following a false or malicious allegation.

The issue was last fully debated during the passage of the Sexual Offences Act in 2003. There was an unsuccessful attempt to introduce an amendment which would have provided defendants in rape cases with the same anonymity rights as are currently given to complainants. The Home Affairs Committee considered this amendment in detail and discussed the arguments for and against. The Report can be accessed at:
http://www.publications.parliament.uk/pa/cm200203/cmselect/cmhaff/639/63902.htm

The Committee concluded that anonymity should not be extended to defendants in sex offence cases and this remains the current position of the UK government notwithstanding the recent spate of Operation Yewtree prosecutions which have gained media attention.

Anonymity of witnesses

Clauses 468 to 475 create a statutory power for the courts to grant witnesses anonymity in criminal proceedings provided this is consistent with the right of a defendant to a fair trial. They provide for the making of witness anonymity orders in criminal proceedings where witnesses are intimidated or where disclosure of identity will cause real harm to the public interest.

Clause 468 which abolishes the common law rule is taken from the Criminal Evidence (Anonymity of Witnesses) Act 2008. That provision was not repeated in the 2009 Act as the rule was by then abolished, but it is included for the avoidance of doubt in the Falkland Islands context.

Clause 473 includes a requirement to give a warning in a summary trial as well as a trial on indictment.

Clauses 474 and 475 enable a court to discharge or vary an order. The term 'appellate court' used in clause 478(6) is defined in clause 2 as the Court of Appeal or Supreme Court, as the case may be.

Savings

Clause 476 saves the operation of any other rule of law in relation to evidence in criminal proceedings, including public interest immunity.

Policy issues

- Clause 440 - Is video recorded cross-examination or re-examination wanted? It is still the subject of pilot evaluation in the UK. Results will be available after June 2014.
- Clauses 468 to 476 – are witness anonymity orders wanted?

CHAPTER 8 – SENTENCING

PART 23 - SENTENCING: GENERAL PRINCIPLES

Introduction

Part 23 sets out general principles about sentencing powers of the courts, including provisions about deferment of sentence and powers of punishment generally. It replaces some sections of the Criminal Justice Ordinance dealing with sentencing.

The term "sentence" is defined in clause 2 as including any order made by a court when dealing with an offender in respect of the offence. There are some general principles about penalties in this Part derived from Part II of the Criminal Justice Ordinance.

This Part should be considered in conjunction with other parts dealing with specific aspects of sentencing. Part 24 deals with discharges, Part 25 with community sentences, Part 26 with custodial sentences, Part 27 with fines, recognisances, etc. and Part 33 with young offenders.

The Part applies to the Magistrate's Court and Summary Court as well as the Supreme Court.

The provisions of this Part are derived from some sections of the UK Powers of Criminal Courts (Sentencing) Act 2000 ('the Sentencing Act') and on sections in Chapter 1 of Part 12 of the UK Criminal Justice Act 2003 ('the 2003 Act'). It includes amendments to those Acts made by e.g. the Criminal Justice & Immigration Act 2008, the Coroners & Justice Act 2009 and the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Section 17 of the Criminal Justice Ordinance on deferred sentences is expanded into clauses 489 to 492. Section 10 of the Criminal Justice Ordinance is repeated in clause 492.

The Part does not include powers to take into account aggravating factors as in sections 145 and 146 of the 2003 Act. This is because those factors – racial or religious aggravation and aggravation related to disability or sexual orientation – rarely arise in the Falkland Islands and it is not considered desirable to highlight them in this Bill. A court can take account of them as part of normal sentencing principles at common law, and see clause 481 for aggravating factors generally.

The Part does however include a discount for assisting the authorities, as a factor relevant in mitigation. It also includes provision for victims of offences to make submissions in the sentencing process – see clauses 498 to 500.

There is a commentary on general sentencing principles in Archbold 2013 Ed. paras.5-1 to 5-168. The UK Sentencing Council Guidelines are in the first 2013 Supplement. They will be replaced by guidelines issued by the Sentencing Guidelines Committee under clause 485 and Part 35 in due course. There are various UK Practice Directions on the use of antecedents etc.

Notes on clauses

Clauses 477 and 478 are based on sections 142 and 144 respectively of the 2003 Act. They do not however refer to minimum sentences or required custodial sentences as such sentences are not appropriate in the Falkland Islands.

Clause 477 states the purposes of sentencing to be punishment of offenders; reduction of crime; reform and rehabilitation of offenders; making of reparation by offenders. However, these principles do not necessarily apply to young offenders, to sentences fixed by law (i.e. life imprisonment) or to detention under the Mental Health Ordinance.

Clause 478 says how the seriousness of an offence is to be determined. The court must consider the offender's culpability in committing the offence and any harm which the offence caused. The court must take into account previous convictions and whether the offence was committed on bail.

Sub-clauses (6) and (7) are based on sections 145 and 146 of the Criminal Justice Act 2003 and provide for enhanced sentencing if the court is satisfied that the offender at the time of the offence demonstrated hostility or was motivated by hostility towards the victim based upon race, religion, disability or sexual orientation.

These provisions only apply if the court is sentencing for an offence which is not an aggravated offence under the provisions of sections 555 to 559 of the Crimes Ordinance 2014. Those offences carry an increased maximum penalty to cover the specific type of aggravation charged, which the prosecution have to prove beyond reasonable doubt. The enhanced sentencing provisions of Clause 481 do not increase the maximum penalty but do increase the seriousness with which the offence is viewed and influence the court's choice of sentence within the range.

A detailed discussion of the development of hate crime offences and sentencing can be found at:
http://lawcommission.justice.gov.uk/docs/cp213_hate_crime_appendix-b.pdf

Clause 479 is based on section 143 of the 2003 Act and says how guilty pleas can be taken into account. It does not say that a court can reduce a sentence for a guilty plea; this is left to the common law and court practice. What it says is that if the court intends to reduce a sentence for a guilty plea, it must take into account the stage in the proceedings when the indication of an intention to plead guilty was given and the circumstances in which it was given. (It does not include guilty pleas in courts martial held in the Falkland Islands, as they are governed by military law and do not necessarily relate to offences committed in the Falkland Islands).

Clause 480 makes general statements about sentencing, including that penalties are maxima, and are cumulative or alternative, as in the Criminal Justice Ordinance. It confers a power to mitigate sentence by taking into account any relevant matters. This is based on s.166 of the 2003 Act but expressed as a power to mitigate, rather than as a saving of an inherent power. It does not include the provisions of the UK Serious Organised Crime & Police Act 2005 s.74 which provide for a discount for assisting law enforcement authorities, as that does seem appropriate in the Falkland Islands context.

Clause 481 is based on section 34 of the UK Magistrates' Courts Act 1980 and is expanded to confer powers of mitigation on all courts. A 'community sentence' is a form of non-custodial sentence under Part 25; the term is defined in clause 2, as is 'mentally disordered offender'.

The clause also provides for mitigation to be heard in private if necessary and for documents not to be read aloud. See Archbold 2013 Ed. para. 5 -128 and the case law cited there for the full principles.

Clause 482 empowers the Criminal Justice Council, on the recommendation of the Sentencing Guidelines Committee, and after consulting as required by Schedule 13, to publish sentencing guidelines, similar to those published in the UK by the Sentencing Guidelines Council and the Sentencing Council for England and Wales. The Sentencing Guidelines Council established by the CJ Act 2003 was abolished by the Coroners & Justice Act 2009 and replaced by the Sentencing Council for England and Wales. Guidelines were issued in 2004 and revised in July 2007 and in the absence of guidelines published by the Criminal Justice Council those guidelines will apply in the Falkland Islands until replaced. This clause is a simplified version of the sections of the CJ Act 2003 and C&J Act 2009 establishing guidelines and requiring courts to follow them.

Guidelines must be based on the need to promote consistency in sentencing; sentences imposed in other common law jurisdictions for similar offences; the cost and relative effectiveness of various types of sentence; the need to promote public confidence in the criminal justice system; and any views on the subject communicated to the Criminal Justice Council in writing. Other principles are set out in Part 'B' of Schedule 13.

Clause 483 imposes a duty to give reasons for sentencing decisions, including any departure from a relevant sentencing guideline and any aggravating or mitigating factors. It is based on section 174 of the 2003 Act as replaced by s.64 of the LASPO Act. It does not mention minimum or required custodial sentences, however. The sentencing guidelines will be those published or applied under clause 482. The power in the Sentencing Act to disapply the requirement for reasons or to keep them from the defendant is not included.

If a custodial sentence is imposed, the court must say why the rule against a custodial sentence in clause 558 does not apply. The court must tell the defendant the effect of the sentence, including the results of payment to failure to pay a fine, etc. There is no power to disapply the requirement for reasons to be given, nor to keep them from the defendant.

Clauses 484 to 486 deal with derogatory assertions about a defendant made by another defendant in a speech in mitigation. If an assertion made during mitigation is derogatory to a person's character (e.g. because it suggests that the person's conduct is or has been criminal, immoral or improper) and if the assertion is false or the facts asserted are irrelevant to the sentence, the court can make an order.

Clause 485 provides that if an order is made, the assertion is not to be reported, as it might not be true and has not been tested.

Clause 486 makes it an offence to publish an assertion in breach of an order under clause 484.

Clause 487 provides that a sentence commences from the beginning of the day on which it is imposed. It applies to the Magistrates' Court and Summary Court, as well as the Supreme Court. Clause 564(1) states a similar rule about imprisonment.

Clause 488 confers power on the Supreme Court power to vary or rescind a sentence or order within 28 days (or 56 days in the case of a joint trial).

Clauses 489 to 492 on deferment of sentence are all based on section 17 of the Criminal Justice Ordinance. That is turn was based on sections 1 to 1D of the UK Powers of Criminal Courts (Sentencing) Act 2000 which have since been replaced by section 278 and Schedule 23 of the 2003 Act.

The scheme in the Criminal Justice Ordinance is retained i.e. sentence can be deferred if the defendant consents, and gives undertakings about his or her conduct during the deferment. Deferment cannot be for more than 6 months and can only be done once.

The Criminal Justice Ordinance scheme is expanded adding a requirement for the appointment of the probation officer as a supervisor.

Clause 489(1) does not mention reparation as that is only available under a community sentence. A probation officer is to be designated as supervisor under this clause and clause 490.

Clause 490 says that if a defendant breaches an undertaking during the deferment period, the court can issue a summons to attend court for sentence for the original offence, or a warrant for arrest if the defendant does not respond to the summons.

Clause 491 makes similar provision if a defendant commits a further offence during the deferment period.

Under clause 492, when a defendant appears on a summons or warrant under the previous 2 clauses, the court must sentence the person for the original offence, as well as for any offence committed during the deferment period, if convicted. The power to bind over to come up for judgment is available to any court in Falkland Islands.

Clause 493 requires a court to obtain a pre-sentence report from a probation officer before imposing any sentence, unless it considers such a report unnecessary. The current equivalent in Falkland Islands law is s.61 of the Criminal Justice Ordinance which enables the Governor by regulations to require reports to be produced for specified proceedings. There is also s.32 of the Criminal Justice Ordinance which requires a social inquiry report to be produced before a court imposes a custodial sentence (as to which see clause 560). The court can remand a defendant in custody for up to 4 weeks in order for a pre-sentence report to be made. This is an exception to the general principle in clause 273.

Clause 494 says how a court is to take into account previous offences committed by the offender.

Clause 495 requires a court to obtain a medical report before imposing a custodial sentence on an offender who appears to be mentally disordered.

Clause 496 requires pre-sentence reports that are not given orally in open court to be disclosed to the defendant or his or her legal practitioner, with certain exceptions. The age limit in the Criminal Justice Ordinance is 17, but 18 is consistent with other age limits in the Bill.

Clause 497 enables a court that is considering passing a suspended sentence or community sentence to require the offender (aged 14 and over) to provide samples to ascertain if there are controlled drugs in his or her body.

Clauses 498 to 500 reflect the development in the UK of a greater focus on the needs of victims within the criminal justice system. The UK government published the Victim's Charter in 1996 and introduced a Victim's Code in 2006. The personal statement scheme is part of a range of measures intended to enable victims and their families to have a higher level of involvement in the criminal justice process. Victim Personal Statements have been considered by the courts in the UK since October 2007 and have proved successful. The scope of the scheme was formally extended to include Family Impact Statements for the families of deceased victims and Community Impact Statements as well by way of the Criminal Practice Direction on Sentencing issued by the Lord Chief Justice on 7 October 2013. The provisions require the court before sentencing to take account of any statement made by a victim of an offence as to the effect of the crime on him or her, and any statement made by the police about the prevalence of a given type of offence. The statements will be written (except in the case of death when the family may make an oral or written statement) and must be referred to if made. The Chief Justice, after consulting the Criminal Justice Council, may issue codes of practice and guidelines about the making of such statements and about the rights of victims generally.

Clause 501 confers power on a court to recommend deportation of a person who has attained the age of 18 and who does not have Falkland Islands status. This is a simplified statement for the Falkland Islands of the UK immigration law on this subject which is very complex. See also Part II of the Immigration Ordinance which enables the Governor to order deportation.

PART 24 – ABSOLUTE OR CONDITIONAL DISCHARGES

Introduction

This Part provides for the making of an order for the absolute or conditional discharge of a person found guilty of an offence. Other types of non-custodial sentence are provided for in Part 25 (Community Sentences) and Part 27 (Fines & Recognisances).

Separate provision is made in the Bill in relation to other sentences that can be imposed on young offenders and mentally disordered offenders – see Parts 33 and 34.

The Part is derived from sections 24 to 29 of the Criminal Justice Ordinance which include some provisions about probation as well as discharges. Probation is no longer a sentence available to the courts in the Falkland Islands, and will be replaced by community sentences (i.e. community orders and youth rehabilitation orders). Sections 18 to 24 and Schedule 1 of the Criminal Justice Ordinance about probation orders will disappear and the provisions about discharges are revised

and re-arranged as free-standing provisions. They are based on sections 12 to 15 of the UK Powers of Criminal Courts (Sentencing) Act 2000 (known as the 'Sentencing Act.')

There is also a power to bind over to keep the peace, but it is non-statutory and is not included in the Bill.

Archbold 2013 Ed. has a commentary on discharges in paras. 5-169 to 5-174.

Notes on clauses
Clause 502 enables a court, instead of sentencing a convicted person, to grant a discharge, either absolutely or on condition that the person does not offend again within a specified period of up to 3 years. Sub-clause (5) is not in Criminal Justice Ordinance but is in the Sentencing Act and seems appropriate

Clause 503 enables the court, on the application of a person sentenced to a community sentence, to substitute a conditional discharge for a community order, if the original order is no longer appropriate e.g. because of illness, absence of work etc.

Clause 504 says what a court can do if a person subject to a conditional discharge commits a further offence during the conditional discharge period. The person must be brought before the court which made the order. That court can then impose any sentence that it could have imposed for the offence originally.

Clause 505 describes various legal effects of a conviction leading to an order for conditional discharge. The conviction is to be treated for certain purposes as a conviction, but not for other purposes. See also clause 372. 'Forfeiture' is not mentioned in Criminal Justice Ordinance but is mentioned in clause 505

Clause 506 says that if a young offender on whom a conditional discharge order has been made commits a further offence after the age of 18, the court can deal with the offender as an adult.

Clause 507 sets out further legal consequences of an order for conditional discharge, including a right of appeal from a sentence imposed by a court when dealing with a breach or a further offence.

PART 25 – COMMUNITY SENTENCES

Introduction
This Part makes provision for one type of non-custodial sentence that a court can impose on a conviction for a criminal offence. It is the 'community order', or in the case of a youth, a 'youth rehabilitation order'. The two types of order are called in this Bill 'community sentences', although that term includes other types of sentences in the UK law e.g. 'custody plus' and 'custody minus' etc, which are not adopted in this Bill.

The Part replaces the provisions in the Criminal Justice Ordinance for community service orders which were based on old UK laws. It also replaces the system of probation orders as provided for in the Criminal Justice Ordinance but which has been abolished in England and Wales.

Other non-custodial sentences are provided in Part 27 (Fines and Recognisances) and Part 24 (Absolute or conditional discharges.) Separate provision is made in the Bill in relation to other sentences that can be imposed on young offenders and mentally disordered offenders – see Parts 33 and 34 respectively.

The provisions of this Part are derived from the UK Criminal Justice Act 2003 and Schedule 1 to that Act, and the Criminal Justice and Immigration Act 2008. The 2008 Act replaced youth community orders with youth rehabilitation orders but applied the same principles to them as apply to community orders under the 2003 Act. The two sets of provisions are therefore combined in this Part.

The Part includes recent amendments made by the UK Legal Aid, Sentencing & Punishment of Offenders Act 2012 as to extension of time etc. It also includes LASPOA additions to the orders that can be made (a foreign travel prohibition order and an alcohol abstinence and monitoring requirement.) In the case of youths the LASPOA provides for a drug treatment and testing requirement which in this Part is subsumed under the drug rehabilitation requirement.

The Part retains the distinction between community sentences for adults and youth rehabilitation orders for persons aged 10 to 18 to allow for the differences to be made clear.

There is a commentary on community sentences in Archbold 2013 Ed. paras. 5-185 to 5-398.

There are relevant UK rules in the CP Rules 2012. See rule 42.2 as to notification of orders and Part 44 as to breach, revocation and amendment of community orders.

There are also some Practice Directions noted in Archbold.

Differences from UK law

The provisions in this Part were widely consulted upon prior to drafting to ensure that the community orders would be practicable in the Falkland Islands context. The Part does not include provision for an attendance centre requirement for under 25's. Nor does it include an intensive supervision and surveillance regime for youths or a fostering regime or provision for a 'youth offending team'.

The Part does not include an education requirement for youths as truancy is not a significant problem in Falkland Islands.

The Part enables a foreign travel restriction requirement to be imposed on youths as well as adults, unlike the UK where it cannot be imposed on youths (though the reason is not apparent).

The Part makes all adults requirements capable of being attached to a youth rehabilitation order, except as identified in clause 529. Enforcement and amendment provisions are the same for both types of order, except that, as in the UK, imprisonment cannot be imposed for breach of a youth rehabilitation order).

The Part enables an intoxicating substance treatment requirement to be imposed on an adult as well as on a youth.

The Part gives all supervisory functions to the probation officer, as there is no Community Service officer in Falkland Islands.

The Summary Court is given the same functions as the Magistrate's Court, but if the Supreme Court directs that a case of failure to comply with an order, etc. is to be dealt with by the Magistrate's Court, it can only be dealt with by the Summary Court if the Senior Magistrate is unavailable – see clause 557.

Notes on clauses
Clause 508 contains definitions of terms used in the Part, including 'relevant order' and 'probation officer'. Other terms, used also in other Parts, are defined in clause 2. A 'community sentence' is defined as a community order or youth rehabilitation order.

Clause 509 sets out some general rules about the making of community orders. Similar provisions are in clause 528 with regard to youth rehabilitation orders, in relation to offenders aged under 18.

Clauses 510 to 527 set out the various requirements that can be attached to a community order.

Clause 510 defines the unpaid work requirement. Clause 511 defines the activity requirement. Clause 512 defines the programme requirement. Clause 513 defines the prohibited activity requirement. Clause 514 defines the curfew requirement. Clause 515 defines the exclusion requirement. Clause 516 defines the residence requirement.

Clause 517 defines the foreign travel prohibition requirement introduced by s.72 of the LASPO Act 2012.

Clauses 518 and 519 provide for mental treatment to be part of a community sentence. It could include treatment outside Falkland Islands as provided by Part 9 of the Mental Health Ordinance.

Clause 520 defines the drug rehabilitation requirement. Clauses 521 and 522 require drug rehabilitation orders to be reviewed by a court at least every month.

Clause 523 defines the alcohol treatment requirement as amended by the LASPOA. It omits a minimum period, as does the Act.

Clause 524 defines the alcohol abstinence and monitoring requirement introduced by s.76 of LASPOA. It specifies the number of days of abstinence and the level of alcohol in the body but empowers the Governor, after consulting the Criminal Justice Council, to amend the figures.

Clause 525 enables the court to include in a relevant order an intoxicating substance treatment requirement which is wider than an alcohol treatment requirement.

Clause 526 defines the supervision requirement.

Clause 527 defines the electronic monitoring requirement

Clause 528 makes additional provision about youth rehabilitation orders. Any of the adult requirements can be imposed on a youth. It is similar to clause 509 but adds a requirement for family circumstances to be taken into account. The orders that can be made on a youth include a foreign travel prohibition which is not a youth rehab requirement in the UK.

Clause 529 sets out some differences in the requirements in relation to youths, compared to adults.

Clauses 530 to 535 are miscellaneous provisions governing the procedure for making community orders or youth rehabilitation orders.

Clause 530 says that the Supreme Court can make a direction in relation to further proceedings. See Clause 557 for the role of the Summary Court

Clause 531 relates to the making of relevant orders on an appeal against sentence.

Clause 532 sets out the duties of the probation officer.

Clause 533 says that a requirement attached to an order must avoid conflict with the offender's religious beliefs, etc.

Clause 534 requires copies of relevant orders to be provided to specified people.

Clause 535 imposes a duty on the offender to keep in touch with the probation officer

Clauses 536 to 541 say how courts can deal with breaches of requirements of community sentences. A summons or warrant can be issued by any court and courts can deal with the offender for the original offence. Clause 541 imposes restrictions on the powers of the courts when treatment is required.

Clauses 542 to 545 enable courts to revoke orders or to amend the requirements attached to them.

Clauses 546 and 547 enable courts to extend the period of orders.

Clauses 548 to 550 provide for the powers of the courts if a person who is subject to a community sentence is convicted of a further offence during the period of the sentence.

Clauses 551 to 557 make supplementary provisions about community sentences.

Clause 551 sets out some general restrictions on imposing community sentences

Clause 552 says that a relevant order is not to be made while appeal against conviction is pending

Clause 553 provides for the issue of a summons or warrant under certain sections.

Clause 554 enables the Governor, after consulting the CJC, to make regulations about community sentences.

Clause 555 regulates hearings by a Magistrates' Court or Summary Court about relevant orders.

Clause 556 enables the courts to review relevant orders.

Clause 557 says that the Summary Court can deal with cases directed to be dealt with by the Magistrate's Court if the Senior Magistrate is unavailable.

PART 26 - CUSTODIAL SENTENCES

Introduction

This Part makes general provisions about the imposing of custodial sentences, i.e. sentences of imprisonment on adults. Sentences of detention on young offenders are mostly dealt with in Part 33, although this Part applies to sentences of detention for some purposes. The Part deals with general principles, duration of sentence, consecutive sentences, suspended sentences, extended sentences and life sentences. It also deals with the release of prisoners. It replaces some of the provisions of Parts III and V of the Criminal Justice Ordinance. It reflects sentencing policy decisions previously made.

Principles of sentencing generally are set out in Part 23. Provisions about sentences other than custodial ones are in Part 27 relating to fines, Part 24 relating to discharges, and Part 25 relating to community sentences. Remission of sentence is provided for in section 29 of the Prison Ordinance and respite and reduction of sentence are provided for in section 71 of the Constitution.

The provisions of this Part are derived in part from the UK Powers of Criminal Courts (Sentencing) Act 2000 ('the Sentencing Act') and in part from the UK Criminal Justice Act 2003 ('the 2003 Act'), both as amended to October 2012. They also repeat some of the provisions of the Criminal Justice Ordinance which are still relevant or which are more appropriate than the UK provisions in the Falkland Islands context.

The Part does not include provision for intermittent custody or for compulsory or extended custodial sentences for dangerous offenders or for minimum sentences for firearms offences, as these are not considered appropriate in the Falkland Islands context. The Part does not include provision for additional days for disciplinary offences as in the UK Crime (Sentencing) Act 1997, as these are included in the Prison Regulations.

The Part retains 'old-style' suspended sentences under the UK Powers of Criminal Courts (Sentencing) Act 2000 rather than introducing the more complex 'custody minus' provisions of the Criminal Justice Act 2003. However, it does include supervision in conjunction with suspended sentences.

The Part includes provision for release on licence of prisoners, including life prisoners, as that is a requirement of the European Convention on Human Rights which binds the UK. It requires the Governor to consult the Advisory Committee on the Prerogative of Mercy before authorising release on licence, and to make rules governing release and recall. This power needs to be read in conjunction with section 71 of the Constitution and with provisions of the Prison Ordinance relating to remission of sentence.

The Part includes provision for extended sentences for persistent offenders – see clause 575.

For a discussion of custodial sentences, see Archbold 2013 Ed, paras.5-399 to 5-670.

There are no relevant UK Criminal Procedure Rules, but there are sentencing guidelines issued by the UK Sentencing Council – see the Explanatory Note to Part 23. These guidelines will be replaced by local guidelines in due course formulated by the Criminal Justice Council and approved by the Chief Justice.

Notes on clauses
Clauses 558 to 562 impose restrictions on the impositions of custodial sentences in various circumstances.

Clause 558 says that a court can only impose a discretionary custodial sentence if no other method of dealing with the offender is appropriate. A failure to agree to e.g. a community service order or a probation order would justify a custodial sentence. The court must state the reason and explain it to the offender.

Clause 559 says that a court must not sentence a first offender who is not legally represented to prison unless of the opinion that no other method of dealing with the person is appropriate. This and clause 558 are both derived from s.31 of the Criminal Justice Ordinance, but with modifications, as that section does not mention legal representation.

Clause 560 is based on s.32 of the Criminal Justice Ordinance and requires a pre- sentence report to be obtained and considered whenever the court contemplates a custodial sentence under section 559. It is similar to clause 493 which is based on s.61 of the Criminal Justice Ordinance. Both clauses find echoes in s.156 of the CJ Act 2003.

Clause 561 requires that if a custodial sentence is passed, it should be for the shortest period commensurate with the seriousness of the offence.

Clause 562 says that in the absence of a period specified in relation to an offence, the power to impose a sentence of imprisonment on conviction on indictment is limited to 2 years.

Clauses 563 and 564 provide for calculating the duration of a custodial sentence, including time spent on appeal. The commencement of a sentence generally is regulated by clause 487.

Under clause 563, time spent in custody or in police detention before conviction counts towards a sentence. Time in custody before a probation order or conditional discharge or suspended sentence which results in a custodial sentence does not count towards the sentence.

Under clause 564, time spent in custody pending an appeal counts towards a sentence unless the court directs otherwise.

Clauses 565 to 572 are based on, and expand, sections 45 to 50 of the Criminal Justice Ordinance. They empower the courts to continue the practice of imposing suspended sentences in appropriate cases. The 2003 Act introduced a system of conditions and supervisory powers which is not appropriate for the Falkland Islands. The more straightforward provisions of the Criminal Justice Ordinance are continued instead. They are based on the UK Powers of Criminal Courts (Sentencing) Act 2000 Chapters IV & V but adapted to the needs of the Falkland Islands. In particular, they include a power to partly suspend sentences which is not in the UK law.

Under clause 565 a court can suspend a sentence of not more than 2 years' imprisonment for a period of from one to 3 years. The court must explain the effect of the suspension, and it counts as a sentence of imprisonment for all purposes, except disqualification from office or loss of office or pension.

Clauses 566 and 567 provide for partly suspended sentences if a court passes a sentence of imprisonment for not less than 3 months and not more than 2 years. They are not based on UK precedent but derive from the second part of s.47 of the Criminal Justice Ordinance.
The 'appropriate officer' is defined in clause 2 to mean the Registrar or the Clerk of the court, as the case may be.

Clause 568 says what happens if the offender commits a further offence during the period of suspension of a sentence. The court can order the suspended sentence to take effect; substitute a lesser term; re-suspend the sentence for up to 2 years; or make no order with regard to the suspended sentence. The court must normally order the suspended sentence to take effect unless it would be unjust to do so.

Clause 569 specifies which court is to deal with the breach of a suspended sentence.

Clause 570 specifies the procedure if the court convicting a person of a further offence does not deal with a suspended sentence; a judge, the Senior Magistrate or a justice of the peace can issue a summons requiring the offender to appear at a specified time and place.

Clause 571 provides, as now, for a supervision order to be made on a person who is given a suspended sentence. The supervising officer is the probation officer (which is defined in clause 2). Clause 571(3) is new and provides that a suspended sentence supervision order can

impose similar requirements upon the offender as are available under a community sentence, including electronic monitoring.

Clause 572 says what happens if the person is in breach of a supervision order. In effect, the person is treated as having breached a community sentence and can be dealt with accordingly, as provided by sections 539 to 541 suitably modified.

Clause 573 states the principle that two or more custodial sentences imposed at the same time can be made to run concurrently or consecutively, and sets out some principles for deciding whether to impose concurrent or consecutive sentences. It also states that where a person is already imprisoned for an offence, a later sentence can be made to run consecutively.
[Note that under clause 178 the Summary Court has power to impose consecutive sentences to a total of 12 months, or, if for 2 or more offences, to a total of 24 months. The maximum sentence of detention on a person under 21 is 24 months under section 726].

Clause 574 says how partly suspended sentences are to be dealt with in the context of consecutive sentences.

Clauses 575 and 576 provide for the punishment of persistent offenders by the imposition of an extended sentence of imprisonment. This concept is no longer part of English law but is in sections 51 and 52 of the Criminal Justice Ordinance so is incorporated in these clauses.

Clauses 577 to 579 enable the Supreme Court to recommend a minimum term of imprisonment when imposing a mandatory life sentence, by reference to a starting point. The clauses are based on Chapter 7 of Part 12 of the Criminal Justice Act 2003 but adapted to conform to recent case law in the European Court of Human Rights.

These clauses provide that life prisoners can apply to the Advisory Board on the Prerogative of Mercy for release on licence, once the minimum tariff period has been served. Any recommendation made by a court under clause 577 would be one of the factors considered by the Board.

Clause 577 requires the court to determine a starting point. For a very serious offence the starting point is 40 years (but see policy issues below). For a less serious but still serious offence the starting point is 30 years. For other types of murder, the starting point is 15 years, unless the offender was under 18 in which case it is 12 years.

Clause 578 requires the court, having chosen a starting point, to take into account aggravating or mitigating factors in order to arrive at a recommended minimum term the offender must serve. Aggravating factors include the amount of planning, the vulnerability of the victim, the abuse of a position of trust, threats to other persons, and whether the victim was providing a public service. Mitigating factors include lack of premeditation, the fact that the offender was provoked (but not to the extent of reducing the charge to manslaughter under the Crimes Ordinance 2014), a belief that the killing was an act of mercy, and the age of the offender.

Clause 579 requires the court to state its reasons for deciding on the order made.

Clauses 580 to 584 are based on sections 90 to 94 of the Criminal Justice Ordinance. They provide for release on licence of prisoners after 1/3 of a sentence has been served, on application by the prisoner and at the discretion of the Governor. This is not the same as automatic remission after 2/3 of a sentence has been served, as provided by section 29 of the Prison Ordinance. Nor is it an exercise of the prerogative of mercy as provided for by section 71 of the Constitution. However, the Advisory Committee on the Prerogative of Mercy is given a role in the exercise of the Governor's functions under these sections. The clauses govern release on licence of young offenders, with any modifications made under clause 726(7) and (8).

Clause 585 specifies the terms of a warrant ordering imprisonment.

Clause 586 says that imprisonment must be served in prison in the Falkland Islands.
These 2 clauses are not in the Criminal Justice Ordinance or in UK law but were already in the Gibraltar and St Helena laws and could be useful. If a person is to serve imprisonment outside the Falkland Islands, e.g. in the UK, the Governor, after consulting the CJC, can so direct.

Clause 587 is based on s.96 of the Criminal Justice Ordinance and says that a person's release can be ordered even if the person is not in detention.

Clause 588 is based on s.97 of the Criminal Justice Ordinance and provides for warrants for the arrest of escaped prisoners.

Policy issues
Some policy issues have already been considered by consultees and their decisions are reflected in the Part. An outstanding issue relates to Clauses 577 to 579 which enable the Supreme Court to recommend a minimum term of imprisonment when imposing a mandatory life sentence, by reference to a starting point.

The clauses are based on Chapter 7 of Part 12 of the UK Criminal Justice Act 2003 but at present the minimum tariff of 40 years has been provided for in 577(2) in the light of the ECHR ruling in the case of Bamber which said that a whole life tariff was not Convention compliant. The UK Court of Appeal has now ruled in the case of McLoughlin that a whole life term is Convention compliant and can be imposed. It is for consideration whether the Falkland Islands want to follow the UK on this and amend this provision so that a whole life tariff is the starting point.

PART 27 – FINES AND RECOGNISANCES

Introduction
This Part regulates the imposition of fines as sentences for criminal offences, and the enforcement of the payment of fines and of recognisances taken for bail or binding over purposes. The provisions are derived partly from the Criminal Justice Ordinance, but with additional material from the UK Powers of Criminal Courts (Sentencing) Act 2000 in relation to the Supreme Court, and of the UK Magistrates' Courts Act 1980 in relation to the Magistrates' Court.

The UK Acts were amended by the Criminal Justice Act 2003 and the Legal Aid, Sentencing & Punishment of Offenders Act 2012, and the resulting UK scheme is very complex. This Part seeks to retain useful features of the UK legislative scheme, duly adapted for the Falkland Islands. In doing so it replaces sections 11 to 16 and Schedules 6 and 7 of the Criminal Justice Ordinance.

The Part includes provisions about enforcement of unpaid fines and recognisances. It also includes enforcement of a recognisance to keep the peace as provided under 'Common assault' in the Crimes Ordinance 2014 (but not called 'forfeiture').

The Part does not include provisions about fines on youths and young persons, or orders that can be made against parents and guardians, as these provisions are in Part 33.

The Part gives the power to fine in addition to sentencing to imprisonment to the MC and Summary Court as well as to the Supreme Court. The Part includes a provision of the AOJO which limits the power of the Summary Court to fine by reference to the age of the offender. It also enables the Governor, after consulting the Criminal Justice Council, to amend the figures.

The Part enables the Governor, after consulting the Criminal Justice Council, to vary the level of all fines prescribed for offences (see clause 591.)

The Part gives all courts similar powers relating to enforcement of fines and recognisance, including the power to make financial circumstances orders. For a power to search a parent or guardian, see clause 734.

The sums in the Schedules are based on current values at the time of enactment of the Ordinance. A power to amend all Schedules, including Schedules 8 and 9, is included in Part 36.

A commentary on some of the relevant provisions is at Archbold 2013 Ed. paras. 5-676 to 5-689 (fines) and at paras.5 -1296, 1297 (recognisances). See also Archbold 3-215 for estreat of recognisances under the Civil Procedure Rules.

Notes on clauses

Clause 589 is a general statement of the power to fine a person who is convicted of any offence. It is derived from s.13 of the Criminal Justice Ordinance which was adapted from s.163 of the UK Criminal Justice Act 2003. It provides that the Supreme Court can impose a fine up to any limit prescribed, instead of or in addition to imprisonment, but that the lower courts can only do so if the penalty provision so provides (as it usually does, in fact). The Summary Court's power to fine adults is limited to £5,000 but this figure can be increased by the Governor. The power to fine a youth is governed by section 731.

Clause 590 is similar to Criminal Justice Ordinance s.11(1) to (4) and creates a standard scale of fines in Part A of Schedule 8. The Criminal Justice Ordinance provision adopted a similar scheme in the UK Criminal Justice Act 1982.

The clause explains the terms ‘maximum level on the standard scale’ or ‘level [xx] on the standard scale.’ There are at present 12 levels, ranging from £200 to £625,000. They can be varied under section 591.

The clause does not mention English and Falkland Islands enactments separately as in Criminal Justice Ordinance s.11, as they are all covered by the term ‘enactment’ as defined in the Interpretation & General Clauses Ordinance.

Clause 591 is based on Criminal Justice Ordinance s.12. It enables the Governor, after consulting the Criminal Justice Council, by order to amend any provision of Falkland Islands laws that specifies a penalty by way of a level on the standard scale of fines, by altering the specified level. This cannot be retrospective, however.

Clause 592 says that fines must reflect the seriousness of the offences and requires courts to take into account the financial circumstances of the offender.

Clause 593 enables a court to make a financial circumstances order on an individual offender. The order must be complied with by the offender.

Clause 594 enables a court to remit the whole or part of a fine it has imposed if it subsequently discovers that the offender’s financial circumstances are different.

Clause 596 enables a court to allow time for payment of a fine, to permit payment by instalments, or to reduce or remit a recognisance.

Clauses 597 to 604 provide for the enforcement of fines and recognisances. It can be done by way of an attachment of earnings order, a warrant for distress or imprisonment if necessary. The periods of imprisonment in default of payment are set out in Schedule 9.

Clause 597 on attachment of earnings is a simplified version of the scheme provided for in Schedule 5 of the UK Courts Act 2003 and the Collection of Fines (Final Scheme) Order 2006.

Clause 605 says how moneys in the hands of the court are to be disposed of, and that fines and forfeited recognisances are to be paid into the Consolidated Fund.

Clause 606 is based on s.85 of the Legal Aid, Sentencing & Punishment of Offenders Act 2012. It says that if the maximum fine for an offence is £10,000 or more, a fine of any amount can be imposed. Also, that power to create an offence carrying a maximum fine of £10,000 or more confers power to create offences carrying fines of an unlimited amount. The rationale is that once a maximum fine is in the £000’s, the court should have the power to impose whatever seems appropriate, particularly if a corporation is involved in e.g. an environmental offence. (The UK Act specifies £5,000 but that is not a level in Falkland Islands).

Schedule 8 is the standard scale of fines. It is based on the Criminal Justice (Revised Standard Scale of Fines) Order 2011.

Schedule 9 is the table of imprisonment that can be imposed for failure to pay a fine or recognisance. Additional rules about calculating terms of imprisonment are set out in clause 599.

Policy issues

- Is the level of penalty in clause 593 appropriate?
- Is the removal of a limit on fines wanted, as in clause 606?

PART 28 – COMPENSATION, RESTITUTION, DEPRIVATION, ETC.

Introduction

This Part deals with a number of ancillary issues that arise at the end of a criminal case. They are - the award of compensation to victims of crime, restitution orders, return of property and deprivation of property. There is also a provision about rewards for those who are killed or injured while assisting in the prevention of crime. There is no provision for rewarding informants etc. Nor is there provision for compensating victims of crime out of public funds.

There is a separate Part about the award of costs in criminal cases – see Part 30. And there is separate legislation about the confiscation of the proceeds of crime – see the Proceeds of Crime Ordinance. There are various powers in the Crimes Ordinance 2014 to forfeit property used in connection with the commission of crime. Reparation is dealt with in Part 33 if the offence is by a youth. Reparation can also be an aspect of a community sentence under Part 25 or of a conditional caution under Part 8.

The Part replaces sections 15 and 53 to 56 of the Criminal Justice Ordinance and incorporates some of the provisions of the UK Powers of Criminal Courts (Sentencing) Act 2000 as amended by the Criminal Justice Act 2003 and the Legal Aid, Sentencing & Punishment of Offenders Act 2012, among others. (See in particular clause 608(2) which imposes a duty to consider a compensation order when sentencing).

The Part does not include s.57 of the Criminal Justice Ordinance which empowers a court to impose imprisonment for failure to pay under a compensation order, as it is no longer law in the UK. Section 15 of the Criminal Justice Ordinance relates also to costs and is reflected in Part 30.

The Part does include a right of appeal against a compensation order, up to the Judicial Committee, and a right of appeal against the other types of order, as in the UK law. This is in line with the right of appeal against a costs order in Part 30.

The Part includes provisions about ‘barring’ of persons convicted of certain offences from working with children or vulnerable adults. They are based on the Safeguarding of Children Act 2006 but simplified and adapted to the circumstances of the Falkland Islands – see clauses 619 and 620.

There is a commentary on compensation in Archbold 2013 Ed. paras.5-691 – 710. Restitution orders are dealt with at paras.5-711 to 715 and Deprivation orders at paras.5-726 to 5-735. See also CPR Rules 42.7 for the victim’s application for restitution, which will be replaced by local criminal procedure rules in due course.

Notes on clauses

Clause 607 enables a court to recommend to the Legislative Assembly the award of compensation to someone who is injured or killed in trying to arrest a person subsequently charged with an offence. The court can also recommend an award if someone helps in the arrest of a person who is then convicted by the court.

This power partially fills the gap created by the absence of a Criminal Injuries Compensation scheme in the Falkland Islands. There appear to be no equivalent provisions in UK criminal law. The clause is based on a provision in the Gibraltar CPE Act which was also adopted in the St Helena CPE Bill. This formulation is preferable to that in s.9 of the Criminal Justice Ordinance which gives the power directly to the Legislative Assembly, uses the term 'moral or legal duty' and enables the award to be varied even after being paid.

Clauses 608 to 613 empower a court to order a convicted person to pay compensation for any personal injury, loss or damage resulting from the offence or any offence taken into consideration. A court can also order the person to make payments for funeral expenses or bereavement in respect of a death resulting from the offence, other than a death arising out of a traffic accident. There are provisions for appeal and review and for the relationship between such orders and civil claims for damages.

The reference to the UK Fatal Accidents Act in clause 609(6) means that any increase in the UK becomes part of Falkland Islands law automatically.

Clause 609(7) takes account of the fact that offences that have not been proved can be taken into account in a sentence, as provided by clause 494(1).

Clause 610(2) limits the compensation that can be awarded by the Summary Court to £5,000, which is the current figure in the Magistrates' Courts in the UK.

Clause 611 provides for appeals against compensation orders to the Court of Appeal or the Supreme Court, as the case may be. This adds to the list in s.4 of the Court of Appeal Ordinance. (There is no mention of compensation in the CAO except s.87 re abatement).

Clause 614 provides for enforcement of compensation orders in the same way as fines.
The provisions of Part 27 on enforcement of fines will then apply, including the power to direct payment by instalments and to distrain on goods.

Clause 615 empowers a court to order a person in possession or control of stolen goods to restore them to the person entitled to recover them. If the goods have been sold, the court can order the value of the stolen goods to be paid out of money of the person convicted taken out of his possession on his arrest, to the person who would be entitled to recover them.

Sub-clause (10) says that the powers in sub-clauses (2)(c) and (4) are exercisable on the court's own initiative or on the application of any person appearing to the court to be interested in the property concerned.

Clause 616 provides for appeals in respect of restitution orders at every level of the appellate system.

Clause 617 empowers a court to order the deprivation of property taken from a convicted person or which is in the person's possession or control if it has been used for the purpose of committing, or facilitating the commission of, any offence or was intended by the person to be used for that purpose. The word 'deprivation' is now used instead of 'forfeiture' which has other connotations, though it still appears in some Falkland Islands laws. The clause is similar to section 59 of the Criminal Justice Ordinance, but that limits the offence to one punishable by imprisonment for 2 years, whereas the UK law now extends to any offence. A vehicle is included in the scope of property that can be confiscated under this clause.

Clause 618 is based on s.60 of the Criminal Justice Ordinance and empowers a court to disqualify from driving any person convicted of an offence in which a motor vehicle was used to commit the offence, whether driven by the convicted person or anyone else (to cover an offence of assisting etc).

Clauses 619 and 620 provide that a person who is convicted of certain offences is automatically barred for life from working with youths or vulnerable adults. Persons convicted of other offences involving children or vulnerable adults may be barred by order of the court. The definition of a vulnerable adult is the same as in section 79 in the Crimes Ordinance 2014. The automatic disqualification offences include the offences listed in Schedule 3 to the Crimes Ordinance 2014, and offences ancillary to those offences. The discretionary disqualification offences involve children aged under 16 or vulnerable adults.

Clause 621 provides for the return to a defendant of property taken from the defendant on arrest, whether or not the person is convicted, if it is appropriate to do so. There is a saving for title to stolen property. Section 51 of the Police Ordinance 2000 incorporates the UK Police (Property) Act 1897.

Clause 622 enables a court to make an order for disposal of property regarding which an offence has been committed. It can order the proceeds of forfeited property to be paid to the victim of the offence instead of making a compensation order or can order forfeited items to be sold or disposed of and the proceeds applied as if they were a fine.

Clause 623 is a general statement, similar to that in clause 653(6), that orders must not be enforced while an appeal is pending.

Clause 624 precludes enforcement of orders under this Part until after the time for appealing has expired or the defendant has indicated there will be no appeal.

Clause 625 gives the Governor, after consulting the Criminal Justice Council, power to vary any monetary limits stated in the Part.

Clause 626 contains saving provisions in respect of related powers.

PART 29 – REHABILITATION OF OFFENDERS

Introduction

This Part contains provisions about rehabilitation of offenders and rules about spent convictions. It replaces similar provisions in Part VIII of the Criminal Justice Ordinance and in the Rehabilitation of Offenders (Exceptions) Order. The provisions are based on the UK Rehabilitation of Offenders Act 1974 as amended, on Exceptions Orders made under the 1974 Act, and on a Practice Direction issued by the Chief Justice of England & Wales. The Part incorporates amendments to the 1974 Act made by the Protection of Freedoms Act 2012 (POFA) and the Legal Aid, Sentencing & Punishment of Offenders Act 2012 (LASPOA).

The provisions are intended to promote the rehabilitation of persons who have been convicted of crime. The Part provides that after a certain period, and subject to certain conditions, a conviction or caution should be regarded as spent for all purposes and the person should be treated as rehabilitated in respect of the conviction or caution.

The Part is structured differently from Part VIII of the Criminal Justice Ordinance and the UK Act in that the rehabilitation periods are set out in a schedule to the Ordinance – Schedule 10 – rather than as a table in the text. The exceptions are also set out in a schedule – Schedule 11 - rather than in subsidiary legislation. Schedule 11 incorporates local exceptions made by the Falkland Islands Rehabilitation of Offenders (Exceptions) Order 1989. Under Part 36, the Schedules can be amended by the Governor by order after consulting the Criminal Justice Council.

Changes to the UK rehabilitation periods proposed by the LASPOA are incorporated, and came into force on 10th March 2014 in the UK.

Cautions are dealt with in Part 8, which also deals with spent cautions. However, provisions about spent cautions and spent convictions are included in clause 637 and in clause 638, which deals with character reports prepared for the court. A spent conviction or caution cannot be disclosed in a character report unless it concerns a sexual offence or offence of violence or an offence involving children.

The Part includes the provisions about disregarding convictions and cautions in respect of homosexual offences contained in the UK Protection of Freedoms Act 2012 – see clauses 639 to 645.

There is a commentary at Archbold 2013 Ed. paras. 13-120 to 13-137.

Notes on clauses

Clause 627 sets out the basic principle, but attaches a number of conditions. They include the person not being sentenced to imprisonment for life or for more than 48 months or to detention during Her Majesty's pleasure (clause 629). This means that only sentences of up to 4 years can be treated as spent under this Part.

A subsequent conviction does not prevent the original conviction being the subject of rehabilitation. Nor does non-payment of a fine or failure to comply with the conditions of a sentence mean the person cannot become rehabilitated (Clause 630(4)).

The reference in 627(8) to probation orders will become historic on the commencement of Part 25 which replaces such orders with community sentences; see also clause 630(5) on this point.

Clause 628 sets out the consequences of a conviction being spent. No evidence is admissible in court to prove that the person has committed or been charged with or prosecuted for or convicted for the offence and the person must not be asked, and, if asked, is not required to answer, any question relating to his or her past which cannot be answered without acknowledging or referring to the spent conviction. There is an exception in relation to evidence of bad character under Part 19 – see clause 372(2).

The rule also applies to non-court proceedings, so that, for example, a prospective employer cannot ask about such convictions. A question about past convictions is to be treated as not relating to spent convictions, and the answer may be framed accordingly. The person questioned must not be prejudiced because of failure to acknowledge or disclose a spent conviction (clause 628(2)).

Clause 629 lists the excepted sentences.

Clause 630 prescribes the rehabilitation periods i.e. the time from the conviction which must pass before the conviction can be treated as spent. The periods are set out in Schedule 10 which lists in tabular form provisions that are set out at length in the UK Act. For example, the rehabilitation period for a sentence of between 6 and 30 months is 10 years for an adult and 5 years for a youth (at the date of conviction). The Schedule includes probation orders imposed under repealed Part III of the Criminal Justice Ordinance before commencement of this Ordinance.

Clause 631 contains detailed provisions on the calculation of the rehabilitation period, including the effect of a further conviction during the period. Generally, the period in relation to the first conviction is extended to the end of the period in relation to the later conviction. The clause also deals with the effect of a breach of a conditional discharge or probation order made under repealed Part III of the Criminal Justice Ordinance.

Clause 632 is a saving clause for the grant of a free pardon, the quashing of a conviction or sentence or commutation of a sentence, enforcement of a fine etc., or any disqualification, disability, prohibition or other penalty the period of which extends beyond the rehabilitation period. The Governor after consulting the Criminal Justice Council can exclude the application of the rehabilitation principle in appropriate cases.

Clause 633 provides for exceptions to the right to rehabilitation in various different respects. They are based on the UK Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 as amended. See also Schedule 11.

Clause 634 contains various definitions etc. for the purposes of clause 633.

Clause 635 regulates the relationship between rehabilitation and defamation actions. An allegation that a person was convicted is defamatory if the allegation is made after the conviction becomes spent. However, a report of judicial proceedings contained in a series of law reports, or published for educational, scientific or professional purposes, or given in the course of a lecture, class or discussion given or held for any of those purposes, is not defamatory even if it mentions a spent conviction.

Clause 636 makes it an offence for a person who, in the course of his or her official duties, has custody of or access to any official record or information about spent convictions to disclose the information to another person, except in the course of those duties. The Governor, after consulting the Criminal Justice Council, can create exceptions to this rule.

Clause 637 says that courts and those who appear in them should not refer to a spent conviction if it can reasonably be avoided; that reference should not be made in open court to a spent conviction without the authority of the presiding officer; and that a person when passing sentence should not refer to spent convictions unless it is necessary to explain the sentence. No offence is created for a breach of these rules, which are derived from the UK Practice Direction (Criminal Proceedings: Consolidation) 2002 para.1.6. (There is no general duty on the media under this Part not to disclose spent convictions, but if the rules in clause 637 are observed, the media will not be aware of spent convictions so will not report them. If they do, they presumably run the risk of an action for defamation).

Clause 638 is included to ensure compliance with Article 8 of the ECHR. It provides that convictions and cautions are to be 'filtered' i.e. not included in disclosure reports once they are spent. They are 'protected' convictions and cautions. Offences which do not fall in that category are listed in sub-clause (7). They include most sexual offences and offences of violence as listed in Schedules 3 and 4 to the Crimes Ordinance 2014 and other offences relating to the care of children. The Governor is given power to add to the list, after consulting the Criminal Justice Council.

Clauses 639 to 645 enable the Governor to direct that convictions and cautions for buggery or gross indecency between males under the Sexual Offences Act 1956 (which was law in the Falkland Islands until replaced by provisions of the Sexual Offences Act 2003) are to be disregarded for records purposes. This is because those acts are no longer offences under UK or Falkland Islands law and will not be offences under the Crimes Ordinance 2014. The Governor in Council is required to consult the CJC in the performance of these functions and provision is made for an advisory panel and for appeals.

Clause 639 states the basic principle.

Clause 640 says how applications for a decision to disregard are made and processed.

Clause 641 states the effect on police records of a decision to disregard.

Clause 642 states the effect of disregard for disclosure and other purposes

Clause 643 contains supplementary provisions.

Clause 644 provides a right of appeal to the Supreme Court against the Governor's decision.

Clause 645 enables the Governor to appoint advisors before making a decision.

See also sections 311 and 312 of the Crimes Ordinance 2014 on this topic.

Schedule 10 sets out the rehabilitation periods i.e. the time from the conviction which must pass before the conviction can be treated as spent.

Schedule 11 contains more detailed exceptions to the right to rehabilitation. It lists excepted professions, offices, occupations, licences, proceedings and decisions.

The Governor is empowered under Part 36 to amend the Schedules, after consulting the Criminal Justice Council.

CHAPTER 9 – COSTS

PART 30 – COSTS IN CRIMINAL CASES

Introduction

This Part deals with the award of costs in criminal proceedings. It enables courts to make an award of costs out of central funds (i.e. the Consolidated Fund) or out of legal aid funds to private prosecutors, defendants and successful appellants and respondents. It regularises the present position that costs are routinely awarded against defendants on application by the prosecution if a defendant pleads guilty or is found guilty after trial.

There is at present little legislative provision in the Falkland Islands on the award of costs in criminal proceedings. The Criminal Justice Ordinance only mentions costs in passing and in relation to enforcement, and the AOJO says nothing about costs in criminal proceedings. The Court of Appeal Rules have provisions about the assessment of costs in appeals to the Court of Appeal which are incorporated by reference in 655(3).

This Part is derived mainly from current statute law in England & Wales contained in sections 16 to 21 of the UK Prosecution of Offences Act 1985 as amended. Clause 647 is based on the Gibraltar CPE Act and the St Helena CPE Bill and is a simplified statement of the UK provisions.

The amendments made by the Legal Aid, Sentencing & Punishment of Offences Act 2012 are not included as they deal mainly with public funding of legal aid. Section 16A of the POO Act 1985 as inserted by LASPOA has therefore not been included. Legal aid in the Falkland Islands is administered under a non-statutory scheme; it is mentioned in the Part, but not put on a statutory footing.

In this Part, the UK law has been modified and adapted as appropriate. In particular it gives courts substantive powers to make certain kinds of orders, rather than merely giving a power to make rules – see clauses 648 to 650.

Under this Part, no costs may be ordered against legal aid funds.

There is no Falkland Islands enactment governing appeals to the Judicial Committee of the Privy Council, but this Part would extend to an award of costs by the Judicial Committee – see clause 647(1)(d) and (e).

Much of the UK law on criminal costs is contained in Practice Directions and in the CP Rules and in case law. There is an extensive commentary on the subject in Archbold 2013 Ed. at paras.6-1 to 6-171.

Notes on clauses

Clause 646 defines terms that are not defined elsewhere in the CPE Bill or in the Interpretation & General Clauses Ordinance. They include 'central funds' which are the Consolidated Fund of the Falkland Islands, and 'witness' which is any person attending to give evidence, except as to character.

Clause 647 lists the circumstances in which costs can be awarded in criminal cases, including appeals. It says who pays the costs, states some principles and sets some limits.
Sub-clause (6) provides that costs against a youth must not exceed the fine imposed, or the limit prescribed by section 731 i.e. £250 for a child, £1,000 for a youth or the maximum fine for the offence in the Supreme Court.

Clause 648 provides for costs orders in relation to two special sets of circumstances.

> Sub-clauses (1) and (2) enable a court to make a costs order against a party in criminal proceedings who causes another to incur costs as a result of an unnecessary or improper act or omission. (In the UK, this power depends on the making of criminal procedure rules, but this clause gives a substantive power).
>
> Sub-clause (3) enables a court to order the payment of the expenses of witnesses who are called by the court, rather than by a party, of medical practitioners who make expert reports to the court, and of other persons who are appointed to assist the court in the course of proceedings.

Clause 649 enables a court to disallow the 'wasted costs' of a legal practitioner, or even to make an order against a legal practitioner to pay such costs. Wasted costs arise as a result of an improper, unreasonable, or negligent act or omission on the part of the legal practitioner, or any employee. (In the UK, this power depends on the making of criminal procedure rules, but this clause gives a substantive power).

Clause 650 enables a court to award costs in criminal proceedings against a person who is not a party to the proceedings (a 'third party') if there has been serious misconduct (whether or not

constituting a contempt of court) by the person. (In the UK, this power depends on the making of criminal procedure rules, but this clause gives a substantive power, except as to types of misconduct).

Clause 651 provides for appeals to the Supreme Court on costs. An appeal may not be brought if the costs in the lower court were less than £50, and can only be brought with leave of the trial court or the appeal court. There is no appeal against a refusal of costs or from a costs order by the Supreme Court. However, the Supreme Court or Court of Appeal can vary a costs order made in conjunction with a conviction or sentence that is reversed or varied on appeal.

Clause 652 says how costs are to be assessed, both in terms of their amount, and the mechanism. Costs should compensate the person to whom they are awarded for all expenses properly incurred in the conduct of the prosecution, defence, appeal or application, including preliminary or incidental proceedings. The amount should be stated in the order or left to be assessed.

Clause 653 is about enforcement of costs orders. The court may allow time for the payment of the sum due or direct payment of it by instalments. A costs order against a defendant is enforceable as if it were a fine imposed on a conviction. An order against any other party or by a legal practitioner is enforceable as a civil debt.

Clause 654 enables criminal procedure rules to be made about costs in criminal proceedings, including prescribing scales of costs and expenses. The rules can also provide for reviews of costs orders.

Clause 655(1) saves other provisions about criminal costs, including payment out of the legal aid fund. It also saves awards of costs out of assets that might be made under other legislation, such as money-laundering and drugs trafficking. Sub-clause (2) is a saving for any compensation payable by a defendant.

CHAPTER 10 – APPEALS

PART 31 – APPEALS TO AND FROM THE SUPREME COURT

Introduction

This Part provides for appeals in criminal cases from the Magistrate's Court or Summary Court to the Supreme Court; for an appeal from the lower courts by way of case stated to the Supreme Court; and for the revision of cases in the lower courts by a judge of the Supreme Court. The powers and procedure in relation to appeals are similar in many respects to the powers and procedure under the UK Magistrates' Court Act 1980 and the Senior Courts Act 1981 in appeals from a magistrates' court to the Crown Court. The provisions in relation to appeals by case stated are similar to the provisions for cases to be stated to the High Court in England. There is no direct parallel in UK law to the power of revision but it is found in the criminal procedure laws of Gibraltar and St Helena and is provided for in the Administration of Justice Ordinance.

Court of Appeal Ordinance

The right of appeal from the Supreme Court in its appellate capacity, as well as from convictions on indictment in the Supreme Court, is governed by the Court of Appeal Ordinance and there is no need to reproduce it in this Bill. That Ordinance goes into some detail on the procedure, and

there are Court of Appeal Rules. Section 48(2) of the AOJO says that the practice and procedure of the Supreme Court on appeals is to be similar to that of the Court of Appeal in England. Now that there are an Ordinance and Rules governing the practice and procedure of the Falkland Islands Court of Appeal it seems more appropriate to refer to them, and Clause 659 does so in relation to documents and exhibits. The Part does not seek to adapt the CA Rules to the Supreme Court in its appellate capacity, as new rules will in due course be made by the Chief Justice after consulting the Criminal Justice Council.

The Court of Appeal Ordinance omits some provisions that are in this Part, such as a general power to enlarge time limits and a power to correct errors and omissions. It also omits the provisions about the effect of death on appeals contained in Clause 676; the CA Rules simply say an appeal abates on death of the appellant. It would be possible to make this Part and the CA Ordinance more parallel if desired i.e. add more provisions to the CA Ordinance, and use some of the Court of Appeal provisions in place of ones in this Part, in particular those relating to mental disorder and special verdicts etc.. At an appropriate stage (possibly as consequential amendments in this Bill) some minor amendments to the CA Ordinance should also be made e.g. to update references to the Constitution etc.

Administration of Justice Ordinance

This Part replaces some sections of the Administration of Justice Ordinance which deal with appeals from the Magistrates' Court and the Summary Court to the Supreme Court – see sections 19, 20, 21, 31, 48 and 51. Section 31 of the Administration of Justice Ordinance says that provisions on appeal that apply to the Summary Court also apply to the Magistrate's Court so this Part is expressed to apply to both courts.

The Part updates the language of the Ordinance, and also incorporates some provisions from the UK Magistrates' Courts Act 1980, Senior Courts Act 1981 and Criminal Appeal Act 1968. It incorporates as substantive clauses some provisions of the Criminal Procedure Rules 2012. Some of the clauses are based on the existing Gibraltar and St Helena criminal procedure legislation which accurately reflects the practice in the Falkland Islands.

Prosecution appeals

Under section 4(1)(g) of the Court of Appeal Ordinance the prosecution can appeal to the Court of Appeal against a decision of the Supreme Court on appeal, but not against a ruling in a trial on indictment – unless by judicial review. There is however a right of appeal for both parties against orders and rulings in preliminary hearings – see clause 250 in Part 15.

Clause 670 therefore gives the prosecution a right to appeal against a ruling of the Supreme Court including a terminating ruling (e.g. a ruling of No Case to Answer) which does not exist in Falkland Islands law at present. The clause is based on the UK Criminal Justice Act 2003 ss.58 to 61 suitably adapted.

The right of the prosecution to apply for a review of a sentence is dealt with in Part 32 on retrials and references. The prosecution right to apply for a retrial is also in Part 32. It will supplement section 14 of the Court of Appeal Ordinance which enables a court to order a retrial on the

application of the defence on conviction in the Supreme Court or from a decision of the Supreme Court in its appellate capacity.

Clause 671 similarly gives the prosecution a limited right to appeal against a ruling of the Magistrates' Court which does not exist in Falkland Islands law at present. This has not been extended to the Summary Court because the provisions in the UK only apply to the UK Crown Court; and the Summary Court is unlikely to be dealing with complex matters likely to lead to a terminating ruling on a serious case (as this is a criteria for allocating the case to the Magistrate's Court in the first instance).

The clause also provides for a prosecution appeal against an unduly lenient sentence of the Magistrate's Court in respect of offences where the maximum penalty is 10 years or more. This limitation (and the omission of the power in respect of Summary Court cases) has been included in order to restrict the power of referral to only the most serious offences and is analogous to the restrictions of the power in the UK legislation under sections 35 and 36 Criminal Justice Act 1988, where the majority of the offences eligible to be referred carry a maximum sentence of at least ten years. Thus the provision ensures that the provision is used only sparingly and in the most serious of cases. The reference can only be made by or with the consent of the Attorney General.

Other powers

There is a right of appeal from decisions of the Supreme Court in its appellate capacity in the Court of Appeal Ordinance – see section 4(1)(g). The Part does however include a saving for further appeals at clause 679 as a reminder of that power.

The Part retains the existing system of appeals by way of case stated for the opinion of the Supreme Court, although the system arguably adds little to the appellate powers of the Supreme Court. **(**In the CA Ordinance there is also a right of appeal by case stated from the Supreme Court in its appellate capacity).

The Part also retains the power of a Supreme Court judge to revise decisions of the Magistrates' Court or Summary Court. This power is unique to Overseas Territories, although it has similarities to the judicial review process. However, as that can power can be initiated by the parties; there is a saving for it in clause 683.

The Part does not include a requirement for a recognisance to prosecute an appeal without delay as in section.114 of the UK Magistrates' Courts Act 1980.

Appeals to the Privy Council will continue to be governed by the UK Judicial Committee Act 1915 and rules made under it.

Transitional provisions in Part 36 will deal with appeals after commencement of the Ordinance against convictions or sentences before commencement.

Bail on appeal is dealt with in Part 9, and also by the CA Ordinance as regards bail by the Court of Appeal. This Part therefore does not say anything about bail on appeal.

Commentary

See Archbold (Criminal Pleading etc.) 2013 Ed. Chapter 7 for appeals generally, including appeals to the Court of Appeal. In particular paras.7-2 to 7-19 for the case stated procedure. The rest of Archbold is about appeals to the Court of Appeal. For appeals to the Crown Court, as in this Part, see Archbold: Magistrates' Courts Criminal Practice 2013 Part 11, or Stone's Justices Manual. See CPR Rule 63 for appeals to the Crown Court and CPR Rule 64 for appeals to the High Court by case stated.

Notes on clauses

Clause 656 describes the scope of the right to appeal from the Magistrates' Court or Summary Court to the Supreme Court against conviction or sentence.

Clause 657 says how and when a notice of appeal must be filed.

Clause 658 provides for the abandonment of appeal before it has begun.

Clause 659 sets out some of the duties of the Registrar of the Supreme Court in relation to an appeal to that court.

Clause 660 enables the Chief Justice to dismiss an appeal without a hearing if satisfied that it is frivolous or vexatious. There is an appeal, with leave, from such a decision.

Clause 661 prescribes some aspects of the procedure at an appeal hearing and refers to the Court of Appeal Rules for other aspects. An appellant is entitled to be present at every stage of an appeal, including an appeal on a point of law or an appeal conducted by live link. Any stage of an appeal can be conducted outside the Falkland Islands if the conditions in clause 183 are met (i.e. parties have an opportunity to make representations etc.).

Clause 662 says what the Supreme Court can do on hearing an appeal.

Clause 663 says how the Supreme Court should make a decision on an appeal against conviction.

Clause 664 makes additional provision about appeals against sentence, based on provisions in the CA Ordinance.

Clause 665 says that the Magistrates' Court or Summary Court must be notified of the result of an appeal.

Clause 666 says how decisions on an appeal are to be enforced i.e. as if they were the decision of the lower court.

Clause 667 confers a right of appeal in mental disorder cases. If the appeal is against a finding of unfitness to be tried the provisions of Part 34 on mentally disordered defendants will apply. If the appeal is against a hospital order the person has the same right of appeal as against conviction. See also Part 34 for appeals to the Court of Appeal on findings of unfitness to be tried and for appeals on other orders.

Clause 668 provides for appeals against a finding of a lower court that a person was not guilty by reason of mental disorder. These 2 clauses are different from the provisions in the CA Ordinance on insanity cases, but have the same overall effect.

Clause 669 provides for appeals in cases concerning youths, in particular against fines imposed on parents and other ancillary decisions concerning youths.

Clause 670 provides for a limited right of appeal by the prosecution against rulings, including a finding of no case to answer, given in the Supreme Court.

Clause 671 provides for a similar right in respect of rulings in the Magistrate's Court and against over-lenient sentences imposed by that court.

Clauses 672 to 674 govern the procedure for an appeal by way of a statement of a case by the Magistrate's Court or Summary Court.

Clause 673 says that the Supreme Court can send the case back for amendment.

Clause 674 says how the question is to be determined and how the decision is enforced.

Clause 675 enables the Supreme Court to enlarge the time for the doing of anything required by the Part.

Clause 676 enables the Supreme Court to correct errors or omissions in the records of the lower courts.

Clause 677 deals with the effect of death on an appeal to the Supreme Court. The previous rule – that an appeal abates on death – is replaced by a right of a family member or similar person to apply to prosecute the appeal, in order to clear the name of the deceased.

Clauses 678 makes similar provision in respect of appeals from the Supreme Court, as there is no equivalent provision at present in the Court of Appeal Ordinance. Both clauses are based on provisions of the UK Criminal Appeals Act 1968.

Clause 679 is derived from the Court of Appeal procedure and provides that any order by the lower court for restitution of property is stayed pending an appeal.

Clause 680 also derives from the Court of Appeal procedure. It enables the Supreme Court to obtain further evidence in order to be able to decide an appeal.

Clause 681 is a saving for appeals from the Supreme Court to the Court of Appeal, which are governed by the Court of Appeal Ordinance.

Clauses 682 to 685 empower a judge of the Supreme Court to call for the records of a lower court and to revise its decisions in certain circumstances.

Clause 680(1) defines a judge in a manner consistent with sections 86 and 88 of the Constitution which designate the Chief Justice or any acting judge as the sole judge of the Supreme Court. Revision can take place outside the Falkland Islands.

Clause 681 sets out the powers of a judge on a revision, including powers as on an appeal and power to alter or reverse an order.

Clause 682 is a saving for the right to apply for judicial review and the making of an order or granting of a declaration or injunction in respect of the proceedings of the lower courts.

PART 32 – RETRIALS, REFERENCES, ETC.

Introduction

This Part introduces some new procedures into the criminal law of the Falkland Islands which allow courts to order retrials after an acquittal. They are derived from existing English practice and therefore apply as part of Falkland Islands law, but are not set out in a local statute.

One procedure (clauses 686 to 703) enables the Court of Appeal to order a retrial on the application of the prosecution if a person has been acquitted on indictment but there is new and compelling evidence which in the interests of justice should be put before a jury. It is based on provisions in the UK Criminal Justice Act 2003.

Another procedure (clauses 704 to 707) enables the Supreme Court on the application of the Attorney General to order a retrial if a person has been acquitted on a trial in any court and the acquittal might have been tainted by improper conduct in relation to witnesses or the jury ('jury-tampering'). It is based on provisions in the UK Criminal Procedure & Investigations Act 1996.

The Part also includes some other new provisions (clauses 708 to 712) that enable the Attorney General to refer a sentence to the Court of Appeal for review and to ask the Court of Appeal for an opinion on a point of law after an acquittal in the Supreme Court. These are based on provisions of the UK Criminal Justice Acts 1972 and 1988.

Finally, the Part reproduces in clauses 713 to 718 the provisions of the Criminal Justice (Amendment) (Miscarriages of Justice) Ordinance enabling the Governor to refer cases to the Court of Appeal or Supreme Court.

Power for a Supreme Court judge to call up the decisions of lower courts for revision is not in this Part, but is included in Part 31 – see clauses 682 to 685.

Retrial powers

The powers to order a retrial on new evidence or because of a tainted acquittal are justifiable departures from the principle that no-one should be tried twice for the same offence. They are intended to avoid people being wrongly acquitted of serious crimes only because the evidence was not available, whether because it was deliberately suppressed or otherwise, or because of jury tampering or interference with witnesses. Section 6 of the Falkland Islands Constitution says-

"(6) No person who shows that he or she has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he or she could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal, or save where a court makes an order under an Ordinance permitting a person to be retried for an offence of which he or she has been acquitted where in all the circumstances a retrial is in the interests of justice."

So the Constitution explicitly contemplates the enactment of provisions about retrials. But the existing power, in section 56 of the AOJO is too wide -

"*Rehearing*
(1) The judge shall in every case heard in the Supreme Court have the power to order a new trial to be had upon such terms as he thinks reasonable and in the meantime to stay the proceedings.
(2) A new trial may be ordered on any question without interfering with the finding or decision on any other question."

This appears to confer on a judge the power to order the whole or any part of a civil or criminal trial in the Supreme Court to be re-opened, without assigning any reason. (Sub-clause (2) seems to imply that the rehearing would be only on an interlocutory issue, but sub-clause (1) is not so limited).

No English authority is identified as the source of this section, and it is probably too wide even for civil cases, where large costs may be involved. (This point can be considered in the context of a review of Falkland Islands civil procedure). The power is certainly too wide in the context of criminal trials, where a rehearing exposes the defendant to a double jeopardy. This Part therefore does not reproduce section 56 of the AOJO but limits the power to order a retrial to the Court of Appeal, and in the interests of justice in the light of new evidence.

The provisions for retrial on the application of the prosecution include restrictions on publication of the application, to avoid prejudicing an acquitted person. If a retrial is authorised, the police can re-arrest the acquitted person and hold him or her in custody or on bail, as if the case were starting afresh.

The offences that can be the subject of a prosecution retrial application are 'qualifying offences', which in the UK Act are set out in Schedule 7. In the Falkland Islands context it seems appropriate to include all indictment-only offences, as listed in clause 181.

References by AG
Clauses 708 to 712 enable the prosecution to refer certain matters to the Court of Appeal for a decision or /advisory opinion.

Note that Part 31 empowers the Supreme Court to review decisions of the Magistrate's Court and Summary Court and provides for appeals from those courts to the Supreme Court against conviction or sentence. That Part also provides for appeals by the prosecution on points of law against acquittals. The Court of Appeal Ordinance provides for appeals from the Supreme Court

in its original or appellate capacity on all these matters. These clauses supplement those provisions by providing for review by the Court of Appeal of Supreme Court sentences and referral of points of law (as distinct from an appeal or an application for retrial) in cases of acquittal.

References by Governor

Clauses 713 to 718 reproduce most of the CJ (Am) (Miscarriages of Justice) Ordinance. This was enacted in 2006 to incorporate into Falkland Islands law the provisions of the UK Criminal Appeal Act 1995 enabling the Criminal Cases Review Commission to refer cases to the Court of Appeal (or the High Court, in the case of decisions of the lower courts.) The Ordinance gave the power of reference to the Governor and these clauses do the same, but only on the advice of the Advisory Committee on the Prerogative of Mercy. The Advisory Committee will perform broadly the same function as the Criminal Cases Review Commission in the UK.

The Part does not include section 16C of the UK Criminal Appeal Act 1968 which relates only to a finding of not guilty by reason of insanity and which can be assimilated in the powers of the Court of Appeal on that topic.

The Part includes provisions enabling the Chief Justice to make rules so that applications and interlocutory matters to be dealt with outside the Falkland Islands – see clauses 686, 710, and 715. Under section 92(2) of the Constitution the Court of Appeal can sit outside the Falkland Islands.

For a commentary on retrials, see Archbold 2013 Ed. paras.276 to 7-307. The UK rules are in Part 41 of the CPR 2012.
For a commentary on tainted acquittals see Archbold paras.4-196 to 4-200. The UK rules are in Part 40 of the CPR 2012.
For a commentary on AGs references see Archbold paras.7-437 to 7-460. The UK rules are in Part 70 of the CPR 2012.
For a commentary on the Criminal Cases Review Commission powers see Archbold paras. 7-157 to 7-160 and 2-173.

Notes on clauses

Retrials

Clauses 686 to 694 provide that an application to the Court of Appeal for a retrial can be made if there is new and compelling evidence and the interests of justice so require.

Clauses 695 to 703 regulate the procedure on a retrial, including the evidence that may be given and the granting of bail.

Clause 686 says what cases can be retried i.e. qualifying offences. Persons who have been acquitted of a qualifying offence in proceedings on indictment in the Falkland Islands or on appeal against a conviction etc. in the Falkland Islands or on an appeal following a previous appeal (e.g. after an appeal to the Judicial Committee of the Privy Council) can be retried if the conditions are met. Under sub-clause (4) a person who has been acquitted outside the Falkland Islands of an offence which would have been an indictment-only offence in the Falkland Islands

can be retried. The term "indictment-only offence" is defined in Clause 2 as an offence listed in Clause 181. They are all the offences that carry a sentence of life imprisonment and most of those that carry a sentence of 14 years imprisonment

Clause 687 enables the Attorney General, if there has been an acquittal in a trial in the Supreme Court on an indictment-only offence, to apply to the Court of Appeal for an order quashing the acquittal and ordering a retrial. It also provides for cases where the acquittal occurred outside the Falkland Islands. The Attorney General must be satisfied that there is new and compelling evidence (as defined in Clause 689), that it is in the public interest to make the application and that any retrial would not be contrary to the obligations of the Falkland Islands with respect to the double jeopardy rule. Only one application may be made in relation to an acquittal.

Clause 688 sets out the decision making process of the Court of Appeal. The court must be satisfied that there is new and compelling evidence and that it would be in the interests of justice to make the order. It must also be satisfied that the application does not breach the obligations of the Falkland Islands under Article 31 or 34 of the Treaty on European Union relating to the principle of double jeopardy, as reflected in section 6(6) of the Constitution.

Clause 689 defines 'new and compelling evidence'. Evidence is new if it was not adduced at the original proceedings. Evidence is compelling if it is reliable, substantial and in the context of the outstanding issues it appears highly probative of the case against the acquitted person.

Clause 690 sets out the 'interests of justice' test. The court needs to consider whether a fair trial is likely, the length of time since the offence was allegedly committed, whether the new evidence was available at the time of the original trial but for failure by a police officer or prosecutor, and whether since then the police and or prosecutors have acted with due diligence.

Clause 691 sets out the procedure as to notice, presence at the hearing, etc. in relation to an application for a retrial.

Clause 692 enables the acquitted person or the Attorney General to appeal against a decision made by the Court of Appeal to Her Majesty in Council i.e. the Judicial Committee of the Privy Council.

Clauses 693 and 694 allow the Court of Appeal to place restrictions on what can be published in relation to such matters if there is substantial risk that a publication would prejudice the administration of justice in a retrial. For definitions of 'publication' 'programme' and 'programme service' see Part 12 and clause 2.

Clauses 695 to 703 regulate the procedure on a retrial, including the evidence that may be given and the powers relating to bail.

Clause 695 requires a retrial to be on indictment preferred on the direction of the Court of Appeal, and to be in the same mode as the original (i.e. by judge and jury or by judge alone). A time limit of 2 months is specified and the person may only be arraigned after that time

with the leave of the Court of Appeal if it is satisfied that the prosecutor has acted with due expedition and there is good and sufficient cause for the trial despite the lapse of time.

Clause 696 contains provisions about the evidence admissible on a retrial, the hearing of oral evidence and use of depositions. Court transcripts can be read out if agreed to by the prosecution and defence or if the judge is satisfied that the witness is dead or unfit to give evidence or attend for that purpose or that all reasonable efforts have been made to find the witness or secure his or her attendance have been made without success.

Clause 697 provides for investigations into the qualifying offence. Such an investigation (subject to Clause 698) may only be undertaken with the written consent of the Attorney General after an application made by a police officer of the rank of Inspector or above (DPP in UK). The Attorney General may only give consent if satisfied that it is likely that new evidence will be forthcoming and that it would be in the public interest to proceed.

Clause 698 provides an exception with respect to urgent investigative steps where there is a real risk that not acting in such matter would substantially and irrevocably prejudice the investigation.

Clause 699 applies with modifications the 'PACE' provisions clauses of the Bill dealing with arrest and detention to proceedings under this Part.

Clauses 700 to 703 provide for bail and custody at various stages of proceeding on an application for retrial and for revocation of bail.

Tainted acquittals

Clauses 704 to 707 are about tainted acquittals. They enable the Supreme Court to order a retrial where there is a suspicion that an acquittal in any court was obtained by intimidation. The power differs from the power of the Court of Appeal to order a retrial where new evidence comes to light, which is provided for in clauses 686 to 703.

References by AG

Clause 708 enables the Court of Appeal to review a sentence passed by the Supreme Court that is considered by the prosecution to be too lenient. The power extends to any case in which sentence is passed on a person by the Supreme Court for an indictment-only offence, other than a sentence substituted on an appeal.

Clause 709 states the powers of the Court of Appeal and provides for an appeal to Her Majesty in Council (i.e. the Judicial Committee of the Privy Council.)

Clause 710 regulates the procedure on a review of sentence and enables criminal procedure rules to be made as to court fees and other matters.

Clause 711 enables the Attorney General to refer a point of law to the Court of Appeal in a case in which a person has been acquitted, without affecting the acquittal.

Clause 710 provides for a right of appeal to the Judicial Committee of the Privy Council from an opinion given under clause 709.

References by the Governor

Clause 713 enables the Governor, on the advice of the Advisory Committee on the Prerogative of Mercy, to refer a conviction or sentence to the Court of Appeal where there has been a conviction in the Supreme Court, whether or not there has already been an appeal, and whether or not the person pleaded guilty.

Clause 714 enables the Governor, on the recommendation of the Advisory Committee on the Prerogative of Mercy, to refer a conviction or sentence to the Supreme Court where there has been a conviction in a summary trial, whether or not there has already been an appeal, and even if the defendant pleaded guilty.

Clause 715 requires a person who wishes a reference to be made to first petition the Governor who must obtain the advice of the Advisory Committee. A reference can only be made if the Advisory Committee considers that there is a real possibility that the conviction, verdict or finding would not be upheld because there was a failure to argue a relevant point of law or to introduce relevant evidence in the case referred.

Clause 716 sets out the procedure for a petition to the Governor, including the role of the Attorney General.

Clause 717 makes further provisions about references, including the criteria for reversing a conviction, verdict or finding.

Clause 718 makes provision for the payment of compensation for a miscarriage of justice.

CHAPTER 11 – YOUTHS AND YOUNG OFFENDERS

PART 33 – YOUNG OFFENDERS AND YOUTH PROTECTION

Introduction

This Part makes provision for the treatment of youths and young offenders in the criminal courts, and for the protection of youths in the courts. **(**A 'youth' is defined in clause 2 to mean a child or young person. A child is defined as a person under the age of 14 and a young person as a person between 14 and 18. A young offender is a person aged 18, 19 or 20 who is convicted of an offence).

The Part replaces and expands sections 33 to 40 of the Criminal Justice Ordinance and some of Part VII of the Criminal Justice Ordinance (sections 110 to 117) by provisions based on the UK Children & Young Persons Act 1933 as amended in 1963 and 1969. It includes provisions of recent UK legislation including the Powers of Criminal Courts (Sentencing) Act 2000 as amended. It governs the imprisonment of youths (which is called detention) and provides for the making of reparation orders on youths and for fining and binding over of parents and guardians.

The custodial scheme envisaged by the Part is that no person under the age of 21 will be sentenced to prison, except for an offence for which the penalty is imprisonment for life. The

sentence will be one of detention, and the Governor, after consulting the CJC, must designate the place for detention. The place can be an area of the prison separate from the rest of the prison.

The Part does not retain the provisions about supervision of young offenders in Part VII of the Criminal Justice Ordinance (sections 118 to 131) as they are superseded by the community sentence provisions in Part 25. Nor does it not refer to attendance centres or young offender institutions as such centres and institutions are not provided in the Falkland Islands (and young offender institutions have been abolished in the UK). The Part varies the provisions of the Criminal Justice Ordinance about periods of detention that can be imposed on youths and young offenders.

The Part does not include provision for Youth Panels or parenting orders or child safety orders or curfew orders as these are not considered appropriate in the Falkland Islands. Nor is there any provision for formal reprimands and warnings, as these require reference to youth offending teams which are not available in the Falkland Islands.

There are however various other options open to courts in dealing with youths and young offenders, and this Part expressly saves those provisions. They include community sentences i.e. community orders and youth rehabilitation orders, which are dealt with in Part 25. Provisions on care of youths are in the Children Ordinance 2014. Conditional cautions on youths, which can include reparation requirements, are provided for by Part 8. Absolute and conditional discharges are provided for by Part 24. Suspended sentences of detention are possible under Part 26.

The Part includes some provisions which overlap with other Parts dealing with sentences; it incorporates e.g. a provision on restriction on imprisonment of persons under 21 and rules. It also incorporates provisions about fines on youths. It imposes a duty on the court to fine parents rather than youths unless the parent cannot be found, etc.

The Part includes provisions designed to protect youths from publicity, but does not include the reporting restrictions in ss.44 and 45 of Youth Justice & Criminal Evidence Act 1999 which are not in force in the UK.

The Part includes provisions designed to protect youths from the consequences of proceedings for certain offences involving violence against youths. See clauses 745 to 750 and Schedule 12.

Commentaries on these topics can be found in various places in Archbold 2013 Ed. For general principles of sentencing youths see paras. 5-66 etc. For reparation see paras.5 – 717 on. For reporting restrictions see paras. 4-15 on. For fines on parents, see paras. 5-1277 on.

Notes on clauses

Clause 719 defines some terms that are used in the Part but not defined elsewhere. It also savings other provisions of the Bill that deal with sentencing of youths and young offenders.

Clause 720 makes general statements of principle about sentencing of youths and young offenders. The UK Act does not mention young offenders but it seems appropriate to do so.

Clauses 721 to 725 provide for the constitution, procedure and jurisdiction of the Youth Court. It is in effect the Magistrate's Court or Summary Court when dealing with offences by youths. The clauses provide for remitting of cases to and from the Youth Court.

Clause 726 restricts in general terms the power to pass custodial sentences on persons under 21 years of age and requires the court to take certain factors into account before imposing a custodial sentence. A court cannot sentence a person under 21 to prison for any offence or in default of payment of a fine, damages or costs. There is an exception for remand and committal to a higher court for sentence. The clause is based on part of s.33 of the Criminal Justice Ordinance.

Clauses 727 and 728 regulate the imposition of sentences of detention on young offenders and youths respectively (though the age limit is not fixed at 18 as in the definition of youth.) These clauses are different from the equivalent provisions in the Criminal Justice Ordinance and are based broadly on the Powers of Criminal Courts (Sentencing) Act 2000 as amended.

Clauses 729 and 730 regulate the imposition of sentences on youths and young offenders for indictment-only offences and other serious crimes. Detention at Her Majesty's pleasure or for a specified period is made obligatory for certain offences.

Clause 731 says that detention can be imposed for contempt of court by a person under the age of 21. It is based on section 40 of the Criminal Justice Ordinance which limits the age to 18 and over but, as contempt can be committed by a youth, that limitation is removed.

Clause 732 enables the Governor to designate the place of detention. It must not be the prison unless no other place is suitable. The Governor, after consulting the CJC, also controls detention at Her Majesty's pleasure. (Release on licence from detention is dealt with under the Prison Ordinance).

Clauses 733 to 736 provide for fines on youth offenders, including ordering a parent or guardian to pay. Other provisions about enforcement of fines, etc. are contained in Part 27.

Clause 733 prescribes the maximum amount that a child or young person can be fined by the Magistrate's Court or Summary Court sitting as a Youth Court, but gives the Governor, after consulting the CJC, power to amend the figures.

Clause 734 requires a court to order a parent or guardian to pay a fine, costs and compensation ordered on a conviction of a youth.

Clause 735 enables a financial circumstances order to be made against a parent or guardian.

Clause 736 adapts clause 592 as to the fixing of the level of fine.

Clauses 737 and 738 enable a court to bind over the parent or guardian of a youth offender.

Clause 738 enables a court to require the attendance of a parent or guardian at court. The amendments to s.34 of the CYP Act 1933 made by the CYP Act 1963 have not been included as they make the requirement rather general in nature.

Clauses 739 to 744 provide for reparation orders to be made on youths. They incorporate some provisions of Schedule 8 of the 2000 Act as substantive provisions governing reparation orders.

Clauses 743 to748 contain special rules about proceedings for certain offences involving youths. The rules are designed to protect youths from harm as a result of the proceedings. The offences, which are listed in Schedule 12, are all offences of violence and will be in the Crimes Ordinance 2014.

There is a presumption about age in clause 745 and a power to proceed with a case in the absence of a youth in clause 746.

Clause 750 enables a warrant to be issued to search for a missing youth. The equivalent UK provisions are in ss.44 and 102 of the Children Act 1989 but the older CYP Act 1933 provision is more appropriate in Falkland Islands.

Clauses 751 to 754 are general protective provisions about youths and young offenders, including a requirement to segregate youths in police detention, a prohibition of unnecessary presence of children in court, and a rule about evidence of a child.

Clauses 755 and 756 relate to publication of certain matter in newspapers and by programme service (i.e. radio or TV or internet broadcast). Clause 755 is a total prohibition in relation to certain proceedings, while clause 756 gives a court power to prohibit publication in all types of proceedings.

Clauses 757 to 760 are miscellaneous provisions.

Clause 757 is about evidence and procedure in relation to youths. If a person attains the age of 18 during the proceedings, they should continue as if the person were still under 18.

Clause 758 provides for ascertaining the age of a youth, whether a defendant or a witness in any proceedings. The requirement to adjourn the case if necessary is in line with recent UK case law on the subject and makes the Falkland Islands compliant with human trafficking awareness standards.

Clause 759 provides that the age of a young offender for the purpose of sentencing is the age at the date of conviction. If a person attains the age of 18 during the proceedings, they should continue as if the person were still under 18.

Clause 760 enables the Governor, after consulting the Criminal Justice Council, to make regulations empowering courts to impose maintenance orders on parents of youths in detention.

Schedule 12 is the list of offences for the purposes of clauses 745 to 750.

Policy issues
The main policy issue is what the youth justice system should comprise in the Falkland Islands. The secondary questions are, whether sentences of detention as in the Bill are appropriate and whether supervision (provided for in Part VII of the Criminal Justice Ordinance) should be abolished as in the draft, as it is superseded by community sentences in Part 25. Supervision for reparation and for post-release of young offenders will remain, however.

CHAPTER 12 – MENTALLY DISORDERED OFFENDERS

PART 34 - MENTALLY DISORDERED OFFENDERS

Introduction
This Part deals with persons who are before a court on a criminal charge but who are unfit to be tried because of mental disorder or who are not guilty by reason of mental disorder. It does not deal with treatment or other issues relating to the mentally disordered, which are dealt with in the Mental Health Ordinance 2010 (MHO). Part 8 of the MHO also deals with "persons concerned in criminal proceedings or under sentence" so this Part does not deal with those matters in general. There is however a saving for that Ordinance at clause 761.

The Part needs to be read in conjunction with the MHO which governs the treatment to be given to mental patients and will govern the treatment to be given under a hospital treatment order or supervision order made under this Part.

The Part incorporates extant provisions of the UK Criminal Procedure (Insanity) Act 1964 as replaced by the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 and amended by the Domestic Violence, Crime & Victims Act 2004. It avoids using the terms 'insanity' or 'unfitness to plead'.

With regard to acquittal on the ground of mental disorder, section 2 of the Trial of Lunatics Act 1883 is still extant and is incorporated in clause 763. The verdict is known as a 'special verdict'.

The Part does not use the term "medical practitioner" but instead uses the term "approved doctor" which is used in the Mental Health Ordinance and is defined in section 91 of that Ordinance to mean a doctor approved by the Governor. The term "hospital" is also defined by reference to the Mental Health Ordinance.

The system of supervision orders for those found unfit to plead or not guilty by reason of mental disorder introduced by the UK Criminal Procedure (Insanity) Act 1964 Sched.1A as replaced by the Domestic Violence, Crime and Victims Act 2004 is included – see clauses 768 to 772.

The Part is wider than the UK provisions as it gives the same powers to the Supreme Court, Magistrate's Court and Summary Court to make hospital orders and supervision orders and to revoke, amend or review them. The review will be by the court that made the original order, but there can be an appeal.

The Part includes some provisions based on the Gibraltar Criminal Procedure Act and the St Helena CPE Bill which are relevant to the Falkland Islands.

For UK text and commentary see Archbold 2013 Ed. paras.4 -230 to 4 -251 (Fitness to be tried), 4 -535 and 536 (special verdict) and 19-95 (evidence). Also para.17-73 for the meaning of 'insanity' in this context.

Notes on clauses
Clause 761 defines various terms, including 'hospital order'. This is defined to mean an order under section 766(2).

'Mental disorder' is defined as in s.4 (2) of the MHO which is the same as in the UK Mental Health Act 2007 (MHA). The 'supervising officer' is the probation officer.

Clauses 762 and 763 deal with the issue of fitness to be tried (previously called 'fitness to plead'). They provide for a special finding on that issue to be made by the Magistrate's Court or Summary Court, or by the Supreme Court without a jury, at any stage in the proceedings.

Clause 764 and 765 provide for a special finding by the Magistrate's Court or Summary Court or by a jury (or judge sitting alone) in the Supreme Court that the defendant did the act or made the omission charged against him or her or alternatively for a special verdict of acquittal on the ground of mental disorder.

Clause 766 provides that if there is a finding that a person is unfit to be tried and did the act, or if a person is acquitted on the ground of mental disorder, the court must make a hospital treatment order or a supervision order, or grant an absolute discharge (unless the sentence is fixed by law).

Clause 767 provides that if the person is fit to be tried, the trial must proceed in the normal way.

Clauses 768 to 772 enable a court to make a supervision order under which a person who is not fit to be tried, or who is acquitted on the ground of mental disorder, is required to undergo medical treatment but not confined to hospital. Such orders are made on the same grounds as a community treatment order under the Mental Health Ordinance and can be made for up to 2 years. They may be reviewed by the court that made them.

Clause 773 provides for appeals to the Court of Appeal or the Supreme Court, as the case may be, on the making of hospital treatment orders and supervision orders. Note that clause 763 provides for an appeal to the Court of Appeal on the question of fitness to be tried. See also clauses 667 and 668 for appeals from the Magistrate's Court or Summary Court to the Supreme Court on mental health issues. See also Part 7 of the Mental Health Ordinance as to appeals under that Ordinance.

Clause 774 provides that if the defence on a charge of murder seek to establish mental disorder or diminished responsibility owing to abnormality of mind, the prosecution can adduce evidence to the contrary. It is based on section 6 of the UK Criminal Procedure (Insanity) Act 1964, but

using the term ‘abnormality of mental functioning’ as introduced by the Coroners and Justice Act 2009, rather than ‘insanity’.

CHAPTER 13 – SUPPLEMENTARY PROVISIONS

PART 35 – CRIMINAL JUSTICE COUNCIL

Introduction

This Part establishes a Criminal Justice Council for the Falkland Islands to maintain an overview of the working of the criminal justice system in the Falkland Islands and to ensure that the system provides an efficient and effective service to the people of the Falkland Islands. The Council is established as an independent non-departmental body, but is not a corporate body with legal personality. It will include representatives of Government departments and of the private sector, selected in accordance with Nolan principles. Its main functions are to advise the Chief Justice on the making of criminal procedure rules and, in its capacity as the Sentencing Guidelines Committee, to issue sentencing guidelines. It will also provide a forum to identify new areas where procedures or rules need to be developed; and to provide advice when requested to the Governor and the legislature on matters relating to the criminal justice system.

This body is an innovation in the Falkland Islands and as constituted is unique in the common law world, although it has similarities to the Criminal Justice Board, Criminal Rules Committee and the Sentencing Guidelines Council in England and Wales. It is structured in such a way as to maintain judicial independence whilst providing oversight of the Criminal Justice system. It will have the ability to influence any necessary adjustments to processes and procedures by advising on the making of criminal procedure rules and by issuing sentencing guidelines. Certain other specific functions are also given to the Council by some provisions of the Bill.

The Governor will need to consult the Criminal Justice Council on the exercise of some functions under this Ordinance, if a section so requires.

Notes on clauses

Clause 775 establishes the Council and requires the Government to provide finding for it. Details of its composition and procedure are set out in Part ‘A’ of Schedule 13.

Clause 776 sets out the aims and activities of the Council. The aim should be to have a criminal justice system that reduces crime, reduces reoffending, punishes offenders, protects the public, encourages the making of reparation, increases public confidence in the system, and is fair and just.

Clause 777 provides that the Council is also the Sentencing Guidelines Committee and sets out the aim of that committee, which is to promote consistency in sentencing. To achieve that, the Committee must publish sentencing guidelines for use in the criminal courts. The committee’s procedure is similar to that of the Council and is set out in Part ‘B’ of Schedule 13.

Clause 778 requires the Council to make an annual report to the Governor, who must lay the report before the Legislative Assembly. The Council report must include a report from the Committee with any sentencing guideline it has published. The report is to be made public.

Clause 779 requires the Council to prepare rules of practice and procedure to be applied in the criminal courts. The rules must be submitted to the Chief Justice and once approved must be made by the Chief Justice as criminal procedure rules. The Council must also prepare guidelines relating to the early release of prisoners and miscarriages of justice to be used by the Advisory Committee on the Prerogative of Mercy and the Governor in the exercise of the discretion conferred by section 71 of the Constitution.

Part 'A' of Schedule 13 sets out the composition of the Council and rules for its procedure, including reports. Part 'B' sets out the procedure of the Committee and principles for developing sentencing guidelines, which are based on the model used in England and Wales but simplified in terms of the required monitoring and reporting.

PART 36 – MISCELLANEOUS AND TRANSITIONAL

Introduction

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

Notes on clauses

Clause 780 applies the provisions of the Ordinance relating to the investigation of offences, the searching, questioning and detention of suspects, the seizure of property and the retention of evidence to other public officers who have power to investigate offences or charge offenders as they apply to police officers. The Governor, after consulting the Criminal Justice Council, may make modifications to the manner in which provisions of this Ordinance apply to such officers.

Sub-clause (3) confers the relevant powers on customs officers and immigration officers as they are not expressly conferred by the Customs Ordinance or Immigration Ordinance respectively.

Clauses 781 and 782 are provisions about the powers of police officers and other public officers derived from the UK PACE Act and the Criminal Law act 1967 which do not fit elsewhere in the Bill.

Clause 782 justifies the use of force in preventing crime or effecting an arrest by police officers and others. The general rule (that force is justified) is still law in the UK and appropriate to include in this Bill. It does not replace the common law rules on self-defence.

Clause 783 makes it clear that this 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 section 431 of the Crimes Ordinance 2014 which is about corporate bodies benefitting from an offence committed by someone who is not an officer or member. See also section 508 of that Ordinance as to bribery by corporate bodies.

Sub-clause (5) states that gender-specific wording of a provision does not preclude the application of the provision to a corporation.

Clause 784 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 785 enables the Chief Justice to make criminal procedure rules, after consulting the Criminal Justice Council as constituted by Part 35, and to issue practice directions after so consulting. Such directions usually supplement the rules but could be displaced by them if necessary.

Clause 786 enables the Governor, after consulting the Criminal Justice Council, to make regulations to implement the provisions of this Ordinance, in particular in relation to the obligations of the Government under international law.

Clause 787 enables the Governor, after consulting the Criminal Justice Council, to amend any of the Schedules, but subject to specific requirements in relation to Schedule 3, as stated in clause 122. An order would need to be laid on the table of the Legislative Assembly and would be subject to section 36 of the IGCO. This requirement is extended to other orders made under the Ordinance.

Clause 788 sets out the relationship between the Governor's obligation to consult the Council or the Advisory Committee or the Chief Justice under this Ordinance, and the requirement to consult ExCo in s.66 of the Constitution and in the definition of 'Governor' in s.2 of the IGCO. If the function is legislative, the Governor is required to consult both bodies.

Clause 789 repeals the Ordinances listed in Part 'A' of Schedule 14 and disapplies the UK enactments listed in Part 'B' 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.

> The clause saves subsidiary legislation made under them 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.

Schedule 14 lists the Falkland Islands Ordinances that are repealed and the UK enactments that are disapplied as a result of their provisions being incorporated in this Bill.

UK statutes since the 'cut-off' date of 31 July 2004 are not included (see section 78(7) of the IGCO).

Clause 790 makes transitional provisions in respect of investigations, proceedings, appeals, etc. that are in progress when the Ordinance comes into force. Sentences, summonses etc. will continue to have effect under the Criminal Justice Ordinance or the AOJO as the case may be.

Clause 791 makes consequential amendments to other enactments, by means of a general provision about references to provisions of the repealed Ordinances. It enables the Governor to

amend other Ordinances by order. Without affecting that power, certain textual amendments are contained in Schedule 15. The Governor can amend Schedule 15 by virtue of the power in clause 785.

Schedule 15 lists some consequential amendments to the definitions in the Interpretation and General Clauses Ordinances to bring them into conformity with this Ordinance.

Clause 792 provides that the Ordinance is binding on Crown. This is needed to displace the opposite rule in section 66 of the IGCO. All Government departments will therefore be required to observe the provisions of the Ordinance.

APPENDIX 1

The main new or updated provisions of the Bill are:

Police powers

- Police officers able to grant bail after arrest, to grant 'street bail' and to impose conditions on police bail. (Part 4)

- Police officers able to stop and search persons or vehicles in anticipation of, or after, violence. In force in UK since 1994 (Part 2)

- Power to stop and search a vehicle in certain circumstances. (Part 2)

- PACE changes to the power of arrest; the abolition of arrestable and non-arrestable offences; now called imprisonable offences. (Part4)

- Detention periods amended to bring them into line with the UK PACE (Part 5)

- New provisions on retention and destruction of samples and DNA profiles aligned to UK Protection of Freedoms Act 2012. (Part 6)

Conditional cautioning for adults and youths (Part 8).

Bail (Part 9)

- Police able to impose a condition on bail after charge.

- Bail in absence with consent.

- 17 year olds treated for the purposes of bail as youths.

- Remands in custody in absence

- Appeals against the refusal of bail

- Prosecution able to appeal refusal of bail
- Electronic monitoring of persons on bail and as part of a sentence– 'curfew tags'
- Introduction of custody time limits for persons on remand

Jurisdiction

- First appearance of all cases in the Summary Court (Clause 257)
- Role of the Justices of the Peace expanded (Part 11)
- Introduction of an allocation for trial procedure (Part 16)
- Role of assessors abolished. (Part 11)
- Judge or the Senior Magistrate able to exercise certain judicial functions while outside the Falkland Islands in certain circumstances – (clause 183).
- All types of pre-trial review rationalised into preliminary hearings (Part 15)
- Time limits for commencement of prosecutions simplified (Clause 182)
- The Chief Justice and Criminal Justice Council (CJC), to issue a code of practice about the summoning of jurors. (Part 18).
- Proposed widening of eligibility groups for jury service in line with UK practice (Part 18)
- The courts given wide powers to impose reporting restrictions as in the UK (Part 22)
- Procedure rules for disclosure included (Part 14)

Evidence

- Admissibility of hearsay widened. (Part 20)
- Bad character rules widened. (Part 19)
- Derogatory assertions in the course of mitigation restricted. (Part 19)
- Adverse inferences from silence introduced. (Part 19)

Witnesses

- Provision for the use of live links in all courts when a witness is not available. (Part 21)
- Live link evidence available as a way of protecting vulnerable witnesses. (Part 22)
- Vulnerable witness provisions extended providing protection to a wider range of witnesses. (Part 22)

Sentencing

- Notification requirements for convicted sex offenders; automatic disqualifications from working with vulnerable groups; restraining orders on conviction and acquittal introduced. (Part 28)

- Sentencing provision overhauled, including the introduction of community orders and simplification of custodial sentences for youths and young offenders. The ability to mix and match sentences is included. (Part 25)

- Regulates the imposition of sentences of detention on young offenders and youths respectively. (Part 33)

- The courts to have the ability to defer sentence. (Part 23)

- Provides for Victim, Family and Community Impact statements to be available to the court. (Part 23)

- Community service orders replaced with a simplified system. (Part 25)

- Type of community orders available widened. (Part 25)

- Probation orders abolished. (Part 25)

- Provision made for release on licence of prisoners, compliant with the European Convention on Human Rights. (Part 26)

- Provisions 'barring' persons convicted of certain offences from working with children or vulnerable adults. (Part 28)

- Falkland Island sentencing guidelines to be introduced. (Part 23)

- Changes to the rehabilitation of offenders periods introduced. (Part 29)

- Provisions made for the award of costs in criminal cases. (Part 30)

Appeals, etc.

- Prosecution given a right to appeal in limited circumstances against an acquittal and against a terminating ruling. (Part 31)

- New procedures for retrials after an acquittal. (Part 32)

Establishes a Criminal Justice Council (Part 35).

APPENDIX 2

INDICTMENT-ONLY OFFENCES

The Criminal Justice Ordinance lists a small number of offences that are triable on indictment only. They do not include all offences that carry a discretionary life sentence. The reason why the list of indictment-only offences is so small is due to the problems historically in empanelling a jury. However the population is increasing and so is the jury pool. It is also anomalous to have offences potentially carrying a discretionary life sentence being heard by a Senior Magistrate and without the right of jury trial.

All of the offences currently carrying life imprisonment have been reviewed, and in some cases the maximum penalty has been reduced e.g. robbery and assault with intent to rob to 18 years. The remaining offences carrying life imprisonment have been amended accordingly to become indictment-only offences.

Given that the list of indictment-only offences is now larger than before, there is no particular merit is listing the sexual offences and the criminal damage offences, as before in the CJO. Accordingly, in drafting clause 181 of the CPE Bill, which defines indictment-only offences, we have not listed the offences. The proposed clause 181 of the CPE Bill therefore reads:

"181. Indictment-only offences

(1) The following offences must be tried on indictment –

(a) an offence under the Crimes Ordinance 2014 specified as triable on indictment only;

(b) an offence under this or any other Ordinance specified as triable on indictment only;

(c) an offence which, by virtue of any law of the United Kingdom having effect in the Falkland Islands (other than by its application by or under a written law of the Falkland Islands), must be tried on indictment;

(d) an attempt to commit any of the offences mentioned in paragraphs (a) to (c);

(e) conspiracy to commit any of those offences;

(f) encouraging, or aiding and abetting, any of those offences.

(2) All other offences are triable summarily."

Proposed indictment-only offences by reference to clauses of the Crimes Bill

These, other than the sexual offences, have been selected on the basis that they are all offences which involve either a fatality or a high risk of one:

Part 16 (Treason)

444(1) and (2): Treason

Part 4 (Offences against the person)

46: Murder
50: Manslaughter
52: Soliciting murder
56: Infanticide
57: Child destruction
77: Causing or allowing the death of or harm to a child or vulnerable adult
112(1): Genocide (whether murder or not)
112(2): Acts ancillary to genocide
114: Piracy endangering life
116: Torture

Part 5 (Corporate manslaughter)

122: Corporate manslaughter

Part 10 (Sexual offences)

204: Rape
205**:** Assault by penetration
207**:** Causing a person to engage in sexual activity without consent (aggravated)
208**:** Rape of a child under 13
209**:** Assault of a child under 13 by penetration
211**:** Causing or inciting a child under 13 to engage in sexual activity

Aggravated offences under the following clauses –

232**:** Sexual activity with a person with a mental disorder impeding choice
233**:** Causing or encouraging a person with a mental disorder impeding choice to engage in sexual activity
236**:** Inducement etc. to procure sexual activity with a person with a mental disorder
237**:** Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, etc.
240**:** Care workers: Sexual activity with a person with a mental disorder
260**:** Paying for sexual services of a child
281: Committing an offence with intent to commit a sexual offence

Part 8 (Explosive substances)

180: Causing an explosion likely to endanger life
181: Making or keeping explosives with intent to endanger life

Part 9 (Criminal damage)

195(2): Aggravated criminal damage
196(2): Aggravated arson

Part 22 (Hate crimes)

557: Aggravated criminal damage or arson, with racial aggravation

Offences proposed to remain summary offences but have the maximum penalty reduced to 18 years:

354(1): Robbery
354(2); Assault with intent to rob
35610: Aggravated burglary

115(1): Kidnapping

Offences proposed to remain summary offences but have the maximum penalty reduced to 14 years:

178: Causing grievous harm by explosion
179: Causing explosion, etc. with intent to cause GBH etc.

58: Administering drugs or using instruments to procure abortion
63: Impeding rescue from a shipwreck
64: Wounding, etc. with intent to do GBH
66: Attempting to choke, etc. with intent to facilitate a serious offence
67: Using drugs to facilitate a serious offence
115(2): False Imprisonment

The two categories have been formulated on the basis that these are offences where the risk to life is lower and also based upon current sentencing practice/sentencing guidelines in the UK where life sentences for these offences are rarely handed down. All save GBH, Robbery, Aggravated burglary and False imprisonment are seldom charged.

UK Sentencing guidelines are of some help:

GBH/Wounding with intent – Starting point on conviction after plea of NG for a category 1 offence (the most serious) is 12 years with a range of 13 to 16 years.

Aggravated burglary – Starting point is 10 years, range 9 to 13 years for a category 1 offence.

Violent personal robberies in the home – Range is 13 to 16 years, but there is an overlap with aggravated burglary.

Street robbery, minor commercial robbery (category 1 offence) – Starting point 8 years, range 7 to 12 years.

Serious commercial robbery – Leading case is Turner 1975 which stated normal sentence where firearms carried but no injury would be 15 years; the most serious commercial robberies are in the range 15 – 20 years on a PG; 20 to 30 years on a plea of NG.

UK sentencing guidelines allow for fact that only half the sentence is served rather than 2/3 as in FI. It is for the MLAs to take a view whether the suggested maximum sentences are acceptable.

Criminal Procedure and Evidence Bill 2014

(No: of 2014)

ARRANGEMENT OF PROVISIONS

Clause

PART 3 - POWERS OF SEIZURE, ETC.

PART 4 – POWERS OF ARREST WITHOUT WARRANT

CHAPTER 6 – TRIAL

PART 14 – DISCLOSURE OF MATERIAL

Preliminary

Duty of disclosure

Sexual offences: Protected material

Public interest review of disclosure decisions

Confidentiality of disclosed information

Supplementary

PART 15 – PRELIMINARY HEARINGS

CHAPTER 7 – EVIDENCE

PART 26 – CUSTODIAL SENTENCES

Restrictions on custodial sentences

Duration of sentences

Suspended sentences

Consecutive sentences

Extended sentences

Life sentences

Release on licence

Miscellaneous provisions

CHAPTER 10 – APPEALS

CHAPTER 13 – SUPPLEMENTARY PROVISIONS

PART 35 –CRIMINAL JUSTICE COUNCIL

PART 36 – MISCELLANEOUS AND TRANSITIONAL

SCHEDULES

CRIMINAL PROCEDURE AND EVIDENCE BILL 2014

(No: of 2014)

(assented to: 2014)
(commencement on: in accordance with section 1)
(published: 2014)

A BILL

for

AN ORDINANCE

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

BE IT ENACTED by the Legislature of the Falkland Islands —

CHAPTER 1 - PRELIMINARY

PART 1 - PRELIMINARY

1. Title and commencement

(1) This Ordinance may be cited as the Criminal Procedure and Evidence 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 —

"absolute discharge" means an order under section 502(1)(a) discharging a person absolutely;

"Advisory Committee" means the Advisory Committee on the Prerogative of Mercy established by section 70 of the Constitution;

"aiding and abetting" has the same meaning as in Part 3 of the Crimes Ordinance 2014;

"appellate court", in relation to criminal proceedings, means the Court of Appeal hearing an appeal from the Supreme Court, the Supreme Court hearing an appeal from the Summary Court or the Magistrate's Court, or the Judicial Committee hearing an appeal in a criminal matter from the Falkland Islands;

"appropriate adult" means —

(a) in relation to a youth —

(i) the youth's parent or guardian;

(ii) if the youth is in the care of the Crown - a person representing the Crown; or

(iii) if a person described in (i) or (ii) is not available - any person over the age of 21 who is not a police officer or a person employed by the police and who is considered suitable by the custody officer;

(b) in relation to a person who is mentally disordered or mentally vulnerable —

(i) a relative, guardian or other person responsible for the person's care or custody;

(ii) a person experienced in dealing with mentally disordered or mentally vulnerable people but who is not a police officer or person employed by the police; or

(iii) if a person described in (i) or (ii) is not available - any person over the age of 21 who is not a police officer or person employed by the police and who is considered suitable by the custody officer;

"appropriate officer of the court" means, in the case of the Supreme Court – the Registrar; and in the case of the Magistrate's Court or the Summary Court – the Clerk of the Court; or in either case a public officer to whom the relevant powers have been delegated for the time being;

"bail decision" means a decision whether to grant or refuse bail, and if bail is granted, the requirements of bail and any conditions to be attached to bail;

"caution", when referring to a form of sentencing, has the meaning given to that term by Part 8 (Simple and Conditional Cautions) and includes a conditional caution as defined in that Part;

"certified" in relation to a document or copy means certified by an officer of the court or other office which originated the document or copy;

"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;

"code of practice" means a code of practice attached as a Schedule to this Ordinance or issued by the Governor under Part 7 (Codes of Practice);

"community order" means an order imposed on a person under section 509;

"community sentence" means a sentence which consists of or includes —

(a) a community order; or

(b) a youth rehabilitation order;

"compensation order" means an order for compensation against a convicted person made under Part 28 (Compensation, Restitution, Deprivation, etc.);

"complainant", in relation to any offence (or alleged offence), means a person against or in relation to whom the offence was (or is alleged to have been) committed;

"conditional discharge" or "order for conditional discharge" means an order under section 502(1)(b) discharging a person with conditions;

"confession" includes any statement wholly or partly adverse to the person who made it, whether made to a person in authority or not and whether made in words or otherwise;

"controlled drug" has the same meaning as in the Misuse of Drugs Ordinance;

"copy", in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly;

"Clerk of the court" means the Clerk to the Magistrate's Court or the Clerk to the Summary Court as the case may be, or the person performing those duties or to whom they have been delegated for the time being;

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

"criminal investigation" means an investigation which police officers or others have a duty to conduct with a view to it being ascertained —

(a) whether one or more offences under the law of the Falkland Islands has been committed;

(b) if so, whether any person or persons can be identified as having committed the offence or offences; and

(c) if so, whether the person or persons should be charged with the offence or offences,

and includes —

(d) an investigation into crimes that have been committed;

(e) an investigation to ascertain whether a crime has been committed,

(f) an investigation which begins in the belief that a crime may have been committed,

with a view to the possible institution of criminal proceedings;
[UK CPI Act 1996 s.22]

"Criminal Justice Council" means the body of that name established by section 775;

"criminal procedure rules" means rules made by the Chief Justice under section 785 or, in the absence of such rules, the Criminal Procedure Rules 2013 of England and Wales as they apply to the topic;

"criminal proceedings" has the meaning given to that term by section 3;

"custodial sentence" means a sentence of imprisonment or a sentence of detention pursuant to Part 33 (Young Offenders and Youth Protection);

"custody officer" has the meaning given to that term by section 59(3);

"custody record" means the record of particulars relating to the custody of a person who is detained at a place of lawful custody in accordance with Part 5 (Police Detention);

"dangerous instrument" means an article which has a blade or is sharply pointed (other than a folding pocket knife the blade of which has a cutting edge of 3 inches or less);

"defendant", in relation to criminal proceedings, means a person charged with an offence in those proceedings, whether or not the person has been convicted; and "co-defendant" means any other person charged with an offence in the same proceedings;

"deprivation order" means an order made under section 617;

"disqualification" means a disqualification from an activity imposed as part of a sentence;

"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;

"editor", in relation to a website, means the webmaster or other person responsible for the content of the website;

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

"encouraging" has the same meaning as in Part 3 of the Crimes Ordinance 2014;

"fine" includes any pecuniary penalty or pecuniary forfeiture but does not include a pecuniary forfeiture or pecuniary compensation;

"Governor in Council" means the Governor on the advice of the Executive Council as provided by section 66 of the Constitution;

"guardian" in relation to a youth means —

(a) if an order appointing a person as guardian of the youth has been made under section 9 of the Children Ordinance 2014 - that person;

(b) if no such order has been made - any person who, in the opinion of the court or police officer having responsibility for the proceedings in which the youth is concerned, has for the time being charge or control over that youth;

"Head of Courts" means the public officer appointed as, or performing the duties of, Head of Courts and Tribunals Service;

"health care professional" means a person who is registered —

(a) in the register of medical practitioners kept under the Medical Practitioners, Midwives and Dentists Ordinance; or

(b) in the register kept by the United Kingdom Central Council for Nursing, Midwifery and Health Visiting by virtue of qualifications in nursing;

"hearsay" means a statement which is made otherwise than by a person while giving oral evidence in the proceedings and which is tendered as evidence of the matters stated;

"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;

"installation" includes an installation in transit;

"item subject to legal privilege" has the meaning given to that term by section 15;

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

"Judicial Committee" means the Judicial Committee of Her Majesty's Privy Council;

"legal aid" means legal advice, assistance or representation in criminal matters provided under the scheme known as "Legal Aid in the Falkland Islands – the 2012 Scheme" (or any scheme substituted for it);

"legal aid funds" means moneys provided by the Legislative Assembly to fund legal aid;

"legal practitioner" has the meaning given to that term by the Legal Practitioners Ordinance;

"linked offence" has the meaning given to that term by section 189;

"live link" has the meaning given to that term by section 417;

"material" as a noun means material of all kinds, and includes —

(a) information;

(b) evidential statements; and

(b) objects of all descriptions;

"mental disorder" means any disorder or disability of the mind;

"mentally disordered", in relation to any person, means suffering from a mental disorder;

"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;

"offence of violence" means an offence listed in Schedule 4 to the Crimes Ordinance 2014;

"offensive weapon" means any article —

(a) made or adapted for use for causing injury to persons; or

(b) intended by the person having it with him or her for such use by that person or by some other person;

“oral evidence” includes evidence which, by reason of any disability, disorder or other impairment, a person called as a witness gives in writing or by signs or by way of any device;

“parent”, in relation to a youth, means any person, other than a guardian or the Crown, who has parental responsibility for the youth;

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

“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;

“police detention” has the meaning given in subsection (3);

“police force” means the the Royal Falkland Islands Police Force established under the Police Ordinance;

“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;

“practice direction” means a direction issued by the Chief Justice under section 785;

“premises” includes —

(a) land and buildinmgs;

(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)]

"pre-sentence report" means a report about a person and his or her circumstances prepared for the court under section 493;

"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 732;

"private prosecutor" means a person who brings a prosecution, not being a public authority or a person acting on behalf of a public authority;

"probation officer" means the public officer appointed as, or performing the duties of, the probation officer;

"programme", in relation to a programme service, includes an advertisement and any item included in that service; and "television programme" includes a teletext transmission;

"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]

"prohibited article" has the meaning given it by section 6(7);

"prosecutor" means an individual or body responsible for the conduct, on behalf of the Crown, of criminal prosecutions, and includes —

(a) any person who appears to the court to be a person at whose instance the prosecution has been commenced, or under whose conduct the prosecution is at any time carried on; and

(b) a person acting on behalf of the prosecutor;

"public authority" means —

(a) the police force;

(b) the Attorney General;

(c) any other government department;

(d) any body or authority carrying on under national ownership any industry or undertaking or part of an industry or undertaking; and

(e) any other authority or body whose members are appointed by the Governor or whose revenues consist wholly or mainly of money provided by the Legislative Assembly;

"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;

"publish", in relation to a report, means to issue it as, or 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;

"Registrar" means the Registrar of the Supreme Court;

"relevant programme" means a programme included in a programme service;

"relevant evidence", in relation to an offence, means anything that would be admissible in evidence at a trial for the offence;

"relevant time" —

(a) in relation to proceedings means the time when events giving rise to the charge to which the proceedings relate is alleged to have occurred; and

(b) in relation to detention of a person has the meaning given by section 69(2);

"reparation order" means an order made against a youth under Part 33 (Young Offenders and Youth Protection);

"restitution order" means an order made under section 615;

"reviewing officer" means the police officer who has to carry out a review of the detention of a person in police detention under section 67;

"sending notice "means a notice issued by the court on sending a person for trial, as provided by Part 12 (Sending for Trial);

"Senior Magistrate" means the person appointed as Senior Magistrate for the Falkland Islands or any person for the time being performing the functions of Senior Magistrate;

"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;

"Sentencing Guidelines Committee" means the committee of that name established by section 777;

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

"sexual offence" means an offence listed in Schedule 3 to the Crimes Ordinance 2014;

"special finding" means a finding under Part 34 (Mentally Disordered Offenders) —

(a) of unfitness to be tried; or

(b) that the defendant did the act or made the omission charged against him or her;

"special verdict" means a verdict under Part 34 (Mentally Disordered Offenders) that a defendant is not guilty by reason of mental disorder;

"spouse" includes a civil partner;

"standard scale" means the standard scale of fines for offences as set out in Schedule 8;

"statement" means any representation of fact, however made;
[UK PACE Act 1984 s.72 and Schedule 3]

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

"summary offence" means any offence other than an indictment-only offence;

"suspended sentence" means a sentence of the kind provided for in sections 565 to 572;

"trial court" means the court where a trial is held at first instance;

"UK" in relation to an enactment means a statute of the Parliament of the United Kingdom or a subsidiary instrument made under such a statute;

"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, cart, bicycle, vessel, aircraft or hovercraft;

"verdict of acquittal" does not include a special verdict, and any reference to acquittal is to be construed accordingly;

"voluntary bill of indictment" means an indictment ordered by a judge during or after a trial;

"vulnerable adult" means a person aged 18 or over whose ability to take care of himself or herself or to protect himself or herself from violence, abuse, neglect or exploitation is significantly impaired through physical or mental disability, illness, old age or otherwise;

"video recording" means any recording, on any medium, from which a moving image made by any means may be produced, and includes the accompanying sound-track;

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

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

"young person" means a person who has attained the age of 14 years and is under the age of 18 years;

"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);

"youth rehabilitation order" means an order imposed on a person under section 528.

(2) 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.

(3) A person —

(a) is in police detention for the purposes of this Ordinance if the person —

(i) has been taken to a place of lawful custody after being arrested for an offence or for any other reason; or

(ii) is arrested at a place of lawful custody after attending voluntarily at such a place or accompanying a police officer to it,

and is detained there or is detained elsewhere in the charge of a police officer; but

(b) is not in police detention for those purposes if the person is at a court after being charged.

[UK PACE Act 1984 s.118(2)]

(4) For the purposes of this Ordinance, a reference to a person being convicted of an offence under the law of a country or territory outside the Falkland Islands includes —

(a) a finding by a court exercising jurisdiction under the law of that country or territory 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]

(5) Subject to section 758 (Ascertainment of age of 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.

(6) A person shall not, for the purposes of this Ordinance, be regarded as being unable —

(a) to understand questions put to the person as a witness; or

(b) to give answers to them which can be understood,

by reason of the person's inability sufficiently to understand or speak the English language if the court believes that if provided with a competent interpreter the person would through the interpreter be able to understand such questions and give such answers. In this subsection "interpreter" includes an intermediary approved by the court under section 447.

[UK Youth Justice and Criminal Evidence Act 1999 s.53]

(7) Wherever in this Ordinance provision is made for payment, for any purpose whatsoever, out of the Consolidated Fund, such payment must be made in accordance with the following procedure —

(a) the payment must be made by the Financial Secretary; and

(b) the Financial Secretary must first ascertain whether the payment required to be made in each case has been provided for by an Appropriation Ordinance, and —

(i) if the payment has been so provided for, the payment must instead be made out of the funds set aside pursuant to the Appropriation Ordinance; but

(ii) if —

(aa) the payment has not been so provided for; or

(bb) the payment has been so provided for, but there is insufficient remainder of the funds set aside pursuant to the Appropriation Ordinance to make the payment at all or in full,

the payment must be made directly out of the Consolidated Fund as required; and

(c) a statement of aggregate payments made in each financial year in the circumstances set out in paragraph (b)(ii) must be included in the statement required by section 55(1) of the Finance and Audit Ordinance (Title 19.3).

3. Criminal proceedings

(1) In this Ordinance, "criminal proceedings" include —

(a) proceedings for an offence consisting of a trial or other hearing at which evidence falls to be given;

(b) proceedings commenced in relation to a breach of law in respect of which the person proceeded against, if the breach is proved, is liable to be punished (other than by an award of punitive or exemplary damages) in some manner provided for by law;

(c) so far as the context admits, proceedings by way of appeal from any decision of a court in proceedings which are criminal proceedings; and

(d) proceedings for enforcement of payment of a fine imposed by way of sentence on any person in criminal proceedings,

but do not include proceedings, other than in the course of a prosecution, for an order that a person be bound over or made the subject of an order under section 76 of the Licensing Ordinance, or proceedings in relation to contempt of court.

(2) Criminal proceedings for an offence are started by —

(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.

(3) If more than one time is found under subsection (2) in relation to proceedings they are started at the earliest of them.

(4) If the defendant is acquitted on all counts in proceedings for an offence, the proceedings are concluded when the defendant is acquitted.

4. Offences under two or more laws

If an act or omission constitutes an offence under two or more Ordinances, or both under an Ordinance and under any other law, the offender —

(a) may, unless the contrary intention appears, be prosecuted and punished under either or any of those Ordinances or under such other law; but

(b) may not be punished twice for the same offence.

5. Application of English procedure

(1) If and to the extent that this Ordinance or any other written law or criminal procedure rules made under this Ordinance do not make provision for any topic, the powers of the courts in their criminal jurisdiction are to be exercised in conformity with the law and practice for the time being observed in England and Wales as follows —

(a) by the Summary Court and the Magistrate's Court - the law and practice of magistrates' courts;

(b) by the Supreme Court in its original jurisdiction and its criminal appellate jurisdiction - the law and practice in the Crown Court;

(c) by the Court of Appeal in its criminal jurisdiction - the law and practice in the Criminal Division of the Court of Appeal,

but modified as required by the circumstances of the Falkland Islands.

(2) Without limiting subsection (1) as to the circumstances of the Falkland Islands, a reference in any rule of practice in England and Wales to an Act of the United Kingdom Parliament is, if there is a corresponding Falkland Islands Ordinance, to be read as a reference to that Ordinance.

CHAPTER 2 – POLICE POWERS

PART 2 – POWERS TO STOP AND SEARCH OR ENTER AND SEARCH

Powers to stop and search

6. Power of police officers to stop and search persons, vehicles, etc.

(1) A police officer may exercise any power conferred by this section —

(a) in any place to which at the time when the officer proposes to exercise the power the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission; or

(b) in any other place to which people have ready access at the time when the officer proposes to exercise the power but which is not a dwelling.

(2) Subject to subsections (3) to (5), a police officer may —

(a) search —

(i) any person or vehicle;

(ii) anything which is in or on a vehicle,

for stolen or prohibited articles or any article to which subsection (9) applies; and

(b) detain a person or vehicle for the purpose of such a search.

(3) This section does not give a police officer power to search a person or vehicle or anything in or on a vehicle unless the officer has reasonable grounds for suspecting that he or she will find stolen or prohibited articles, or any article to which subsection (9) applies.

(4) If a person is in a garden or yard occupied by and used for the purposes of a dwelling or on other land so occupied and used, a police officer may not search the person in the exercise of the power conferred by this section unless the police officer has reasonable grounds for believing that the person —

(a) does not reside in the dwelling; and

(b) is not in the place in question with the express or implied permission of a person who resides in the dwelling.

(5) If a vehicle is in a garden or yard occupied with and used for the purposes of a dwelling or on other land so occupied and used, a police officer may not search the vehicle or anything in or on it in the exercise of the power conferred by this section unless the officer has reasonable grounds for believing —

(a) that the person in charge of the vehicle does not reside in the dwelling; and

(b) that the vehicle is not in the place in question with the express or implied permission of a person who resides in the dwelling.

(6) If in the course of such a search a police officer discovers an article which the officer has reasonable grounds for suspecting to be a stolen or prohibited article, or an article to which subsection (9) applies, the officer may seize it.

(7) For the purposes of this Part, an article is prohibited if it is —

(a) an offensive weapon;

(b) a dangerous instrument; or

(c) an article —

(i) made or adapted for the use in the course of or in connection with an offence to which this sub-paragraph applies; or

(ii) intended by the person having it with the person for such use by that person or by some other person.

(8) The offences to which subsection (7)(c)(i) applies are —

(a) burglary;

(b) theft;

(c) an offence under section 30 of the Road Traffice Ordinance (Taking motor vehicles, etc. without authority);

(d) an offence under section 369 of the Crimes Ordinance 2014 (Offence of fraud); and

(e) an offence under section 195 of the Crimes Ordinance 2014 (Destroying or damaging property).

[Criminal Justice Ord. s.168; UK PACE Act 1984 s.1; Criminal Justice Act 1988 s.139]

7. Provisions relating to search under section 6

(1) A police officer who detains a person or vehicle in the exercise of —

(a) the power conferred by section 6; or

(b) any other power —

(i) to search a person without first arresting the person; or

(ii) to search a vehicle without making an arrest,

need not conduct a search if it appears subsequently to the officer that no search is required, or that a search is impracticable.

(2) A police officer who contemplates a search, other than a search of an unattended vehicle, in the exercise of the powers mentioned in subsection (1) must, subject to subsection (5), take reasonable steps before he or she commences the search to bring to the attention of the appropriate person the matters specified in subsection (4) and must not commence the search until he or she has performed that duty.

(3) If the police officer is not in uniform he or she must also produce to the appropriate person documentary evidence that he or she is a police officer.

(4) The matters referred to in subsection (2) are —

(a) the police officer's name;

(b) the object of the proposed search;

(c) the officer's grounds for proposing to make it; and

(d) the effect of section 8(7) or (8), as appropriate.

(5) A police officer need not bring the effect of section 8(7) or (8)] to the attention of the appropriate person if it appears to the officer that it will not be practicable to make the record as provided by section 10(1).

(6) In this section "the appropriate person" means —

(a) if the police officer proposes to search a person - that person; and

(b) if the officer proposes to search a vehicle, or anything in or on a vehicle - the person in charge of the vehicle.

(7) On completing a search of an unattended vehicle or anything in or on such a vehicle in the exercise of any such power as is mentioned in subsection (1) a police officer must leave a notice stating —

(a) that the officer has searched it;

(b) the officer's name and rank;

(c) that an application for compensation for any damage caused by the search may be made in writing to to the Chief Police Officer; and

(d) the effect of section 10(8).

(8) The police officer must leave the notice referred to in subsection (7) inside the vehicle unless it is not reasonably practicable to do so without damaging the vehicle.

(9) The time for which a person or vehicle may be detained for the purposes of such a search is the time reasonably required to permit a search to be carried out either at the place where the person or vehicle was first detained or nearby.

(10) Neither the power conferred by section 6 nor any other power to detain and search a person without first arresting the person, or to detain and search a vehicle without making an arrest, authorises a police officer —

(a) to require a person to remove any of the person's clothing in public other than an outer coat, jacket or gloves; or

(b) if not in uniform, to stop a vehicle.

[Criminal Justice Ord. s.169; UK PACE Act 1984 s.2]

8. Power to stop and search in anticipation of, or after, violence

(1) If a police officer of the rank of inspector or above reasonably believes that —

(a) incidents involving serious violence are likely to take place in any locality in the Falkland Islands; and

(b) it is necessary and expedient to give an authorisation under this section to prevent their occurrence,

the officer may give an authorisation that the powers conferred by this section are exercisable in that locality for a specified period not exceeding 24 hours.

(2) If a police officer of the rank of inspector or above reasonably believes that —

(a) an incident involving serious violence has taken place in any locality in the Falkland Islands;

(b) a dangerous instrument or offensive weapon used in the incident is being carried by a person in that locality; and

(c) it is necessary and expedient to give an authorisation under this section to find the instrument or weapon,

the officer may give an authorisation that the powers conferred by this section are exercisable in that locality for a specified period not exceeding 24 hours.

(3) If a police officer of the rank of inspector or above reasonably believes that persons are carrying dangerous instruments or offensive weapons in any locality in the Falkland Islands without good reason, the officer may give an authorisation that the powers conferred by this section are exercisable in that locality for a specified period not exceeding 24 hours.

(4) If it appears to an officer above the rank of inspector to be necessary and expedient, having regard to offences which have, or are reasonably suspected to have, been committed in connection with any activity falling within the authorisation, the officer may direct that the authorisation continues in force for a further 24 hours.

(5) If a police officer gives an authorisation under subsection (1) he or she must, as soon as practicable, cause an officer above the rank of inspector to be informed.

(6) This section confers on any police officer in uniform power to —

(a) stop any pedestrian and search the pedestrian or anything carried by him or her for offensive weapons or dangerous instruments;

(b) stop any vehicle and search the vehicle, its driver and any passenger for offensive weapons or dangerous instruments.

(c) require any person to remove any item which the officer reasonably believes that person is wearing wholly or mainly for the purpose of concealing the person's identity;

(d) seize any item which the officer reasonably believes any person intends to wear wholly or mainly for that purpose.

(7) A police officer may, in the exercise of the powers conferred by subsection (6), stop any person or vehicle and make any search the officer thinks fit, whether or not the officer has any grounds for suspecting that the person or vehicle is carrying weapons or articles of that kind.

(8) If in the course of a search under this section a police officer discovers a dangerous instrument or an article which the officer has reasonable grounds for suspecting to be an offensive weapon, the officer may seize it.

(9) A person who fails —

(a) to stop, or to stop a vehicle; or

(b) to remove an item worn by the person,

when required to do so by a police officer under this section commits an offence.
Penalty: Imprisonment for 1 month, or a fine at level 3 on the standard scale, or both.
[UK Criminal Justice & Public Order Act 1994 s.60 (part) and 60AA]

9. Provisions supplementary to section 8

(1) Subject to subsection (2), an authorisation or direction under section 8 must —

(a) be in writing signed by the officer giving it; and

(b) specify the grounds on which it is given and the locality in which and the period during which the powers conferred by this section are exercisable.

(2) An authorisation under subsection (2) of section 8 need not be given in writing if it is not practicable to do so but any oral authorisation must state the matters which would otherwise have to be specified under subsection (1) of this section and must be recorded in writing as soon as is practicable.

(3) The driver of a vehicle that is stopped by a police officer under this section is entitled to obtain a written statement that the vehicle was stopped under the powers conferred by this section, if he or she applies for such a statement within 3 months after the day on which the vehicle was stopped.

(4) A person who is searched by a police officer under this section is entitled to obtain a written statement that he or she was searched under the powers conferred by this section, if the person applies for such a statement within 12 months after the day on which he or she was searched.

(5) For the purposes of section 8, a person carries a dangerous instrument or an offensive weapon if the person has it in his or her possession.

(6) The powers conferred by section 8 are in addition to and do not derogate from any power otherwise conferred by this Ordinance.
[UK Criminal Justice & Public Order Act 1994 s.60 (part)]

10. Duty to make records concerning searches
(1) When a police officer has carried out a search pursuant to the provisions of this Part, other than a search under section 13, a record of the search must be made in writing unless it is not practicable to do so.

(2) The record of a search of a person must include a note of the person's name, if the police officer knows it, but an officer must not detain a person to find out the name of the person.

(3) If a police officer does not know the name of a person searched, the record of the search must include a note describing that person.

(4) The record of a search of a vehicle must include a note describing the vehicle, and stating the registration number of the vehicle if displayed upon the vehicle.

(5) When a record of a search is required by subsection (1) to be made —

(a) if the search results in a person being arrested and taken to a place of lawful custody, the officer must ensure that the record is made as part of the person's custody record;

(b) in any other case, the officer must make the record at the time, or, if that is not practicable, as soon as practicable after the completion of the search.

(6) The record of a search of a person or a vehicle must —

(a) state —

(i) the object of the search;

(ii) the grounds for making it;

(iii) the date and time when it was made;

(iv) the place where it was made;

(v) whether anything, and if so what, was found;

(vi) whether any, and if so what, injury to a person or damage to property appears to the police officer to have resulted from the search; and

(b) identify the police officer who made the search.

(7) If a record of a search of a person has been made under this section, the person who was searched is entitled to a copy of the record if he or she asks for one within 12 months of the search being made.

(8) If —

(a) a record of the search of a vehicle has been made under this section; and

(b) the owner of the vehicle or the person who was in charge of the vehicle at the time when it was searched asks for a copy of the record of the search within 12 months of the search being made,

the person who made the request is entitled to a copy.
[Criminal Justice Ord s.170; UK PACE Act 1984 s.3]

11. Road checks

(1) This section governs the conduct of road checks by police officers for the purpose of ascertaining whether a vehicle is carrying a person who —

(a) has committed an offence other than a road traffic offence;

(b) is a witness to such an offence;

(c) intends to commit such an offence; or

(d) is unlawfully at large.

(2) For the purposes of this section a road check consists of the exercise in a place of the power to stop traffic conferred by section 45(1) of the Road Traffic Ordinance so as to stop all vehicles, or all vehicles of a particular type, during the period for which the power is exercised in that place.

(3) Subject to subsection (5), there may only be a road check if a police officer of the rank of inspector or above authorises it in writing.

(4) An officer may only authorise a road check under subsection (3) —

(a) for the purpose specified in subsection (1)(a) - if the officer has reasonable grounds —

(i) for believing that the offence is an imprisonable offence; and

(ii) for suspecting that the person is, or is about to be, in the place in which vehicles would be stopped if the road check were authorised;

(b) for the purpose specified in subsection (1)(b) - if the officer has reasonable grounds for believing that the offence is an imprisonable offence;

(c) for the purpose specified in subsection (1)(c) - if the officer has reasonable grounds —

(i) for believing that the offence would be an imprisonable offence; and

(ii) for suspecting that the person is, or is about to be, in the place in which vehicles would be stopped if the road check were authorised;

(d) for the purpose specified in subsection (1)(d) - if the officer has reasonable grounds for suspecting that the person is, or is about to be, in that place.

(5) An officer below the rank of inspector may authorise a road check if it appears to the officer that it is required as a matter of urgency for one of the purposes specified in subsection (1).

(6) If an authorisation is given under subsection (5), the officer who gives it must —

(a) make a written record of the time at which he or she gives it; and

(b) inform an officer of the rank of inspector or above that it has been given.

(7) The duties imposed by subsection (6) must be performed as soon as is practicable after the giving of the authorisation.

(8) An officer to whom a report is made under subsection (6) may, in writing, authorise the road check to continue.

(9) If the officer to whom the report is made considers that the road check should not continue, he or she must record in writing —

(a) the fact that it took place; and

(b) the purpose for which it took place.

(10) An officer giving an authorisation under this section must specify the place in which vehicles are to be stopped.

(11) An officer giving an authorisation under this section, other than an authorisation under subsection (5) —

(a) must specify a period, not exceeding 7 days, during which the road check may continue; and

(b) may direct that the road check is to be —

(i) continuous; or

(ii) conducted at specified times,

during that period.

(12) If it appears to a police officer of the rank of inspector or above that a road check ought to continue beyond the period for which it has been authorised, the officer may, from time to time, in writing specify a further period, not exceeding 7 days, during which it may continue.

(13) An authorisation under this section must specify —

(a) the name of the officer giving it;

(b) the purpose of the road check; and

(c) the place in which vehicles are to be stopped.

(14) The duties to specify the purposes of a road check imposed by subsections (9) and (13) include duties to specify any relevant imprisonable offence.

(15) If a vehicle is stopped in a road check, the person in charge of the vehicle at the time when it stopped is entitled to obtain a written statement of the purpose of the road check if he or she applies for such a statement within 12 months from the day on which the vehicle was stopped.

(16) Nothing in this section affects the exercise by police officers of any power to stop vehicles for purposes other than those specified in subsection (1).
[UK PACE Act 1984 s.4]

12. Reports of searches and road checks

(1) The Chief Police Officer must publish an annual report that contains information for the period to which it relates relating to —

(a) searches carried out pursuant to the provisions of this Part during that period; and

(b) road checks authorised under section 11 during that period.

(2) The information about searches does not need to include information about specific searches but must include —

(a) the total numbers of searches in each month during the period to which the report relates—

(i) for stolen articles; and

(ii) for probibted articles, as defined in section 6(7).

(b) the total number of persons arrested in each such month in consequence of searches of each of the descriptions specified in paragraph (a)(i) to (iii).

(3) The information about road checks must include information —

(a) about the reason for authorising each road check; and

(b) about the result of each of them.

[UK PACE Act 1984 s.5]

Powers to enter and search

13. Power to authorise entry and search of premises

(1) If, on application made by a police officer, the Senior Magistrate is, or 2 justices of the peace are, satisfied that there are reasonable grounds for believing that —

(a) an imprisonable offence has been committed;

(b) there is material on premises specified in the application which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence;

(c) the material is likely to be relevant evidence;

(d) it does not consist of or include items subject to legal privilege, excluded material or special procedure material; and

(e) any of the conditions specified in subsection (3) applies,

the Senior Magistrate or justices of the peace may issue a warrant authorising a police officer to enter and search the premises.

(2) The premises referred to in subsection (1)(b) are —

(a) one or more sets of premises specified in the application (in which case the application is for a "specific premises warrant"); or

(b) any premises occupied or controlled by a person specified in the application, including any premises specified as in paragraph (a) (in which case the application is for an "all premises warrant")

(3) A police officer may seize and retain anything for which a search has been authorised under subsection (1).

(4) The conditions mentioned in subsection (1)(e) are that —

(a) it is not practicable to communicate with any person entitled to grant entry to the premises;

(b) it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the evidence;

(c) entry to the premises will not be granted unless a warrant is produced;

(d) 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.

(5) The power to issue a warrant conferred by this section is in addition to any such power conferred by any other law.

(6) In this section a reference to 2 justices of the peace means 2 such justices sitting together (whether in open court or otherwise) and concurring in the decision.
[Criminal Justice Ord. s.179; UK PACE Act 1984 s.8]

14. Special provisions as to access – Schedule 1
A police officer of the rank of sergeant or above may obtain access to excluded material or special procedure material for the purposes of a criminal investigation by making an application under Schedule 1 (Access to special procedure material or excluded material) and in accordance with that Schedule.
[Criminal Justice Ord. s.180; UK PACE Act 1984 s.9]

15. Meaning of "items subject to legal privilege"
(1) Subject to subsection (2), in this Part "items subject to legal privilege" means —

(a) communications between a legal practitioner and the practitioner's client or any person representing the client made in connection with the giving of legal advice to the client;

(b) communications between a legal practitioner and the practitioner's client or any person representing the client or between such a representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and

(c) items enclosed with or referred to in such communications and made —

(i) in connection with the giving of legal advice; or

(ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

when they are in the possession of a person who is entitled to possession of them.

(2) Items held with the intention of furthering a criminal purpose are not items subject to legal privilege.
[Criminal Justice Ord. s.181; UK PACE Act 1984 s.10]

16. Meaning of "excluded material"

(1) Subject to the following provisions of this section, in this Part "excluded material" means —

(a) personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which the person holds in confidence;

(b) human tissue or tissue fluid which has been taken for the purposes of diagnosis or medical treatment and which a person holds in confidence;

(c) journalistic material which a person holds in confidence and which consists of —

(i) documents; or

(ii) records other than documents.

(2) A person holds material other than journalistic material in confidence for the purposes of this section if the person holds it subject to —

(a) an express or implied undertaking to hold it in confidence; or

(b) a restriction on disclosure or an obligation of secrecy contained in any enactment including an enactment that comes into force after this Part comes into force, unless the later enactment limits the obligation under this section.

(3) A person holds journalistic material in confidence for the purposes of this section if —

(a) the person holds it subject to such an undertaking, restriction or obligation; and

(b) it has been continuously held (by one or more persons) subject to such an undertaking, restriction or obligation since it was first acquired or created for the purposes of journalism.
[Criminal Justice Ord. s.182; UK PACE Act 1984 s.11]

17. Meaning of "personal records"

In this Part "personal records" means documentary and other records concerning an individual (whether living or dead) who can be identified from them and relating to —

(a) the individual's physical or mental health;

(b) spiritual counselling or assistance given or to be given to the individual; or

(c) counseling or assistance given or to be given to the individual, for the purposes of the individual's personal welfare, by any voluntary organisation or by any other individual who—

(i) by reason of his or her office or occupation has responsibilities for the individuals personal welfare; or

(ii) by reason of an order of a court has responsibilities for the individual's supervision.
[Criminal Justice Ord. s.183; UK PACE Act 1984 s.12]

18. Meaning of "journalistic material"
(1) Subject to subsection (2), in this Part "journalistic material" means material acquired or created for the purposes of journalism.

(2) Material is only journalistic material for the purposes of this Part if it is in the possession of a person who acquired or created it for the purposes of journalism.

(3) A person who receives material from someone who intends that the recipient will use it for the purposes of journalism is to be taken to have acquired it for those purposes.
[Criminal Justice Ord. s.184; UK PACE Act 1984 s.13]

19. Meaning of "special procedure material"
(1) In this Part, "special procedure material" means —

(a) material to which subsection (2) applies; and

(b) journalistic material that is not excluded material.

(2) Subject to the following subsections, this subsection applies to material, other than items subject to legal privilege and excluded material, in the possession of a person who —

(a) acquired or created it in the course of any trade, business, profession or other occupation or for the purpose of any paid or unpaid office; and

(b) holds it subject —

(i) to an express or implied undertaking to hold it in confidence; or

(ii) to a restriction or obligation such as is mentioned in section 16(2)(b).

(3) If material is acquired —

(a) by an employee from his or her employer and in the course of his or her employment; or

(b) by a company from an associated company,

it is only special procedure material if it was special procedure material immediately before the acquisition.

(4) If material is created by an employee in the course of his or her employment, it is only special procedure material if it would have been special procedure material if his or her employer had created it.

(5) If material is created by a company on behalf of an associated company, it is only special procedure material if it would have been special procedure material had the associated company created it.

(6) A company is to be treated as another's associated company for the purposes of this section at a given time if, at that time or at any time within one year previously —

(a) one of the 2 companies has control of the other; or

(b) both are under the control of the same person or persons.

[Criminal Justice Ord. s.185; UK PACE Act 1984 s.14; Corporation Tax Act 2010, s.449]

20. Search warrants: Safeguards

(1) This section and section 21 have effect in relation to the issue to a police officer under any enactment (including an enactment that comes into force after this Part comes into force unless the later enactment limits the obligation in this section) of a warrant to enter and search premises (a "search warrant").

(2) An entry on or search of premises under a search warrant is unlawful unless it complies with this section and section 21.

(3) A police officer who applies for a search warrant must —

(a) state —

(i) the ground on which he or she makes the application; and

(ii) the enactment under which the warrant would be issued;

(b) specify the premises which it is desired to enter and search; and

(c) identify, so far as is practicable, the articles or persons to be sought.

(4) An application for a search warrant must be made without notice and supported by an information in writing.

(5) A police officer applying for a search warrant must answer on oath any question asked by the Senior Magistrate or justices of the peace hearing the application.

(6) A search warrant must —

(a) authorise an entry on one occasion only, unless it specifies that it authorises multiple entries;

(b) if it specifies that it authorises multiple entries - specify whether the number of entries authorised is unlimited, or limited to a specified maximum;

(c) specify —

(i) the name of the person who applies for it;

(ii) the date on which it was issued;

(iii) the enactment under which it is issued;

(iv) each set of premises to be searched or, in the case of an all premises warrant, the person who is in occupation or control of the premises to be searched and any premises under the occupation or control of that person that can be specified and are to be searched; and

(d) identify, so far as practicable, the articles or persons to be sought.

(7) Two copies must be made of a warrant, each clearly certified by the person issuing the warrant as copies.
[Criminal Justice Ord. s.186; UK PACE Act 1984 s.15]

21. Execution of search warrants
(1) A search warrant may —

(a) be executed by any police officer; and

(b) authorise persons to accompany the officer who is executing it.

(2) A person authorised under subsection (1)(b) —

(a) has the same powers as the police officer whom the person accompanies in respect of —

(i) the execution of the warrant; and

(ii) the seizure of anything to which the warrant relates; but.

(b) may exercise those powers only in the company, and under the supervision, of the police officer.

(3) Entry and search under a search warrant must be —

(a) within one month from the date of its issue;

(b) at a reasonable hour unless it appears to the police officer executing it that the purpose of a search may be frustrated by entry at a reasonable hour.

(4) If the occupier of premises which are to be entered and searched is present at the time when a police officer seeks to execute a search warrant in respect of them, the officer must —

(a) identify himself or herself to the occupier and, if not in uniform, produce to the occupier documentary evidence that he or she is a police officer;

(b) produce the warrant to the occupier; and

(c) supply the occupier with a copy of it, certified as required by section 20(7).

(5) If —

(a) the occupier of the premises is not present at the time when a police officer seeks to execute a search warrant; but

(b) some other person who appears to the police officer to be in charge of the premises is present,

subsection (4) has effect as if a reference to the occupier were a reference to that other person.

(6) If there is no person present who appears to the police officer to be in charge of the premises, the officer must leave a copy of the warrant in a prominent place on the premises.

(7) A search under a warrant may only be a search to the extent required for the purpose for which the warrant was issued.

(8) A police officer executing a search warrant must make an endorsement on it stating whether—

(a) the articles or persons sought were found; and

(b) any articles were seized, other than articles which were sought.

(9) A search warrant which —

(a) has been executed; or

(b) has not been executed within the time authorised for its execution,

must be returned to the office of the court out of which it was issued.

(10) A warrant which is returned to a court under subsection (9) must be retained for 12 months from its return by the court officer to whom it was returned.

(11) If during the period for which a warrant is to be retained the occupier of the premises to which it relates asks to inspect it, the occupier must be allowed to do so.
[Criminal Justice Ord. s.187; UK PACE Act 1984 s.16]

Entry and search without a search warrant

22. Entry for purpose of arrest, etc.
(1) Subject to the following provisions of this section, and without affecting any other enactment, a police officer may enter and search any premises for the purpose of —

(a) executing —

(i) a warrant of arrest issued in connection with or arising out of criminal proceedings; or

(ii) a warrant of commitment issued by a court under any enactment;

(b) arresting a person for an imprisonable offence;

(c) arresting a person for an offence under —

(i) any of sections 568 to 572 of the Crimes Ordinance 2014 (trespassing on premises);

(ii) section 45(2) of the Road Traffic Ordinance (failure to stop when required to do so by police officer in uniform);

(d) arresting any youth who has been remanded or detained under this Ordinance;

(e) recapturing a person who is, or is deemed for any purpose to be, unlawfully at large while liable to be detained in a prison or other place of detention;

(f) recapturing a person who is unlawfully at large and whom the officer is pursuing; or

(g) preventing death or serious personal injury or serious damage to property.

(2) Except for the purpose specified in subsection (1)(g), the powers of entry and search conferred by this section —

(a) are only exercisable if the police officer has reasonable grounds for believing that the person whom he or she is seeking is on the premises; and

(b) are limited, in relation to premises consisting of 2 or more separate dwellings, to powers to enter and search —

(i) any parts of the premises which the occupiers of any dwelling comprised in the premises use in common with the occupiers of any other such dwelling; and

(ii) any such dwelling in which the police officer has reasonable grounds for believing that the person whom he or she is seeking may be.

(3) The powers of entry and search conferred by this section, if exercised for the purpose specified in subsection (1)(c)(ii), must be exercised by a police officer in uniform.

(4) The power of search conferred by this section is only a power to search to the extent reasonably required for the purpose for which the power of entry is exercised.

(5) Nothing in this section affects any power of entry to deal with or prevent a breach of the peace.
[Criminal Justice Ord. s.188; UK PACE Act 1984 s.17]

23. Entry and search after arrest
(1) Subject to this section, a police officer may enter and search any premises occupied or controlled by a person who is under arrest for an imprisonable offence, if the officer has reasonable grounds for suspecting that there is on the premises evidence, other than items subject to legal privilege, that relates —

(a) to that offence; or

(b) to some other imprisonable offence which is connected with or similar to that offence.

(2) A police officer may seize and retain anything for which he or she may search under subsection (1).

(3) The power to search conferred by subsection (1) is only a power to search to the extent that is reasonably required for the purpose of discovering evidence of the kind mentioned in that subsection.

(4) Subject to subsection (5), the powers conferred by this section may not be exercised unless an officer of the rank of inspector or above has authorised them in writing.

(5) A police officer may conduct a search under subsection (1) —

(a) before the person is taken to a place of lawful custody or released on bail; and

(b) without obtaining an authorisation under subsection (4),

if the presence of the person at a place (other than the place of lawful custody) is necessary for the effective investigation of the offence.

(6) If a police officer conducts a search by virtue of subsection (5), the officer must as soon as practicable after making the search inform an officer of the rank of inspector or above that he or she has made it.

(7) An officer who —

(a) authorises a search; or

(b) is informed of a search under subsection (6),

must make a record in writing —

(i) of the grounds for the search; and

(ii) of the nature of the evidence that was sought.

(8) If the person who was in occupation or control of the premises at the time of the search is in police detention at the time the search record is to be made, the officer must, as soon as reasonably practicable, add the search record as part of the person's custody record.
[Criminal Justice Ord. s.189; UK PACE Act 1984 s.18]

Police powers at airports

24. Exercise of police functions at airports

(1) A police officer, when acting in the performance of duties as a police officer, is entitled to enter any part of any airport.

(2) A police officer may in any airport —

(a) stop, and without warrant search and arrest, any airport employee whom the officer has reasonable grounds to suspect of having in the employee's possession, or of conveying in any manner, anything stolen or unlawfully obtained at the airport;

(b) if the officer has reasonable grounds to suspect that anything stolen or unlawfuly obtained at the airport may be found in or on any vehicle carrying an airport employee at the airport or in or on any aircraft, stop, board and, without warrant, search and detain the vehicle or aircraft.

(3) A police officer may —

(a) stop any person who is leaving a cargo area in an airport and inspect any goods carried by the person;

(b) stop and search any vehicle or aircraft which is leaving any such area and inspect the vehicle or aircraft and any goods crried on or in it; and

(c) detain in the area —

(i) any such goods for which there is not produced a document authorising their removal from the area signed by a person authorised in that behalf by the manager of the airport; and

(ii) any such vehicle or aircraft for so long as there are on or in it goods liable to detention under this paragraph.

(4) Nothing in subsection (3) is to be construed as a power to search any person.

(5) The powers conferred by this section on police officers do not limit or affect any other powers under this or any other written law or enactment exercisable by a police officer at an airport.

(6) In this section —

"airport" means Mount Pleasant Airport, Stanley Airport, and any other airport designated by the Governor by order for the purposes of this section;

"airport employee" means any person working at an airport under a contract requiring the person to work at the airport;

"cargo area" means any area which is used wholly or mainly for the storage or handling of cargo in an airport.

PART 3 – POWERS OF SEIZURE, ETC.

25. General interpretation of Part

(1) In this Part —

"excluded material" has the meaning given to that term by section 16;

"item subject to legal privilege" has the meaning given to it by section 15;

"return", in relation to seized property, is to be construed in accordance with section 39, and cognate expressions are to be construed accordingly;

"seize", and cognate expressions, are to be construed in accordance with section 26(1);

"seized property", in relation to any exercise of a power of seizure, means anything seized in exercise of that power;

"special procedure material" has the meaning given to it by section 19.

(2) In this Part, in relation to a time when seized property is in any person's possession in consequence of a seizure ("the relevant time"), a reference to a thing for which the person making the seizure had power to search is to be construed —

(a) if the seizure was made on the occasion of a search carried out on the authority of a warrant - as including anything of the description of things the presence or suspected presence of which provided grounds for the issue of the warrant;

(b) if the property was seized in the course of a search on the occasion of which it would have been lawful for the person carrying out the search to seize anything which on that occasion was believed by the person to be, or appeared to the person to be, of a particular description - as including —

(i) anything which at the relevant time is believed by the person in possession of the seized property, or (as the case may be) appears to the person, to be of that description; and

(ii) anything which is in fact of that description;

(c) if the property was seized in the course of a search on the occasion of which it would have been lawful for the person carrying out the search to seize anything which there were on that occasion reasonable grounds for believing was of a particular description - as including—

(i) anything which there are at the relevant time reasonable grounds for believing is of that description; and

(ii) anything which is in fact of that description;

(d) if the property was seized in the course of a search to which neither paragraph (b) nor paragraph (c) applies - as including anything which is of a description of things which, on the occasion of the search, it would have been lawful for the person carrying it out to seize otherwise than under section 31 or 32.

(3) In this Part, "judicial officer" means the Senior Magistrate, except that —

(a) if the Senior Magistrate is not available, owing to absence or indisposition, "judicial officer" means a judge in chambers;

(b) if neither the Senior Magistrate nor a judge is available, "judicial officer" means 3 justices of the peace, sitting together (whether in open court or otherwise).

[UK Criminal Justice & Police Act 2001 s.66]

26. Copies

(1) Subject to subsection (3) —

(a) in this Part, "seize" includes "take a copy of", and cognate expressions are to be construed accordingly;

(b) this Part applies as if any copy taken under any power to which any provision of this Part applies were the original of that of which it is a copy; and

(c) for the purposes of this Part, except sections 31 and 32, the powers mentioned in subsection (2) (which are powers to obtain hard copies etc. of information which is stored in electronic form) are to be treated as powers of seizure, and references to seizure and to seized property are to be construed accordingly.

(2) The powers mentioned in subsection (1)(c) are any powers conferred by section 27(4) or 28.

(3) Subsection (1) does not apply to section 37.
[UK Criminal Justice & Police Act 2001 s.63]

General power of seizure, etc.

27. General power of seizure, etc.
(1) The powers conferred by subsections (2), (3) and (4) are exercisable by a police officer who is lawfully on any premises.

(2) The police officer may seize anything which is on the premises if the officer has reasonable grounds for believing —

(a) that it has been obtained in consequence of the commission of an offence; and

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

(3) The police officer may seize anything which is on the premises if the officer has reasonable grounds for believing —

(a) that it is evidence in relation to an offence which the officer is investigating or any other offence; and

(b) that it is necessary to seize it in order to prevent the evidence being concealed, lost, damaged, altered or destroyed.

(4) The police officer may require any information which is stored in any electronic form and is accessible from the premises to be produced in a form —

(a) in which it can be taken away and in which it is visible and legible; or

(b) from which it can readily be produced in a visible and legible form,

if the officer has reasonable grounds for believing that —

(c) the information —

(i) is evidence in relation to an offence which he or she is investigating, or any other offence; or

(ii) has been obtained in consequence of the commission of an offence; and

(d) it is necessary to do so in order to prevent it being concealed, lost, tampered with or destroyed.

(5) The powers of seizure conferred by this section are in addition to any similar power conferred by any enactment.

(6) No power of seizure conferred on a police officer under any enactment (including an enactment that comes into force after this Part comes into force unless the later enactment limits the power in this section) authorises the seizure of an item which the police officer exercising the power has reasonable grounds for believing to be subject to legal privilege.
[Criminal Justice Ord. s.190; UK PACE Act 1984 s.19]

28. Extension of powers of seizure to computerised information

(1) Every power of seizure conferred by an enactment to which this section applies on a police officer who has entered premises in the exercise of a power conferred by an enactment includes a power to require any information stored in any electronic form and accessible from the premises to be produced in a form —

(a) in which it can be taken away and in which it is visible and legible; or

(b) from which it can readily be produced in a visible and legible form.

(2) This section applies —

(a) to any enactment in force when this Part came into force;

(b) to sections 13 and 23;

(c) to paragraph 13 of Schedule 1 (Access to special procedure material and excluded material); and

(d) to any enactment that comes into force after this Part comes into force, unless the later enactment limits the power in this section.
[Criminal Justice Ord. s.191; UK PACE Act 1984 s.20]

29. Access and copying

(1) A police officer who seizes anything in the exercise of a power conferred by any enactment (including an enactment that comes into force after this Part comes into force, unless the later enactment limits the power in this section) must, if so requested by a person showing himself or herself —

(a) to be the occupier of premises on which it was seized; or

(b) to have had custody or control of it immediately before the seizure,

provide that person with a record of what the officer seized.

(2) The officer must provide the record within a reasonable time from the making of the request for it.

(3) Subject to subsection (7), if a request for permission to be granted access to anything which—

(a) has been seized by a police officer; and

(b) is retained by the police for the purpose of investigating an offence,

is made to the officer in charge of the investigation by a person who had custody or control of the thing immediately before it was so seized, or by someone acting on behalf of such a person, the officer must allow the person who made the request access to it under the supervision of a police officer.

(4) Subject to subsection (7), if a request for a photograph or copy of any such thing is made to the officer in charge of the investigation by a person who had custody or control of the thing immediately before it was so seized, or by someone acting on behalf of such a person, the officer must —

(a) allow the person who made the request access to it under the supervision of a police officer for the purpose of photographing or copying it; or

(b) photograph or copy it, or cause it to be photographed or copied.

(5) A police officer may also photograph or copy, or have photographed or copied, anything which the officer has power to seize, without a request being made under subsection (4).

(6) If anything is photographed or copied under subsection (4)(b), the photograph or copy must be supplied to the person who made the request within a reasonable time after the making of the request.

(7) There is no duty under this section to grant access to, or to supply a photograph or copy of, anything if the officer in charge of the investigation for the purposes of which it was seized has reasonable grounds for believing that to do so would prejudice —

(a) that investigation;

(b) the investigating of an offence other than the offence for the purposes of investigating which the thing was seized; or

(c) any criminal proceedings which might be brought as a result of —

(i) the investigation of which the officer is in charge; or

(ii) any such investigation as is mentioned in paragraph (b).

(8) The references to a police officer in subsections (1), (2), (3)(a) and (5) include a person authorised under section 21(1) to accompany a police officer executing a warrant.
[Criminal Justice Ord. s192; UK PACE Act 1984 s.21]

30. Retention

(1) Subject to subsection (4), anything which has been seized by a police officer or taken away by a police officer following a requirement made by virtue of section 27 or 28 may be retained for as long as is necessary in all the circumstances.

(2) Without limiting subsection (1) —

(a) anything seized for the purposes of a criminal investigation may be retained, except as provided by subsection (4) —

(i) for use as evidence at a trial for an offence; or

(ii) for forensic examination or for investigation in connection with an offence; and

(b) anything may be retained in order to establish its lawful owner, if there are reasonable grounds for believing that it has been obtained in consequence of the commission of an offence.

(3) Nothing seized on the ground that it may be used —

(a) to cause physical injury to any person;

(b) to damage property;

(c) to interfere with evidence; or

(d) to assist in escape from police detention or lawful custody,

may be retained when the person from whom it was seized —

(i) is no longer in police detention or the custody of a court; or

(ii) is in the custody of a court but has been released on bail.

(4) Nothing may be retained for either of the purposes mentioned in subsection (2)(a) if a photograph or copy would be sufficient for that purpose.

(5) The reference in subsection (1) to anything seized by a police officer includes anything seized by a person authorised under section 21(1) to accompany a police officer executing a warrant.

(6) Nothing in this section affects any power of a court to make an order under section 51 of the Police Ordinance 2000 (Disposal of property).
[Criminal Justice Ord. s.193; UK PACE Act 1984 s.22]

Additional powers of seizure

31. Additional powers of seizure from premises

(1) If —

(a) a person who is lawfully on any premises finds anything on those premises that the person has reasonable grounds for believing may be or contain something for which the person is authorised to search on those premises;

(b) a power of seizure to which this section applies, or the power conferred by subsection (2), would entitle the person, if he or she found it, to seize whatever it is that the person has grounds for believing that thing to be or to contain; and

(c) in all the circumstances, it is not reasonably practicable for it to be determined, on those premises —

(i) whether what the person has found is something that he or she is entitled to seize; or

(ii) the extent to which what the person has found contains something that he or she is entitled to seize,

that person's powers of seizure include power under this section to seize so much of what the person has found as it is necessary to remove from the premises to enable that to be determined.

(2) If —

(a) a person who is lawfully on any premises finds anything on those premises ("the seizable property") which the person would be entitled to seize but for its being comprised in something else that the person has (apart from this subsection) no power to seize;

(b) the power under which that person would have power to seize the seizable property is a power to which this section applies; and

(c) in all the circumstances it is not reasonably practicable for the seizable property to be separated, on those premises, from that in which it is comprised,

that person's powers of seizure include power under this section to seize both the seizable property and that from which it is not reasonably practicable to separate it.

(3) The factors to be taken into account in considering, for the purposes of this section, whether or not it is reasonably practicable on particular premises for something to be determined, or for something to be separated from something else, are confined to —

(a) how long it would take to carry out the determination or separation on those premises;

(b) the number of persons that would be required to carry out that determination or separation on those premises within a reasonable period;

(c) whether the determination or separation would (or would if carried out on those premises) involve damage to property;

(d) the apparatus or equipment that it would be necessary or appropriate to use for the carrying out of the determination or separation; and

(e) in the case of separation - whether the separation —

(i) would be likely; or

(ii) if carried out by the only means that are reasonably practicable on those premises would be likely,

to prejudice the use of some or all of the separated seizable property for a purpose for which something seized under the power in question is capable of being used.

(4) Section 27(6) (powers of seizure not to include anything legally privileged) does not apply to the power of seizure conferred by subsection (2).

(5) This section applies to every power of seizure contained in an enactment in force when this Part comes into force, or coming into force after this Part comes into force, unless the later enactment limits the power in this section.
[UK Criminal Justice & Police Act 2001 s.50, but modified to remove Schedule 1]

32. Additional powers of seizure from the person
(1) If —

(a) a person carrying out a lawful search of any person finds something that the person has reasonable grounds for believing may be or may contain something for which the person is authorised to search;

(b) a power of seizure to which this section applies or the power conferred by subsection (2) would entitle the person, if he or she found it, to seize whatever it is that the person has grounds for believing that thing to be or to contain; and

(c) in all the circumstances it is not reasonably practicable for it to be determined, at the time and place of the search —

(i) whether what the person has found is something that he or she is entitled to seize; or

(ii) the extent to which what the person has found contains something that he or she is entitled to seize,

that person's powers of seizure include power under this section to seize so much of what he or she has found as it is necessary to remove from that place to enable that to be determined.

(2) If —

(a) a person carrying out a lawful search of any person finds something ("the seizable property") which the person would be entitled to seize but for its being comprised in something else that the person has (apart from this subsection) no power to seize;

(b) the power under which that person would have power to seize the seizable property is a power to which this section applies; and

(c) in all the circumstances it is not reasonably practicable for the seizable property to be separated, at the time and place of the search, from that in which it is comprised,

that person's powers of seizure include power under this section to seize both the seizable property and that from which it is not reasonably practicable to separate it.

(3) The factors to be taken into account in considering, for the purposes of this section, whether or not it is reasonably practicable, at the time and place of a search, for something to be determined, or for something to be separated from something else, are confined to —

(a) how long it would take to carry out the determination or separation at that time and place;

(b) the number of persons that would be required to carry out that determination or separation at that time and place within a reasonable period;

(c) whether the determination or separation would (or would if carried out at that time and place) involve damage to property;

(d) the apparatus or equipment that it would be necessary or appropriate to use for the carrying out of the determination or separation; and

(e) in the case of separation - whether the separation —

(i) would be likely; or

(ii) if carried out by the only means that are reasonably practicable at that time and place would be likely,

to prejudice the use of some or all of the separated seizable property for a purpose for which something seized under the power in question is capable of being used.

(4) Section 27(6) (powers of seizure not to include anything that a person has reasonable grounds for believing is legally privileged) does not apply to the power of seizure conferred by subsection (2).

(5) This section applies to every power of seizure contained in an enactment in force when this Part comes into force, or coming into force after this Part comes into force, unless the later enactment limits the power in this section.
[UK Criminal Justice & Police Act 2001 s.51]

33. Notice of exercise of power under section 31 or 32

(1) When a person exercises a power of seizure conferred by section 31, the person must (subject to subsections (2) and (3)) give to the occupier of the premises a written notice —

(a) specifying what has been seized in reliance on the powers conferred by that section;

(b) specifying the grounds on which those powers have been exercised;

(c) setting out the effect of sections 40 to 42 about applying for the return of seized items;

(d) specifying the name and address of the person to whom notice of an application under section 40(2) in respect of any of the seized property must be given; and

(e) specifying the name and address of the person to whom an application may be made to be allowed to attend the initial examination required by any arrangements made for the purposes of section 34(2).

(2) If it appears to the person exercising on any premises a power of seizure conferred by section 31 that —

(a) the occupier of the premises is not present on the premises at the time of the exercise of the power; but

(b) there is some other person present on the premises who is in charge of the premises,

subsection (1) of this section has effect as if it required the notice under that subsection to be given to that other person.

(3) If it appears to the person exercising a power of seizure conferred by section 31 that there is no one present on the premises to whom the person may give a notice for the purposes of complying with subsection (1) of this section, he or she must, before leaving the premises, instead of complying with that subsection, attach a notice such as is mentioned in that subsection in a prominent place to the premises.

(4) A person who exercises a power of seizure conferred by section 32 must give a written notice to the person from whom the seizure is made —

(a) specifying what has been seized in reliance on the powers conferred by that section;

(b) specifying the grounds on which those powers have been exercised;

(c) setting out the effect of sections 40 to 42;

(d) specifying the name and address of the person to whom notice of any application under section 40(1) in respect of any of the seized property must be given; and

(e) specifying the name and address of the person to whom an application may be made to be allowed to attend the initial examination required by any arrangements made for the purposes of section 34(2).

[UK Criminal Justice & Police Act 2001 s.52]

Return or retention of seized property

34. Examination and return of property seized under section 31 or 32

(1) This section applies when anything has been seized under a power conferred by section 31 or 32.

(2) The person for the time being in possession of the seized property in consequence of the exercise of that power must ensure that arrangements are in place so that (subject to section 42)—

(a) an initial examination of the property is carried out as soon as reasonably practicable after the seizure;

(b) the examination is confined to whatever is necessary for determining how much of the property falls within subsection (3);

(c) anything which is found, on that examination, not to fall within subsection (3) is separated from the rest of the seized property and is returned as soon as reasonably practicable after the examination of all the seized property has been completed; and

(d) until the initial examination of all the seized property has been completed and anything which does not fall within subsection (3) has been returned, the seized property is kept separate from anything seized under any other power.

(3) The seized property falls within this subsection only to the extent that it is —

(a) property for which the person seizing it had power to search when he or she made the seizure but is not property the return of which is required by section 35;

(b) property the retention of which is authorised by section 37; or

(c) something which, in all the circumstances, it will not be reasonably practicable, following the examination, to separate from property falling within paragraph (a) or (b).

(4) In determining for the purposes of this section the earliest practicable time for the carrying out of an initial examination of the seized property, due regard must be had to the desirability of allowing the person from whom it was seized, or a person with an interest in that property, an opportunity of being present or (if he or she chooses) of being represented at the examination.

(5) In this section, references to whether or not it is reasonably practicable to separate part of the seized property from the rest of it are references to whether or not it is reasonably practicable to do so without prejudicing the use of the rest of that property, or a part of it, for purposes for which (disregarding the part to be separated) the use of the whole or of a part of the rest of the property, if retained, would be lawful.
[UK Criminal Justice & Police Act 2001 s.53]

35. Obligation to return items subject to legal privilege
(1) If, at any time after a seizure of anything has been made in exercise of a power of seizure to which this section applies —

(a) it appears to the person who for the time being has possession of the seized property in consequence of the seizure that the property —

(i) is an item subject to legal privilege; or

(ii) has such an item comprised in it; and

(b) if the item is comprised in something else which has been lawfully seized, it is not comprised in property falling within subsection (2),

the person must ensure that the item is returned as soon as reasonably practicable after the seizure.

(2) Property in which an item subject to legal privilege is comprised falls within this subsection if —

(a) the whole or a part of the rest of the property is property falling within subsection (3) or property the retention of which is authorised by section 37; and

(b) in all the circumstances, it is not reasonably practicable for that item to be separated from the rest of that property (or, as the case may be, from that part of it) without prejudicing the use of the rest of that property, or that part of it, for purposes for which (disregarding that item) its use, if retained, would be lawful.

(3) Property falls within this subsection to the extent that it is property for which the person seizing it had power to search when he or she made the seizure, but is not property which is required to be returned under this section or section 36.

(4) This section applies —

(a) to the powers of seizure conferred by sections 31 and 32; and

(b) to any power of seizure (not falling within paragraph (a)) conferred on a police officer by or under any enactment, including an enactment that comes into force after this Part comes into force, unless the later enactment limits the power in this section.

[UK Criminal Justice & Police Act 2001 s.54]

36. Obligation to return excluded and special procedure material

(1) If, at any time after a seizure of anything has been made in exercise of a power to which this section applies —

(a) it appears to the person for the time being having possession of the seized property in consequence of the seizure that the property —

(i) is excluded material or special procedure material; or

(ii) has any excluded material or any special procedure material comprised in it;

(b) its retention is not authorised by section 37; and

(c) in a case in which the material is comprised in something else which has been lawfully seized - it is not comprised in property falling within subsection (2) or (3),

the person must ensure that the item is returned as soon as reasonably practicable after the seizure.

(2) Property in which any excluded material or special procedure material is comprised falls within this subsection if —

(a) the whole or a part of the rest of the property is property for which the person seizing it had power to search when he or she made the seizure but is not property the return of which is required by this section or section 35; and

(b) in all the circumstances, it is not reasonably practicable for that material to be separated from the rest of that property (or, as the case may be, from that part of it) without prejudicing the use of the rest of that property, or that part of it, for purposes for which (disregarding that material) its use, if retained, would be lawful.

(3) Property in which any excluded material or special procedure material is comprised falls within this subsection if —

(a) the whole or a part of the rest of the property is property the retention of which is authorised by section 37; and

(b) in all the circumstances, it is not reasonably practicable for that material to be separated from the rest of that property (or, as the case may be, from that part of it) without prejudicing the use of the rest of that property, or that part of it, for purposes for which (disregarding that material) its use, if retained, would be lawful.

(4) This section applies to every power of seizure contained in an enactment in force when this Part comes into force, or coming into force after this Part comes into force, unless the later enactment limits the power in this section.
[UK Criminal Justice & Police Act 2001 s.55]

37. Retention of seized property
(1) The retention of —

(a) property seized on any premises by a police officer who was lawfully on the premises; or

(b) property seized by a police officer carrying out a lawful search of any person,

is authorised by this section if the property falls within subsection (2) or (3).

(2) Property falls within this subsection to the extent that there are reasonable grounds for believing that —

(a) it is property obtained in consequence of the commission of an offence; and

(b) it is necessary for it to be retained in order to prevent its being concealed, lost, damaged, altered or destroyed.

(3) Property falls within this subsection to the extent that there are reasonable grounds for believing that —

(a) it is evidence in relation to any offence; and

(b) it is necessary for it to be retained in order to prevent its being concealed, lost, damaged, altered or destroyed.

(4) Nothing in this section authorises the retention (except pursuant to section 35(2)) of anything the return of which is required by section 35.

(5) Subsection (1)(a) includes property seized on any premises by a person authorised under section 21(1) to accompany a police officer executing a warrant.
[UK Criminal Justice & Police Act 2001 s.56]

38. Retention of property seized under section 31 or 32
(1) This section has effect in relation to the following provisions (the "relevant provisions") —

(a) section 30; and

(b) any power to seize property conferred by a written law or any enactment in force in the Falkland Islands.

(2) The relevant provisions apply in relation to any property seized in exercise of a power conferred by section 31 or 32 as if the property had been seized under the power of seizure by reference to which the power under that section was exercised in relation to that property.

(3) Nothing in any of sections 34 to 37 authorises the retention of any property at any time when its retention would not (other than as provided for in this Part) be authorised by the relevant provisions.

(4) Nothing in any of the relevant provisions authorises the retention of anything after an obligation to return it has arisen under this Part.
[UK Criminal Justice & Police Act 2001 s.57]

39. Person to whom seized property is to be returned
(1) If —

(a) anything has been seized in exercise of any power of seizure; and

(b) there is an obligation under this Part for the whole or any part of the seized property to be returned,

the obligation to return it is (subject to the following provisions of this section) an obligation to return it to the person from whom it was seized.

(2) If —

(a) any person ('A') is obliged under this Part to return anything that has been seized to the person ('B') from whom it was seized; and

(b) A is satisfied that some other person has a better right to that thing than B,

A must instead return it to that other person or, as the case may be, to the person appearing to A to have the best right to the thing in question.

(3) If different persons claim to be entitled to the return of anything that is required to be returned under this Part, the thing may be retained for as long as is reasonably necessary for the determination, in accordance with subsection (2), of the person to whom it must be returned.

(4) References in this Part to the person from whom something has been seized, in relation to a case in which the power of seizure was exercisable by reason of that thing's having been found on any premises, are references to the occupier of the premises at the time of the seizure.

(5) References in this section to the occupier of any premises at the time of a seizure, in relation to a case in which —

(a) a notice in connection with the entry or search of the premises in question, or with the seizure, was given to a person appearing in the occupier's absence to be in charge of the premises; and

(b) it is practicable, for the purpose of returning something that has been seized, to identify that person but not to identify the occupier of the premises,

are references to that person.
[UK Criminal Justice & Police Act 2001 s.58]

Remedies and safeguards

40. Application for return of property

(1) When anything has been seized in exercise, or purported exercise, of a relevant power of seizure, any person with a relevant interest in the seized property may apply to the judicial officer, on one or more of the grounds mentioned in subsection (2), for the return of the whole or a part of the seized property.

(2) The grounds for an application under subsection (1) are that —

(a) there was no power to make the seizure;

(b) the seized property is or contains an item subject to legal privilege that is not comprised in property falling within section 35(2);

(c) the seized property is or contains any excluded material or special procedure material which —

(i) has been seized under a power to which section 36 applies;

(ii) is not comprised in property falling within section 36(2) or (3); and

(iii) is not property the retention of which is authorised by section 37;

(d) the seized property is or contains something seized under section 31 or 32 which does not fall within section 34(3);

(3) Subject to subsection (5), the judicial officer, on an application under subsection (1), must —

(a) if satisfied as to any of the matters mentioned in subsection (2) - order the return of so much of the seized property as is property in relation to which the judicial officer is so satisfied; and

(b) to the extent that the officer is not so satisfied - dismiss the application.

(4) The judicial officer, on an application under subsection (1) —

(a) made by the person for the time being having possession of anything in consequence of its seizure under a relevant power of seizure; or

(b) made —

(i) by a person with a relevant interest in anything seized under section 31 or 32; and

(ii) on the grounds that the requirements of section 34(2) have not been or are not being complied with,

may give such directions as the officer thinks fit as to the examination, retention, separation or return of the whole or any part of the seized property.

(5) On an application under this section, the judicial officer may, if satisfied that the retention of the property is justified on grounds stated in subsection (7), authorise the retention of any property which —

(a) has been seized in exercise, or purported exercise, of a relevant power of seizure; and

(b) would otherwise fall to be returned.

(6) The grounds referred to in subsection (5) are that if the property were returned it would immediately become appropriate —

(a) to issue, on the application of the person who is in possession of the property at the time of the application, a warrant under which it would be lawful to seize the property; or

(b) to make an order under paragraph 4 of Schedule 1 (Access to special procedure material and excluded material) under which the property would fall to be delivered up or produced to the person mentioned in paragraph (a).

(7) If any property which has been seized in exercise, or purported exercise, of a relevant power of seizure has parts ("part A" and "part B") comprised in it such that —

(a) it would be inappropriate, if the property were returned, to take any action such as is mentioned in subsection (6) in relation to part A;

(b) it would (or would but for the facts mentioned in paragraph (a)) be appropriate, if the property were returned, to take such action in relation to part B; and

(c) in all the circumstances, it is not reasonably practicable to separate part A from part B without prejudicing the use of part B for purposes for which it is lawful to use property seized under the power in question,

the facts mentioned in paragraph (a) must not be taken into account by the judicial officer in deciding whether the retention of the property is justified on grounds falling within subsection (6).

(8) A person who fails to comply with an order or direction of the judicial officer in exercise of the jurisdiction under this section commits a contempt of court.

(9) The relevant powers of seizure for the purposes of this section are —

(a) the powers of seizure conferred by sections 31 and 32;

(b) any power of seizure (not falling within paragraph (a)) conferred on a police officer by or under any enactment (including an enactment that comes into force after this Part comes into force, unless the later enactment limits the power in this section).

(10) In this section, "person with a relevant interest in seized property" means —

(a) the person from whom the property was seized;

(b) any person with an interest in the property; or

(c) any person, not falling within paragraph (a) or (b), who had custody or control of the property immediately before the seizure.

(11) For the purposes of subsection (10)(b), the persons who have an interest in seized property include, in the case of property which is or contains an item subject to legal privilege, the person in whose favour that privilege is conferred.
[UK Criminal Justice & Police Act 2001 s.59]

41. Cases in which duty to secure arises
(1) When property has been seized in exercise, or purported exercise, of any power of seizure conferred by this Part or Part 1 (Powers to Stop and Search), a duty to secure arises under section 42 in relation to the seized property if —

(a) a person entitled to do so applies under section 40 for the return of the property;

(b) at least one of the conditions set out in subsections (2) and (3) is satisfied; and

(c) notice of the application is given to a relevant person.

(2) The first condition is that the application is made on the grounds that the seized property is or contains an item subject to legal privilege that is not comprised in property falling within section 35(2).

(3) The second condition is that —

(a) the seized property was seized by a person who had, or purported to have, power to seize it by virtue only of a power conferred by this Part or Part 1 (Powers to Stop and Search) (other than section 13(2)); and

(b) the application —

(i) is made on the ground that the seized property is or contains something which does not fall within section 34(3); and

(ii) states that the seized property is or contains special procedure material or excluded material.

(4) In relation to property seized by a person who had, or purported to have, power under this Part or Part 1 to seize it by virtue only of the power of seizure conferred by section 54 of the Drug Trafficking Ordinance 1997, the second condition is satisfied only if the application states that the seized property is or contains excluded material.

(5) In this section "relevant person" means —

(a) the person who made the seizure;

(b) the person for the time being having possession, in consequence of the seizure, of the seized property; or

(c) the person named for the purposes of subsection (1)(d) or (4)(d) of in any notice given under that section with respect to the seizure.

[UK Criminal Justice & Police Act 2001 s.60 modified to remove Schedule 1]

42. The duty to secure

(1) The duty to secure that arises under this section is a duty of the person for the time being having possession, in consequence of the seizure, of the seized property to ensure that arrangements are in place so that the seized property (without being returned) is not, at any time after the giving of the notice of the application under section 41(1) —

(a) examined;

(b) copied; or

(c) put to any use to which its seizure would, apart from this subsection, entitle it to be put,

except with the consent of the applicant or in accordance with the directions of the judicial officer.

(2) Subsection (1) does not have effect in relation to any time after the withdrawal of the application to which the notice relates.

(3) Subsection (8) of section 40 (contempt of court) applies in relation to any jurisdiction conferred on the judicial officer by this section as it applies in relation to the jurisdiction conferred by that section.
[UK Criminal Justice & Police Act 2001 s.61]

43. Use of inextricably linked property
(1) This section applies to property, other than property which is for the time being required to be secured pursuant to section 42, if —

(a) it has been seized under any power conferred by this Part or Part 1 (Powers to Stop and Search); and

(b) it is inextricably linked property.

(2) Subject to subsection (3), the person for the time being having possession, in consequence of the seizure, of the inextricably linked property must ensure that arrangements are in place so that the seized property (without being returned) is not at any time, except with the consent of the person from whom it was seized —

(a) examined;

(b) copied; or

(c) put to any other use.

(3) Subsection (2) does not require that arrangements under that subsection should prevent inextricably linked property from being put to any use which is necessary for facilitating the use, in any investigation or proceedings, of property in which the inextricably linked property is comprised.

(4) Property is inextricably linked property for the purposes of this section if it falls within any of subsections (5) to (7).

(5) Property falls within this subsection if —

(a) it has been seized under a power conferred by section 31 or 32; and

(b) but for subsection (3)(c) of section 34, arrangements under subsection (2) of that section in relation to the property would be required to ensure the return of the property as mentioned in subsection (2)(c) of that section.

(6) Property falls within this subsection if —

(a) it has been seized under a power to which section 35 applies; and

(b) but for subsection (1)(b) of that section, the person for the time being having possession of the property would be under a duty to ensure its return as mentioned in that subsection.

(7) Property falls within this subsection if —

(a) it has been seized under a power of seizure to which section 36 applies; and

(b) but for subsection (1)(c) of that section, the person for the time being having possession of the property would be under a duty to ensure its return as mentioned in that subsection.

[UK Criminal Justice & Police Act 2001 s.62]

PART 4 – POWERS OF ARREST WITHOUT WARRANT

44. Arrest without warrant: Police officers

(1) A police officer may arrest without a warrant anyone —

(a) who is about to commit an offence;

(b) who is in the act of committing an offence;

(c) whom the officer has reasonable grounds for suspecting to be about to commit an offence;

(d) whom the officer has reasonable grounds for suspecting to be committing an offence.

(2) If a police officer has reasonable grounds for suspecting that an offence has been committed, the officer may arrest without a warrant anyone whom he or she has reasonable grounds to suspect of being guilty of it.

(3) If an offence has been committed, a police officer may arrest without a warrant anyone —

(a) who is guilty of the offence;

(b) whom the officer has reasonable grounds for suspecting to be guilty of it.

(4) The power of arrest without warrant of a person conferred by subsection (1), (2) or (3) is exercisable only if the police officer has reasonable grounds for believing that for any of the reasons mentioned in subsection (5) it is necessary to arrest the person.

(5) The reasons are —

(a) to enable the name of the person to be ascertained (if the police officer does not know, and cannot readily ascertain, the person's name, or has reasonable grounds for doubting whether a name given by the person as his or her name is the person's real name);

(b) correspondingly as regards the person's address;

(c) to prevent the person —

(i) causing physical injury to himself or herself or any other person;

(ii) suffering physical injury;

(iii) causing loss of or damage to property;

(iv) committing an offence against public decency (subject to subsection (6)); or

(v) causing an unlawful obstruction of the highway;

(d) to protect a child or other vulnerable person from the person;

(e) to allow the prompt and effective investigation of the offence or of the conduct of the person;

(f) to prevent any prosecution for the offence from being hindered by the disappearance or other action of the person.

(6) Subsection (5)(c)(iv) applies only in a situation in which members of the public going about their normal business cannot reasonably be expected to avoid the person in question.
[Criminal Justice Ord. ss.198 and 199 varied; UK PACE Act 1984 s.24 substituted by Serious Organised Crime and Police Act 2005 s.110]

45. Arrest without warrant: Other persons

(1) A person other than a police officer may arrest without a warrant anyone —

(a) who is in the act of committing an imprisonable offence;

(b) whom the person has reasonable grounds for suspecting to be committing an imprisonable offence.

(2) If an imprisonable offence has been committed, a person other than a police officer may arrest without a warrant anyone —

(a) who is guilty of the offence;

(b) whom the person has reasonable grounds for suspecting to be guilty of it.

(3) The power of arrest without warrant of a person conferred by subsection (1) or (2) is exercisable only if —

(a) the person making the arrest has reasonable grounds for believing that for any of the reasons mentioned in subsection (4) it is necessary to arrest the person; and

(b) it appears to the person making the arrest that it is not reasonably practicable for a police officer to make it instead.

(4) The reasons are to prevent the person arrested —

(a) causing physical injury to himself or herself or any other person;

(b) suffering physical injury;

(c) causing loss of or damage to property; or

(d) making off before a police officer can assume responsibility for the person.

(5) This section does not apply in relation to an offence under any of sections 536 to 547 of the Crimes Ordinance 2014 (Hate crimes).

(6) A person who makes an arrest pursuant to this section must as soon as reasonably practicable—

(a) notify a police officer that the arrest has been made; and

(b) hand the arrested person over to a police officer.

(7) When a person arrested under this section is handed over to a police officer, the person is deemed to have been arrested by the police officer and the provisions of this and subsequent Parts apply as if the person had been arrested by the police officer.
[UK PACE Act 1984 s.24A inserted by Serious Organised Crime and Police Act 2005 s.110; common law for (6) and (7)]

46. Saving of other powers of arrest
(1) Any written law in force when this Part comes into force that enables a police officer or any other person —

(a) to arrest a person for an offence without a warrant; or

(b) to arrest a person with a warrant or an order of the court,

continues to have effect, but subject to the provisions of this Ordinance.

(2) Nothing in this Part affects any power —

(a) at common law to arrest a person without a warrant for a breach of the peace; or

(b) of arrest for enforcement of any civil process.

[Criminal Justice Ord. s.201; UK PACE Act 1984 s.26 adapted]

47. Fingerprinting of certain offenders – Schedule 2

Schedule 2 has effect in relation to the power of police officers to require a person to attend a place of lawful custody or other convenient place for the purpose of taking fingerprints or samples from the person.

[UK PACE Act 1984 s.27 replaced by s.63A and Schedule 2A by Crime & Security Act 2010 s.6(3)]

48. Information to be given on arrest

(1) Subject to subsection (5), when a person is arrested otherwise than by being informed that he or she is under arrest, the arrest is not lawful unless the person arrested is informed that he or she is under arrest as soon as practicable after the arrest.

(2) If a person is arrested by a police officer, subsection (1) applies regardless of whether the fact of the arrest is obvious.

(3) Subject to subsection (5), no arrest is lawful unless the person arrested is informed of the ground for the arrest at the time of, or as soon as practicable after, the arrest.

(4) If a person is arrested by a police officer, subsection (3) applies regardless of whether the ground for the arrest is obvious.

(5) Nothing in this section requires a person to be informed —

(a) that he or she is under arrest; or

(b) of the ground for the arrest,

if it was not reasonably practicable for the person to be so informed because the person has escaped from arrest before the information could be given.

[Criminal Justice Ord. s.202; UK PACE Act 1984 s.28]

49. Voluntary attendance at place of lawful custody, etc.

If for the purpose of assisting with an investigation a person attends voluntarily at a place of lawful custody or at any other place where a police officer is present, or accompanies a police officer to a place of lawful custody or any such other place without having been arrested, the person —

(a) is entitled to leave at will unless he or she is placed under arrest; and

(b) must be informed at once that he or she is under arrest if a decision is taken by a police officer to prevent the person from leaving at will.

[Criminal Justice Ord. s.203; UK PACE Act 1984 s.29]

50. Arrest elsewhere than at a place of lawful custody

(1) If a person is, at any place other than a place of lawful custody —

(a) arrested by a police officer for an offence; or

(b) taken into custody by a police officer after being arrested for an offence by a person other than a police officer,

the person must be taken by a police officer to a place of lawful custody as soon as practicable after the arrest.

(2) Subsection (1) has effect subject to subsection (3) and section 51.

(3) A person arrested by a police officer at a place other than a place of lawful custody must be released without bail if, at any time before the person arrested reaches the place of lawful custody, a police officer is satisfied that there are no grounds for keeping the person under arrest or releasing the person on bail under section 51.

(4) Nothing in subsection (1) or in section 51 prevents a police officer delaying taking a person to a place of lawful custody or releasing the person on bail if the presence of the person at a place other than a place of lawful custody is necessary in order to carry out investigations that it is reasonable to carry out immediately.

(5) If there is delay as mentioned in subsection (4), the reasons for the delay must be recorded when the person first arrives at the place of lawful custody or (as the case may be) is released on bail.

(6) This section does not affect the powers of arrest and detention in the Immigration Ordinance.

[UK PACE Act 1984 s.30]

51. Bail elsewhere than at a place of lawful custody

(1) A police officer may release on bail a person who is arrested or taken into custody in the circumstances mentioned in section 50(1).

(2) A person may be released on bail under subsection (1) at any time before he or she arrives at a place of lawful custody.

(3) A person released on bail under subsection (1) must be required to attend a place of lawful custody.

(4) If a police officer releases a person on bail under subsection (1) —

(a) no recognisance for the person's surrender to custody may be taken from the person;

(b) no security for the person's surrender to custody may be taken from the person or from anyone else on the person's behalf;

(c) the person must not be required to provide a surety or sureties for his or her surrender to custody.

(5) Subject to subsection (4), a police officer who releases a person on bail under subsection (1) may impose as conditions of the bail any requirement that appears to the officer to be necessary—

(a) to secure that the person surrenders to custody;

(b) to secure that the person does not commit an offence while on bail;

(c) to secure that the person does not interfere with witnesses or otherwise obstruct the course of justice, whether in relation to that person or any other person;

(d) for the person's own protection, or, if the person is under the age of 18, for the person's own welfare or in the person's interests.

(6) The conditions that may be imposed on a person under subsection (5) include the surrender of the person's passport (as described in section 143(2)) and electronic monitoring in accordance with section 144.
[UK PACE Act 1984 s 30A ins. by Criminal Justice Act 2003 as am. by Police & Justice Act 2006]

52. Bail under section 51: Notices
(1) A police officer who grants bail to a person under section 51 must give the person a notice in writing before the person is released, stating —

(a) the offence for which the person was arrested; and

(b) the ground for the arrest.

(2) The notice must —

(a) inform the person that he or she is required to attend a place of lawful custody specified in the notice; and

(b) specify the time when the person is required to attend.

(3) If the person is granted bail subject to conditions under section 51(5), the notice must also —

(a) specify the requirements imposed by those conditions; and

(b) explain the opportunities under sections 54 and 55 for variation of those conditions.

(4) If the notice does not include the information mentioned in subsection (2), the person must subsequently be given a further notice in writing which contains that information.
[UK PACE Act 1984 s.30B inserted by Criminal Justice Act 2003]

53. Bail under section 51: Supplementary

(1) A person who has been required to attend a place of lawful custody is not required to do so if the person is given notice that his or her attendance is no longer required.

(2) Nothing in Part 9 (Bail in Criminal Proceedings) applies in relation to bail under section 51.

(3) Nothing in section 51 or 52 or this section prevents the re-arrest without a warrant of a person released on bail under section 51 if new evidence justifying a further arrest has come to light since the person's release.
[UK PACE Act 1984 s.30C inserted by Criminal Justice Act 2003]

54. Variation of bail conditions by custody officer

(1) If a person released on bail under section 51(1) is on bail subject to conditions, the custody officer at the place of lawful custody at which the person is required to attend may, at the request of the person but subject to subsection (2), vary the conditions.

(2) On any subsequent request made in respect of the same grant of bail, subsection (1) confers power to vary the conditions of the bail only if the request is based on information that, in the case of the previous request or each previous request, was not available to the custody officer considering that previous request at the time.

(3) If conditions of bail granted to a person under section 51(1) are varied under subsection (1)—

(a) paragraphs (a) to (d) of section 51(5) apply;

(b) requirements imposed by the conditions as so varied must be requirements that appear to the custody officer to be necessary for one or more of the purposes mentioned in those paragraphs; and

(c) the custody officer who varies the conditions must give the person notice in writing of the variation.

(4) Section 59 applies as to the identity and functions of the custody officer under this section.
[UK PACE Act 1984 s.30CA ins. by Police & Justice Act 2006 and Policing & Crime Act 2009]

55. Variation of bail conditions by court

(1) If a person released on bail under section 51(1) is on bail subject to conditions, the Magistrate's Court or the Summary Court may, on an application by or on behalf of the person, vary the conditions if —

(a) the conditions have been varied under section 54(1) since being imposed under section 51(5);

(b) a request for variation under section 54(1) of the conditions has been made and refused; or

(c) a request for variation under section 54(1) of the conditions has been made and the period of 48 hours beginning with the day when the request was made has expired without the request having been withdrawn or the conditions having been varied in response to the request.

(2) In proceedings on an application for a variation under subsection (1), a ground may not be relied upon unless —

(a) in a case falling within subsection (1)(a), the ground was relied upon in the request in response to which the conditions were varied under section 54(1); or

(b) in a case falling within paragraph (b) or (c) of subsection (1), the ground was relied upon in the request mentioned in that paragraph,

but this does not prevent the court, when deciding the application, from considering different grounds arising out of a change in circumstances that has occurred since the making of the application.

(3) If conditions of bail granted to a person under section 54(1) are varied under subsection (1)—

(a) paragraphs (a) to (d) of section 51(5) apply;

(b) requirements imposed by the conditions as so varied must be requirements that appear to the court varying the conditions to be necessary for any of the purposes mentioned in paragraphs (a) to (d) of section 51(5); and

(c) that bail does not lapse but continues subject to the conditions as so varied.

(4) Power under subsection (1) to vary conditions is, subject to subsection (3)(a) and (b), power—

(a) to vary or rescind any of the conditions; and

(b) to impose further conditions.
[UK PACE Act 1984 s.30CB ins. by Police & Justice Act 2006]

56. Arrest for failure to answer to bail under section 51
(1) A police officer may arrest without a warrant a person who —

(a) has been released on bail under section 51 subject to a requirement to attend the place of lawful custody; and

(b) fails to attend the place of lawful custody at the specified time.

(2) A person arrested under subsection (1) must be taken to the place of lawful custody as soon as practicable after the arrest.
(3) For the purposes of —

(a) section 50 (subject to the obligation in subsection (3)); and

(b) section 57,

an arrest under this section is to be treated as an arrest for an offence.
[UK PACE Act 1984 s.30D inserted by Criminal Justice Act 2003]

57. Arrest for further offence
If —

(a) a person —

(i) has been arrested for an offence; and

(ii) is at a place of lawful custody in consequence of that arrest; and

(b) it appears to a police officer that, if the person were released from that arrest, the person would be liable to arrest for some other offence,

the person must be arrested for that other offence before being released.
[Criminal Justice Ord. s.204; UK PACE Act 1984 s.31]

58. Search upon arrest
(1) If —

(a) a person has been arrested at a place other than a place of lawful custody; and

(b) a police officer has reasonable grounds for believing that the person may present a danger to himself or herself or others,

the police officer may search the person.

(2) If a person has been arrested at a place other than a place of lawful custody a police officer may, subject to subsections (3) to (5) —

(a) search the arrested person for anything which —

(i) the person might use to assist the person to escape from lawful custody; or

(ii) might be evidence relating to an offence; and

(b) if the offence for which the arrested person has been arrested is an imprisonable offence - enter and search any premises in which the person was when arrested or immediately before the person was arrested for evidence relating to that offence.

(3) The power to search conferred by subsection (2) is only a power to search to the extent that it is reasonably required for the purpose of discovering any thing or any evidence as mentioned in subsection (2)(a).

(4) The powers conferred by this section to search a person —

(a) do not authorise a police officer to require a person to remove any of the person's clothing in public other than an outer coat, jacket or gloves;

(b) do authorise a search of a person's mouth.

(5) A police officer may not search a person in the exercise of the power conferred by subsection (2)(a) unless the officer has reasonable grounds for believing that the person to be searched may have concealed on him or her anything for which a search is permitted under that paragraph.

(6) A police officer may not search premises in the exercise of the power conferred by subsection (2)(b) unless the officer has reasonable grounds for believing that there is evidence for which a search is permitted under that paragraph on premises.

(7) In so far as the power of search conferred by subsection (2)(b) relates to premises consisting of 2 or more separated dwellings, it is limited to a power to search —

(a) a dwelling in which the arrest took place or in which the person arrested was immediately before his or her arrest; and

(b) parts of the premises which the occupier of the dwelling uses in common with the occupiers of any other dwellings comprised in the premises.

(8) A police officer searching a person in exercise of the power conferred by subsection (1) may seize and retain anything the officer finds, if the officer has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or herself or to any other person.

(9) A police officer searching a person in the exercise of the power conferred by subsection (2)(a) may seize and retain anything the officer finds, other than an item subject to legal privilege, if the officer has reasonable grounds for believing —

(a) that the person might use it to assist the person to escape from lawful custody; or

(b) that it is evidence of an offence or has been obtained in consequence of the commission of an offence.

[Criminal Justice Ord. s.205; UK PACE Act 1984 s.32]

PART 5 – POLICE DETENTION
Police detention – conditions and duration

59. Custody officers and reviewing officers

(1) There is to be a custody officer at each place of lawful custody, who is responsible for making and keeping the custody record at that place and making initial decisions about police detention.

(2) In this Ordinance, "custody record" means the record of particulars relating to the custody of a person who is arrested and brought to a place of lawful custody and detained in accordance with this Part.

(3) The "custody officer" at a place of lawful custody is each police officer who is successively on desk duty when an arrested person is brought to that place and when decisions about the person's detention fall to be made and recorded under this Ordinance.

(4) The "reviewing officer" for a place of lawful custody means an officer of the rank of sergeant or above who is on call for that place when decisions as mentioned in subsection (3) fall to be reviewed under section 67.

(5) Subject to subsections (6) and (7) and section 66(2), the functions of a custody officer or reviewing officer in relation to a person must so far as practicable not be performed by an officer who at the time when the function is to be performed is involved in the investigation of an offence for which the person is in police detention at the time.

(6) Subsection (5) does not prevent a custody officer or reviewing officer, if no other officer is available, from —

(a) performing any function assigned to such officers by —

(i) this Ordinance; or

(ii) a code of practice issued under this Ordinance;

(b) doing anything in connection with the identification of a suspect; or

(c) taking action under sections 23 and 24 of the Road Traffic Ordinance.

(7) If an arrested person is taken to a place other than a place of lawful custody, or answers to bail at such a place, the functions in relation to the person which at a place of lawful custody would be the function of the custody officer or reviewing officer, or the officer who granted bail, must be performed —

(a) by an officer who is not involved in the investigation of the offence for which the person is being detained, if such an officer is readily available; or

(b) if no such officer is readily available, by the officer who took the person to that place or any other officer.

(8) If the offence is one in respect of which a person has been given a conditional caution, subsection (5) is to be read as if the reference to being involved in the investigation of an offence for which the person is in police detention were a reference to being involved —

(a) in the investigation of the offence in respect of which the person was given the conditional caution; or

(b) in investigating whether the person has failed, without reasonable excuse, to comply with any of the conditions attached to the conditional caution.

[Criminal Justice Ord. s.151; UK PACE Act 1984 s.36 adapted; Criminal Justice Act 2003 s.24B]

60. Limitations on police detention

(1) A person arrested for an offence must not be kept in police detention except in accordance with this Part.

(2) Subject to subsection (3), if at any time a custody officer —

(a) becomes aware, in relation to any person in police detention, that the grounds for the detention of that person have ceased to apply; and

(b) is not aware of any other grounds on which the continued detention of that person could be justified under this Part,

the officer must, subject to subsection (4), order the person's immediate release from custody.

(3) A person in police detention must not be released except on the authority of a custody officer.

(4) A person who appears to the custody officer to have been unlawfully at large when arrested must not be released under subsection (2).

(5) A person whose release is ordered under subsection (2) must be released without bail unless it appears to the custody officer that —

(a) there is need for further investigation of any matter in connection with which the person was detained at any time during the period of his or her detention; or

(b) in respect of any such matter, proceedings may be taken against the person,

in which case the person must be released on bail.

(6) For the purposes of this Part, a person arrested under section 23(5) of the Road Traffic Ordinance is arrested for an offence.

(7) For the purpose of this Part, a person who —

(a) goes to a place of lawful custody to answer to bail granted under section 51 or this Part; or

(b) is arrested under section 56 or section 75,

is to be treated as arrested for an offence and that offence is the offence in connection with which the person was granted bail.

(8) Subsection (7) does not apply in relation to a person who is granted bail subject to the duty mentioned in section 76(2)(b) and who either —

(a) attends a place of lawful custody to answer to such bail; or

(b) is arrested under section 75 for failing to do so.

(9) For the purposes of this Part, a person is not unlawfully at large only because he or she is in breach of the conditions of a licence granted under Part 26 (Custodial Sentences) or under the Prison Regulations.

(10) Subject to section 77, Part 9 (Bail in Criminal Proceedings) applies to —

(a) the making of a bail decision by a police officer at a place of lawful custody; and

(b) the conditions that may be attached to bail granted by a police officer at a place of lawful custody, including the surrender of a passport.

[Criminal Justice Ord. s.150; UK PACE Act 1984 s.34 adapted]

61. Duties of custody officer before charge

(1) If a person is arrested for an offence —

(a) without a warrant; or

(b) under a warrant not endorsed for bail,

the custody officer at the place of lawful custody when the person is detained after arrest —

(i) must decide whether there is sufficient evidence to charge the person with the offence for which the person was arrested; and

(ii) may detain the person at the place of lawful custody for the period necessary to enable the officer to make that decision.

(2) If the custody officer decides that there is not sufficient evidence, the person arrested must be released either on bail or without bail, unless the officer has reasonable grounds for believing that the person's detention without being charged is necessary —

(a) to secure or preserve evidence relating to an offence for which the person is under arrest; or

(b) to obtain such evidence by questioning the person.

(3) If the custody officer has reasonable grounds for believing as mentioned in subsection (2), the officer may authorise the person arrested to be kept in police detention.

(4) If a custody officer authorises a person who has not been charged to be kept in police detention, the officer must as soon as practicable make a written record of the grounds for the detention.

(5) Subject to subsection (6), the written record must be made in the presence of the person arrested who must at that time be informed by the custody officer of the grounds for the detention.

(6) Subsection (5) does not apply if the person arrested is, at the time when the written record is made —

(a) incapable of understanding what is said to him or her;

(b) violent or likely to become violent; or

(c) in urgent need of medical attention.

(7) Subject to section 69(5), if the custody officer decides that there is sufficient evidence to charge the person arrested with the offence for which he or she was arrested, the officer must decide whether to —

(a) detain the person for the purpose of obtaining a decision of the Attorney General under section 62;

(b) release the person on bail for that purpose;

(c) release the person without charge and on bail, but not for that purpose; or

(d) release the person without charge and without bail; or

(e) charge the person,

and must act accordingly.

(8) If a person is —

(a) detained under subsection (7)(a); or

(b) released on bail under subsection (7)(b),

for the purpose of obtaining the advice of the Attorney General, the custody officer must so inform the person.

(9) If —

(a) a person is released under subsection (7)(c) or (d); and

(b) at the time of the release a decision whether the person should be prosecuted for the offence for which the person was arrested has not been taken,

the custody officer must so inform the person.

(10) Subsection (11) applies if the offence for which the person is arrested is one in relation to which a sample could be taken under section 96 (Testing for Class A or Class B drugs) and the custody officer —

(a) is required by subsection (2) to release the person arrested and decides to release the person on bail; or

(b) decides under subsection (7)(c) to release the person without charge on bail.

(11) The detention of a person may be continued to enable a sample to be taken under section 96, but this subsection does not permit a person to be detained for more than 24 hours after the relevant time (as defined in section 69(2)).

(12) If the person arrested is not in a fit state to be dealt with under subsection (7), the person may, notwithstanding section 69(5), be kept in police detention until he or she is in a fit state.

(13) The duty imposed on the custody officer under subsection (1) must be performed as soon as practicable after the person arrested arrives at the place of lawful custody or, in the case of a person arrested at the place of lawful custody, as soon as practicable after the arrest.
[Criminal Justice Ord. s.152; UK PACE Act 1984 s.37]

62. Role of Attorney General

(1) If a person is detained under section 61(7)(a) or released on bail under section 61(2) or (7)(b), the officer in charge of the investigation of the case must as soon as practicable send to the Attorney General information in writing about the case to enable the Attorney General to decide whether there is sufficient evidence to charge the person with an offence.

(2) On receipt of the information under subsection (1), the Attorney General must decide whether the person should be charged with an offence, and if so, what offence, or whether the person should be cautioned for the offence.

(3) Notice of the Attorney General's decision must be given to the officer in charge of the investigation. The notice must be in writing, but may be given orally in the first instance and confirmed in writing subsequently.

(4) If the decision is that that there is not sufficient evidence to charge the person with any offence, or that there is sufficient evidence but that the person should not be charged, or given a caution, the custody officer must give the person a written notice to that effect and must release the person from custody unless the person is in custody for any other reason.

(5) If the decision is that the person should be charged with an offence, or given a caution in respect of an offence, the person must be charged or cautioned accordingly.

(6) If the decision is that the person should be given a caution for an offence, but it proves not possible to administer such a caution, the person must be charged with the offence.

(7) For the purpose of this section, a person must be charged with an offence either —

(a) while the person is in police detention after answering to bail or otherwise; or

(b) by summons on an information laid before a justice of the peace.

(8) In the preceding provisions of this section —

"caution" includes a conditional caution or a reprimand given under the authority of any written law;

"Attorney General" includes any person to whom the Attorney General has delegated the power under this section to make decisions under this section.

(9) The Attorney General may from time to time issue to the Chief Police Officer written guidelines as to the information that custody officers must provide to enable a decision to be made for purposes of this section.

[UK PACE Act 1984 ss.37A and 37B inserted by CJA 2003]

63. Breach of bail following release

(1) Subsection (3) applies if —

(a) a person released on bail under section 61(2) or (7)(b) or subsection (3)(b) of this section is arrested under section 75 in respect of that bail; and

(b) at the time of the person's detention following the arrest no notice of the Attorney General's decision has been given under section 62(3).

(2) Subsection (3) also applies if a person released on bail under section 61(7)(c) or subsection (3)(b) of this section —

(a) is arrested under section 75 in respect of that bail; and

(b) is being detained at a place of lawful custody.

(3) The person arrested must be —

(a) charged; or

(b) released without charge, either on bail or without bail.

(4) The decision as to how a person is to be dealt with under subsection (3) must be made by the custody officer.

(5) A person released on bail under subsection (3)(b) must be released on bail subject to any conditions which applied immediately before the person's arrest.
[UK PACE Act 1984 ss.37C and 37CA inserted by Criminal Justice Act 2003 and Police & Justice Act 2006]

64. Release on bail under sections 61 and 62: Further provision

(1) When a person is released on bail under section 61 or 62, the custody officer may appoint a different time, or an additional time, at which the person is to attend at a place of lawful custody.

(2) The custody officer must give the person notice in writing of the exercise of the power under subsection (1).

(3) The exercise of the power under subsection (1) does not affect any other conditions to which bail is subject.

(4) If a person released on bail under section 61(2) or (7) or 63(3) returns to a place of lawful custody to answer bail or is otherwise in police detention at such a place, the person may be kept in police detention to enable him or her to be dealt with in accordance with section 62 or 63 as the case may be, or to enable the power under subsection (1) above to be exercised.

(5) If the person mentioned in subsection (4) is not in a fit state to enable him or her to be dealt with as mentioned in that subsection or to enable the power under subsection (1) to be exercised, the person may, notwithstanding section 69(5), be kept in police detention until he or she is in a fit state.

(6) If a person is kept in police detention by virtue of subsection (4) or (5) of this section, section 61(1) to (3) and (7) (and section 67(8) so far as it relates to section 61(1) to (3)) do not apply to the offence in connection with which the person was released on bail under section 61(2) or (7) or 63(3).
[UK PACE Act 1984 s.37D inserted by Criminal Justice Act 2003 (modified)]

65. Duties of custody officer after charge
(1) Subsection (2) applies when a person arrested for an offence otherwise than under a warrant endorsed for bail is charged with an offence.

(2) The custody officer must order the person's release from police detention, either on bail or without bail, unless —

(a) in the case of an adult —

(i) the person's name or address cannot be ascertained or the custody officer has reasonable grounds for doubting whether a name or address given by the person as his or her name or address is his or her real name or address;

(ii) the custody officer has reasonable grounds for believing that the person arrested will fail to appear in court to answer bail;

(iii) the person was arrested for an imprisonable offence and the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary to prevent the person from committing an offence;

(iv) a sample may be taken from the person under section 95 (speculative searches) and the custody officer has reasonable grounds for believing that the detention of the person is necessary to enable a sample to be taken from the person;

(v) the person was arrested for an offence which is not an imprisonable offence and the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary to prevent the person from causing physical injury to any other person or from causing loss of or damage to property;

(vi) the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary to prevent the person from interfering with the administration of justice or with the investigation of offences or of a particular offence;

(vii) the custody officer has reasonable grounds for believing that the detention of the person arrested is for the person's own protection;

(b) in the case of a youth —

(i) any of the requirements of paragraph (a) is satisfied but, if paragraph (a)(iv) applies, only if the youth has attained the minimum age; or

(ii) the custody officer has reasonable grounds for believing that the youth ought to be detained in his or her own interests.

(3) If the release of a person arrested is not required by subsection (1), the custody officer —

(a) may authorise the person to be kept in police detention; but

(b) may not authorise the person to be kept in police detention by virtue of subsection (1)(a)(iv) for more than 6 hours after the person was charged with the offence.

(4) The custody officer, in making the decisions required by subsection (1)(a) or (b) (except (a)(i) and (vii) and (b)(ii)), must have regard to the same considerations as those which a court is required to have regard to in making the corresponding decisions.

(5) If a custody officer authorises a person who has been charged to be kept in police detention, the officer must as soon as practicable make an entry in the custody record of the grounds for detention.

(6) Subject to subsection (7), the entry in the custody record must be made in the presence of the person charged, who must at that time be informed by the custody officer of the grounds for the detention.

(7) Subsection (6) does not apply if the person charged is, at the time when the entry in the custody record is made —

(a) incapable of understanding what is said to him or her;

(b) violent or likely to become violent; or

(c) in urgent need of medical attention.

(8) If a custody officer authorises an arrested youth to be kept in police detention under subsection (2), the officer must ensure that the youth is moved to segregated accommodation.

(9) In this section —

"minimum age" means the age specified in section 96 (Testing for presence of Class A or Class B drugs);

"segregated accommodation" means a separate cell, without contact with other detained persons, in the place of lawful custody or prison.
[Criminal Justice Ord. s.153; UK PACE Act 1984 s.38 adapted]

66. Responsibilities in relation to persons detained
(1) Subject to subsections (2) and (4), the custody officer at a place of lawful custody must ensure that —

(a) all persons in police detention at that place are treated in accordance with this Ordinance and any code of practice relating to the treatment of persons in police detention; and

(b) all matters relating to such persons which are required by this Ordinance or any such code of practice to be recorded are recorded in the custody records relating to such persons.

(2) If the custody officer, in accordance with any relevant code of practice, transfers or permits the transfer of a person in police detention to the custody —

(a) of a police officer investigating an offence for which that person is in police detention; or

(b) of an officer who has charge of that person outside the place of lawful custody,

the custody officer no longer has the duty imposed on him or her by subsection (1)(a), but the officer to whom the transfer is made must ensure that the person is treated in accordance with this Ordinance and any code of practice relating to the treatment of persons in police detention.

(3) If the person detained is subsequently returned to the custody of the custody officer, the officer investigating the offence must report to the custody officer as to the manner in which this section and any code of practice have been complied with while that person was in the investigating officer's custody.

(4) If —

(a) an officer of higher rank than the custody officer gives directions relating to a person in police detention; and

(b) the directions are at variance with —

(i) any decision made or action taken by the custody officer, in the performance of a duty imposed on him or her by this Part; or

(ii) any decision or action which would but for the directions have been made or taken by the custody officer in the performance of such a duty,

the custody officer must at once refer the matter to the person performing the functions of the Chief Police Officer.
[Criminal Justice Ord. s.154; UK PACE Act 1984 s.39]

67. Review of police detention
(1) A review of the detention of each person in police detention in connection with the investigation of an offence must be carried out periodically by a reviewing officer.

(2) Subject to subsection (4) —

(a) the first review must be not later than 6 hours after the detention was first authorised;

(b) the second review must be not later than 9 hours after the first;

(c) subsequent reviews must be at intervals of not more than 9 hours.

(3) A review may be postponed —

(a) if, having regard to the circumstances prevailing at the latest time specified for it in subsection (2), it is not practicable to carry out the review at that time;

(b) (without limiting paragraph (a)), if at that time —

(i) the person in detention is being questioned by a police officer and the reviewing officer is satisfied that an interruption of the questioning for the purpose of carrying out the review would prejudice the investigation in connection with which the person is being questioned; or

(ii) no reviewing officer is readily available.

(4) If a review is postponed under subsection (3) it must be carried out as soon as practicable after the latest time specified for it in subsection (2).

(5) If a review is carried out after postponement under subsection (3), the fact that it was carried out does not affect any requirement of this section as to the time at which any subsequent review is to be carried out.

(6) The reviewing officer must record the reasons for any postponement of a review in the custody record.

(7) Subject to subsection (8), if the person whose detention is under review has not been charged before the time of the review, section 61(1) to (6) have effect in relation to the person, but with the following modifications —

(a) replace references to the person arrested by references to the person whose detention is under review;

(b) replace references to the custody officer by references to the reviewing officer;

(c) in subsection (6) insert after paragraph (a) —

“(aa) asleep;”.

(8) If a person has been kept in police detention by virtue of section 61(12) or 64(5), section 61(1) to (6) do not have effect in relation to the person but the reviewing officer must decide whether the person is yet in a fit state.

(9) If the person whose detention is under review has been charged before the time of the review, section 65(1) to (7) have effect in relation to the person, but with the following modifications —

(a) replace references to the person arrested or to the person charged by references to the person whose detention is under review;

(b) in subsection (7), insert after paragraph (a) —

"(aa) asleep;".

(10) If —

(a) an officer of higher rank than the reviewing officer gives directions relating to a person in police detention; and

(b) the directions are at variance with —

(i) any decision made or action taken by the reviewing officer in the performance of a duty imposed on him or her by this Part; or

(ii) any decision or action which would but for the directions have been made or taken by the reviewing officer in the performance of such a duty,

the reviewing officer must at once refer the matter to the person performing the functions of the Chief Police Officer.

(11) Before deciding whether to authorise a person's continued detention the reviewing officer must give —

(a) the person (unless he or she is asleep); or

(b) any legal practitioner representing the person who is available at the time of the review,

an opportunity to make representations to the reviewing officer about the detention.

(12) Subject to subsection (13), the person whose detention is under review or his or her legal practitioner may make representations under subsection (11) either orally or in writing.

(13) The reviewing officer may refuse to hear oral representations from the person whose detention is under review if the officer considers that the person is unfit to make such representations by reason of his or her condition or behaviour.
[UK PACE Act 1984 s.40]

68. Use of telephone for review under section 67

(1) A review under section 67 may be carried out by means of a discussion, conducted by telephone, with one or more persons at the place of lawful custody where the arrested person is held.

(2) If a review is carried out under this section by an officer who is not present at the place where the arrested person is held —

(a) an obligation on that officer to make a record in connection with the carrying out of the review is an obligation to cause another officer to make the record;

(b) a requirement for the record to be made in the presence of the arrested person applies to the making of that record by that other officer; and

(c) the requirements of section 67(11) and (12), for the arrested person or a legal practitioner representing the person to be given an opportunity to make representations (whether in writing or orally) to that officer, are requirements for the person or legal practitioner to be given an opportunity to make representations in a manner authorised by subsection (3).

(3) Representations are made in a manner authorised by this subsection if —

(a) where facilities exist for the immediate transmission of written representations to the officer carrying out the review - they are made either —

(i) orally by telephone to that officer; or

(ii) in writing to that officer by means of those facilities;

(b) in any other case - they are made orally by telephone to that officer.

[UK PACE Act 1984 s.40A inserted by Criminal Justice Act 2003]

69. Limits on period of detention without charge

(1) Subject to this section and sections 70 and 71, a person must not be kept in police detention for more than 24 hours without being charged.

(2) The time from which the period of detention of a person is to be calculated (in this Part referred to as the "relevant time") is the time at which the person arrested arrives at the place of lawful custody, except that –

(a) in the case of a person arrested outside the Falkland Islands, the relevant time is —

(i) the time at which the person arrives at a place of lawful custody; or

(ii) the time 24 hours after the time of the person's entry into the Falkland Islands,

whichever is the earlier;

(b) in the case of a person who —

(i) attends voluntarily at a place of lawful custody; or

(ii) accompanies a police officer to a place of lawful custody without having been arrested,

and is arrested at the place of lawful custody, the relevant time is the time of the person's arrest.

(3) Subsection (2) has effect in relation to a person arrested under section 57 as if every reference in it to the person's arrest or being arrested were a reference to the person's arrest or being arrested for the offence for which the person was originally arrested.

(4) If a person who is in a police detention is removed to hospital because the person is in need of medical treatment —

(a) any time during which the person is being questioned in hospital or on the way there or back by a police officer for the purpose of obtaining evidence relating to an offence is included in any period which falls to be calculated for the purposes of this Part; but

(b) any other time while the person is in hospital or on the way there or back is not so included.

(5) Subject to subsection (6), a person who at the expiry of 24 hours after the relevant time is in police detention and has not been charged must be released at that time either on bail or without bail.

(6) Subsection (5) does not apply to a person whose detention for more than 24 hours after the relevant time has been authorised or is otherwise permitted in accordance with section 70 or 71.

(7) A person released under subsection (5) must not be re-arrested without a warrant for the offence for which the person was previously arrested unless new evidence justifying a further arrest has come to light since the person's release; but this subsection does not prevent an arrest under section 75.
[UK PACE Act 1984 s.41]

70. Authorisation of continued detention
(1) If a police officer of the rank of inspector or above (who has not been involved in the investigation of the case) is satisfied that —

(a) the detention of the person without charge is necessary to secure or preserve evidence relating to an offence for which the person is under arrest or to obtain such evidence by questioning the person;

(b) an offence for which the person is under arrest is an imprisonable offence; and

(c) the investigation is being conducted diligently and expeditiously,

the officer may authorise the keeping of the person in police detention for a period expiring at or before 36 hours after the relevant time.

(2) An authorisation under subsection (1) may be given by telephone after a discussion with the custody officer.

(3) If an officer such as is mentioned in subsection (1) has authorised the keeping of a person in police detention for a period expiring less than 36 hours after the relevant time, the officer may authorise the keeping of the person in police detention for a further period expiring not more than 36 hours after the relevant time if the conditions specified in subsection (1) are still satisfied when the officer gives the authorisation.

(4) An authorisation under subsection (1) must not be given in respect of a person —

(a) more than 24 hours after the relevant time; or

(b) before the second review of the person's detention under section 67 has been carried out.

(5) If an officer authorises the keeping of a person in police detention under subsection (1), the officer must —

(a) inform the person of the grounds of the continued detention; and

(b) record the grounds in the person's custody record.

(6) Before deciding whether to authorise the keeping of a person in detention under subsection (1) or (3), an officer must give —

(a) the person; or

(b) any legal practitioner representing the person who is available at the time when the officer has to decide whether to give the authorisation,

an opportunity to make representations to the officer about the detention.

(7) Subject to subsection (8), section 68(3) applies to representations under this section.

(8) The officer who has to decide whether to give the authorisation may refuse to hear oral representations from the person in detention if the officer considers that the person is unfit to make such representations by reason of his or her condition or behaviour.

(9) If —

(a) an officer authorises the keeping of a person in detention under subsection (1); and

(b) at the time of the authorisation the person has not yet exercised a right conferred on the person by section 88 (Right to have someone informed when arrested) or section 90 (Access to legal advice),

the officer must —

(i) inform the person of the right;

(ii) decide whether the person should be permitted to exercise it;

(iii) record the decision in the person's custody record; and

(iv) if the decision is to refuse to permit the exercise of the right - also record the grounds for that decision in the record.

(10) If an officer has authorised the keeping of a person who has not been charged in detention under subsection (1) or (3), the person must be released from detention, either on bail or without bail, not later than 36 hours after the relevant time, unless —

(a) the person has been charged with an offence; or

(b) the continued detention is authorised or otherwise permitted in accordance with section 71.

(11) A person released under subsection (9) must not be re-arrested without a warrant for the offence for which the person was previously arrested unless new evidence justifying a further arrest has come to light since the release; but this subsection does not prevent an arrest under section 75.
[Criminal Justice Ord. s.157; UK PACE Act 1984 s.42]

71. Warrants of further detention
(1) If on an application on oath made by a police officer and supported by an information, either the Magistrate's Court or the Summary Court is satisfied that there are reasonable grounds for believing that the further detention of the person to whom the application relates (the "detainee") is justified, the court may issue a warrant of further detention authorising the keeping of that person in police detention.

(2) A court must not hear an application for a warrant of further detention unless the detainee has been —

(a) provided with a copy of the information; and

(b) brought before the court for the hearing.

(3) If a detainee wishes to be legally represented at the hearing —

(a) the detainee may be legally represented at the detainee's own expense;

(b) a legal practitioner may participate in the hearing (or resumed hearing) in person or by telephone.

(4) If the detainee is not legally represented, and states a wish to be so represented —

(a) the court must adjourn the hearing for up to 24 hours to enable the person to obtain legal representation;

(b) legal representation includes taking advice by telephone from a legal practitioner;

(c) the period of the adjournment does not count towards the 96 hours mentioned in section 72(3)(b);

(d) the person may be kept in police detention during the adjournment, but must not be questioned by a police officer during the period of the adjournment.

(5) If the detainee is a youth or vulnerable adult, the court may also hear on the person's behalf from (in the case of a youth) a person with parental responsibility; or (in the case of a vulnerable adult) a person, such as a relative, carer or social worker, who need to be consulted in conformity with the relevant code of practice.

(6) A person's further detention is only justified for the purposes of this section or section 72 if the court is satisfied that —

(a) detention without charge is necessary —

(i) to secure or preserve evidence relating to an offence for which the person is under arrest; or

(ii) to obtain such evidence by questioning the person;

(b) an offence for which the person is under arrest is an imprisonable offence; and

(c) the investigation is being conducted diligently and expeditiously.

(7) Subject to subsection (9), an application for a warrant of further detention may be made —

(a) at any time before the expiry of 36 hours after the relevant time; or

(b) if —

(i) it is not practicable for either the Magistrate's Court or the Summary Court to sit at the expiry of 36 hours after the relevant time; but

(ii) one of those courts will sit during the 6 hours following the end of that period,

at any time before the expiry of that 6 hours.

(8) If subsection (7)(b) applies —

(a) the person to whom the application relates may be kept in police detention until the application is heard; and

(b) the custody officer must make an entry in the person's custody record of —

(i) the fact that the person was kept in police detention for more than 36 hours after the relevant time; and

(ii) the reason why the person was so kept.

(9) If —

(a) an application for a warrant of further detention is made after the expiry of 36 hours after the relevant time; and

(b) it appears to the court that it would have been reasonable for the police to make it before the expiry of that period,

the court must dismiss the application.

(10) If on an application for a warrant of further detention the court is not satisfied that there are reasonable grounds for believing that the further detention of the detainee is justified, the court must —

(a) refuse the application; or

(b) adjourn the hearing of it until a time not later than 36 hours after the relevant time.

(11) If the hearing of an application is adjourned under subsection (10)(b), the detainee may be kept in police detention during the adjournment.

(12) A warrant of further detention must —

(a) state the time at which it is issued; and

(b) authorise the keeping in police detention of the person to whom it relates for the period stated in it.

(13) The period stated in a warrant of further detention must be —

(a) a period the court thinks fit, having regard to the evidence before it; but

(b) no longer than 36 hours.

(14) An information submitted in support of an application under this section must state —

(a) the nature of the offence for which the detainee has been arrested;

(b) the general nature of the evidence on which the person was arrested;

(c) what inquiries relating to the offence have been made by the police and what further inquiries are proposed by them;

(d) the reasons for believing the continued detention of the person to be necessary for the purposes of such further inquiries.

(15) If an application under this section is refused, the detainee must forthwith be charged or, subject to subsection (16), released, either on bail or without bail.

(16) A person need not be released under subsection (15) —

(a) before the expiry of 24 hours after the relevant time; or

(b) before the expiry of any longer period for which the person's continued detention is or has been authorised under section 70.

(17) If an application under this section is refused, no further application may be made under this section in respect of the person to whom the refusal relates, unless supported by evidence which has come to light since the refusal.

(18) If a warrant of further detention is issued, the detainee must be released from police detention, either on bail or without bail, upon or before the expiry of the warrant, unless the person is charged.

(19) A person released under subsection (18) must not be re-arrested without a warrant for the offence for which the person was previously arrested unless new evidence justifying a further arrest has come to light since the person's release; but this subsection does not prevent an arrest under section 75.
[Criminal Justice Ord. s.158; UK PACE Act 1984 s.43]

72. Extension of warrants of further detention
(1) On an application on oath made by a police officer and supported by an information, the Magistrate's Court or the Summary Court may extend a warrant of further detention issued under section 71 if satisfied that there are reasonable grounds for believing that the further detention of the person to whom the application relates is justified.

(2) The court that considers an application for a warrant of further extension should so far as practicable be the same court (and in the case of the Summary Court, comprise the same justices) as the court that heard the application for the warrant of extension.

(3) The period for which a warrant of further detention may be extended is such as the court thinks fit, having regard to the evidence before it but must not —

(a) be longer than 36 hours; nor

(b) end later than 96 hours after the relevant time.

(4) If a warrant of further detention has been extended under subsection (1) for a period ending before 96 hours after the relevant time, on an application as mentioned in that subsection the Magistrate's Court or the Summary Court may further extend the warrant if satisfied as there mentioned; and subsections (2) and (3) apply to such further extensions.

(5) A warrant of further detention must, if extended or further extended under this section, be endorsed with a note of the period of the extension.

(6) Subsections (2) to (5) and (14) of section 71 apply to an application made under this section as they apply to an application made under that section.

(7) If an application under this section is refused, the person to whom the application relates must forthwith be charged or, subject to subsection (8), released, either on bail or without bail.

(8) A person need not be released under subsection (7) before the expiry of any period for which a warrant of further detention issued in relation to the person has been extended or further extended on an earlier application made under this section.
[Criminal Justice Ord. s.159; UK PACE Act 1984 s.44]

73. Detention before charge: Supplementary

(1) A police officer may apply for a warrant under section 71(1) or for an extension of a warrant under section 72(1) only on the authority of an officer of the rank of inspector or above, who must enter in the custody record the fact that the authority has been given, and the reasons for giving it.

(2) In sections 71 and 72 "Magistrate's Court" means the Senior Magistrate sitting otherwise than in open court and "Summary Court" means 2 or more justices of the peace sitting otherwise than in open court.

(3) For purpose of hearing applications under section 71 or 72, the Magistrate's Court and the Summary Court can both be required to sit at weekends and on public holidays.

(4) A reference in this Part to a period of time or a time of day is to be treated as approximate only, and includes weekends and public holidays.
[Criminal Justice Ord. s.160; UK PACE Act 1984 s.45]

74. Detention after charge

(1) If a person —

(a) is charged with an offence; and

(b) after being charged —

(i) is kept in police detention; or

(ii) is in segregated accommodation pursuant to section 65(8),

the person must be brought before either the Magistrate's Court or the Summary Court as soon as practicable and in any event within 72 hours of being charged with the offence.

(2) If neither the Magistrate's Court nor the Summary Court is due to sit either on the day on which a person is charged or on the next day, the custody officer must inform the Clerk of the court that there is a person to whom subsection (1) applies and the Clerk must arrange for a court to sit within 72 hours of the person being charged.

(3) Nothing in this section requires a person who is in hospital to be brought before a court if the person is not well enough.
[Criminal Justice Ord. s.161; UK PACE Act 1984 s.46]

75. Power of arrest for failure to answer to police bail

(1) A police officer may arrest without a warrant any person who, having been released on bail under this Part subject to a duty to attend at a place of lawful custody, fails to attend at the time appointed.

(2) A person who has been released on bail under section 61 or 63 may be arrested without warrant by a police officer if the police officer has reasonable grounds for suspecting that the person has broken any of the conditions of bail.

(3) A person arrested under this section must be taken to the place of lawful custody that is most appropriate in the circumstances of the arrest, as soon as practicable after the arrest.

(4) For the purpose of —

(a) section 50 (Arrest elsewhere than at a place of lawful custody); and

(b) section 57 (Arrest for further offence),

an arrest under this section is to be treated as an arrest for an offence.
[UK PACE Act 1984 s.46A inserted by Criminal Justice Act 2003]

76. Bail after arrest

(1) Except as otherwise provided in this Part, and subject to this section —

(a) a release of a person on bail under this Part must be in accordance with Part 9 (Bail in Criminal Proceedings) as that Part applies to bail granted by the Magistrate's Court or the Summary Court;

(b) the powers of the Magistrate's Court or the Summary Court under Part 9 (Bail in Criminal Proceedings) to impose conditions of bail are available to a custody officer who releases a person on bail under this Part.

(2) References in this Part to "bail" are references to bail subject to a duty —

(a) to appear before the Magistrate's Court or the Summary Court at a time and place that the custody officer appoints; or

(b) to attend at a place of lawful custody at a time the custody officer appoints.

(3) If a custody officer intends to grant bail to a person subject to a duty to appear before the Magistrate's Court or the Summary Court —

(a) the officer must notify the Clerk of the court, who must in turn notify the officer of the first date that is convenient to all parties on which the appropriate court can sit;

(b) the officer must set that date as the date for the person's appearance in the relevant court, and grant bail accordingly.

(4) If custody officer has granted bail to a person subject to a duty to appear at a place of lawful custody, the officer may give notice in writing to the person that the person's attendance at the place of lawful custody is not required.

(5) If a person who has been granted bail under this Part and has either attended at a place of lawful custody in accordance with the grant of bail or been arrested under section 75 is detained at a place of lawful custody —

(a) any time during which the person was in police detention prior to being granted bail is to be included as part of any period which falls to be calculated under this Part;

(b) any time during which the person was on bail is not to be included.

(6) The court before which a person appears on bail under this section may vary the conditions of the bail on an application by or on behalf of the person, as provided by section 148.
[Criminal Justice Ord. s.162 as amended; UK PACE Act 1984 s.47(1) and (3) to (6)]

77. Conditions of police bail

(1) Part 9 (Bail in Criminal Proceedings) applies to bail granted by a police officer under this Part, subject to section 148 (Variation of police bail) and the following provisions of this section.

(2) If a police officer grants bail to a person, no conditions may be imposed under paragraphs (a) to (d) of section 143(1) (Conditions of bail) unless it appears to the officer that it is necessary to do so for the purpose of preventing the person from —

(a) failing to surrender to custody;

(b) committing an offence while on bail; or

(c) interfering with witnesses or otherwise obstructing the course of justice, whether in relation to that person or any other person.

(3) If a custody officer has granted bail in relation to criminal proceedings, that officer or another custody officer may, at the request of the person to whom it was granted, vary the conditions of bail; and in doing so may impose conditions, which may be more onerous conditions.

(4) Subsection (2) applies on any request to a custody officer under subsection (3) to vary the conditions of bail.

(5) If a custody officer, in relation to any person —

(a) imposes conditions when granting bail in relation to criminal proceedings; or

(b) varies any conditions of bail or imposes new conditions in respect of bail in criminal proceedings,

the officer must, with a view to enabling that person to consider requesting that or another custody officer, or making an application to the Magistrate's Court or the Summary Court, to vary the conditions, give reasons for imposing or varying the conditions.

(6) A custody officer who is by virtue of subsection (5) required to give reasons for a decision must include a note of those reasons in the custody record and give a copy of the note to the person in relation to whom the decision was taken.

[Criminal Justice Ord. s.142 varied; UK Bail Act 1976 ss.3A and 5A as am. and adapted]

78. Re-arrest of persons on bail

(1) Nothing in this Part or Part 9 (Bail in Criminal Proceedings) prevents the re-arrest without warrant of a person released on bail subject to a duty to attend at a place of lawful custody if new evidence justifying a further arrest has come to light since the person's release.

(2) If a person who was released on bail under this Part subject to a duty to attend at a place of lawful custody is re-arrested, the provisions of this Part apply to the person as they apply to a person arrested for the first time.

(3) Subsection (2) does not apply to a person —

(a) who is arrested under section 75; or

(b) who has attended at a place of lawful custody in accordance with the grant of bail (and who accordingly is to be treated under section 60(7) as having been arrested for an offence).

[UK PACE Act 1984 s.47(2) and (7)]

79. Records of detention

(1) The Chief Police Officer must keep written records showing on an annual basis —

(a) the number of persons kept in police detention for more than 24 hours and subsequently released without charge;

(b) the number of applications for warrants of further detention and the results of the applications; and

(c) in relation to each warrant of further detention —

(i) the period of further detention authorised by it;

(ii) the period which the person named in it spent in police detention on its authority; and

(iii) whether the person was charged or released without charge.

(2) The Chief Police Officer must publish an annual report containing information about the matters mentioned in subsection (1) in respect of the period to which the report relates.

[UK PACE Act 1984 s.50]

80. Saving for *habeas corpus* and immigration law

Nothing in this Part affects —

(a) any right of a person in police detention to apply for a writ of *habeas corpus* or other prerogative remedy;

(b) any power conferred by or under the Immigration Ordinance on any police officer or immigration officer to detain any person for purposes connected with the control of immigration.

[Criminal Justice Ord. s.163; UK PACE Act 1984 s.51]

81. Detention of youths

(1) Whenever a youth is arrested and taken to a place of lawful custody, the custody officer must, in addition to any other functions in relation to an arrested person imposed by this Part, perform the functions specified in subsections (2) to (4).

(2) The custody officer must take such steps as are practicable to ascertain the identity of a person responsible for the welfare of the arrested youth, and if —

(a) the officer ascertains the identity of any such person; and

(b) it is practicable to notify that person that the youth has been arrested and is in police detention,

the officer must give that person the information as soon as it is practicable to do so.

(3) For the purposes of subsection (1) the persons who may be responsible for the welfare of an arrested youth are —

(a) the youth's parent or guardian or person having parental responsibility for the youth; and

(b) any other person who has for the time being assumed responsibility for the welfare of the youth.

(4) If it appears to the custody officer that a supervision order is in force in respect of the arrested youth under the Children Ordinance 2014, the officer must also give the information to the person responsible for the arrested youth's supervision, as soon reasonably practicable.
[Criminal Justice Ord. s.152(11) to (14)]

PART 6 - QUESTIONING AND TREATMENT OF PERSONS BY POLICE
Questioning and search of persons

82. Interpretation of Part
(1) In this Part —

"analysis", in relation to a skin impression, includes comparison and matching;

"appropriate consent" means —

(a) in relation to a person who has attained the age of 18 years - the consent of that person;

(b) in relation to a person who has not attained that age but has attained the age of 14 years - the consent of that person and his or her parent or guardian; and

(c) in relation to a person who has not attained the age of 14 years - the consent of his or her parent or guardian;

"appropriate criminal intent" means an intent to commit an offence under —

(a) section 5(2) of the Misuse of Drugs Ordinance (possession of controlled drug with intent to supply to another); or

(b) section 59 or 60 of the Customs Ordinance 2003 (offences in relation to the exportation of goods);

"appropriate officer", in relation to a person whose fingerprints are to be taken, means the officer investigating the offence for which the person was arrested or charged or informed that he or she would be reported, as the case may be;

"approved place" for the taking of an intimate sample means any of the places specified in section 86(9);

"Class A drug" and "Class B drug" have the same meaning as in the Misuse of Drugs Ordinance;

"DNA profile" means any information derived from a DNA sample;

"DNA sample" means any material that has come from a human body and consists of or includes human cells;

"drug offence search" means an intimate search for a Class A drug or Class B drug which an officer has authorised by virtue of section 86(1)(b);

"excluded offence", in relation to a person, means an imprisonable offence which —

(a) is not a qualifying offence;

(b) is the only imprisonable offence of which the person has been convicted; and

(c) was committed when the person was aged under 18,

and for which the person was not given a custodial sentence of 5 years or more;

"extradition arrest power" means a power of arrest under an enactment with a view to the extradition of the person arrested;

"fingerprints", in relation to any person, means a record (in any form and produced by any method) of the skin pattern and other physical characteristics or features of —

(a) any of the person's fingers; or

(b) either of the person's palms;

"health care professional" means —

(a) a person who is registered in the register of medical practitioners kept under the Medical Practitioners, Midwives and Dentists Ordinance; or

(b) a person who is registered in the register kept by the United Kingdom Central Council for Nursing, Midwifery and Health Visiting by virtue of qualifications in nursing;

"intimate sample" means —

(a) a sample of blood, semen or any other tissue, fluid, urine or pubic hair;

(b) a dental impression; or

(c) a swab taken from any part of a person's genitals (including pubic hair) or from a person's body orifice other than the mouth;

"intimate search" means a search which consists of the physical examination of a person's body orifices other than the mouth;

"non-intimate sample" means —

(a) a sample of hair other than pubic hair;

(b) a sample taken from a nail or from under a nail;

(c) a swab taken from any part of a person's body other than a part from which a swab taken would be an intimate sample;

(d) saliva; or

(e) a skin impression;

"qualifying offence" means a sexual offence or an offence of violence;

"registered dentist" means a person registered as a dentist under the Medical Practitioners, Midwives and Dentists Ordinance;

"relevant material" means fingerprints or DNA profiles to which section 98 applies;

"relevant time" has the meaning given to it by section 69(2);

"skin impression", in relation to any person, means any record (other than a fingerprint) which is a record (in any form and produced by any method) of the skin pattern and other physical characteristics or features of the whole or any part of the person's foot or of any other part of the person's body;

"speculative search", in relation to a person's fingerprints or samples, means a check against other fingerprints or samples or against information derived from other samples such as is referred to in section 95(1);

"sufficient" and "insufficient", in relation to a sample, means (subject to subsection (2)) sufficient or insufficient (in point of quantity or quality) for the purpose of enabling information to be produced by the means of analysis used or to be used in relation to the sample.

(2) References in this Part to a sample proving insufficient include references to cases in which, as a consequence of —

(a) the loss, destruction or contamination of the whole or any part of the sample;

(b) any damage to the whole or a part of the sample; or

(c) the use of the whole or a part of the sample for an analysis which produced no results or which produced results some or all of which must be regarded, in the circumstances, as unreliable,

the sample has become unavailable or insufficient for the purpose of enabling information, or information of a particular description, to be obtained by means of analysis of the sample.

(3) In subsection (2), the reference to the destruction of a sample does not include a reference to the destruction of a sample under section 111 (requirement to destroy samples).

(4) Any reference in sections 100, 102, 109 or 114 to a person being charged with an offence includes a reference to a person being informed that he or she will be reported for an offence.

(5) For the purposes of this Part, any reference to a person who is convicted of an offence includes a reference to —

(a) a person who has been given a caution in respect of the offence which, at the time of the caution, the person has admitted;

(b) a person who has been found not guilty of the offence by reason of insanity, or who has been found to be under a disability and to have done the act charged in respect of the offence.

(6) This Part, so far as it relates to persons convicted of an offence, has effect despite anything in Part 29 (Rehabilitation of Offenders), but subject to any provision of this Ordinance empowering the Governor to disregard certain convictions and cautions.

(7) If a person is convicted of more than one offence arising out of a single course of action, those convictions are to be treated as a single conviction for the purposes of calculating under section 102 or 107 whether the person has been convicted of only one offence.

83. Abolition of certain powers of police officers to search persons

(1) Any enactment in force before this Part comes into force ceases to have effect to the extent that it authorises —

(a) a search by a police officer of a person in police detention at a place of lawful custody; or

(b) an intimate search of a person by a police officer.

(2) Any rule of common law which authorises a search such as is mentioned in subsection (1) that was abolished by section 165 of the Criminal Justice Ordinance remains abolished.
[Criminal Justice Ord. s.165; UK PACE Act 1984 s.53]

84. Searches of detained person

(1) The custody officer at a place of lawful custody must ascertain and record or cause to be recorded everything that a person has with him or her when the person is —

(a) brought to the station after being arrested elsewhere or after being committed to custody by an order or sentence of a court; or

(b) arrested at the station, or detained there as a person falling within section 59(7).

(2) In the case of an arrested person, a record under subsection (1) must be made as part of the person's custody record.

(3) Subject to subsection (4), a custody officer may seize and retain anything as mentioned in subsection (1) or cause it to be seized and retained.

(4) Clothes and personal effects may only be seized if the custody officer —

(a) believes that the person from whom they are seized may use them to —

(i) cause physical injury to himself or herself or any other person;

(ii) damage property;

(iii) interfere with evidence; or

(iv) assist the person to escape; or

(b) has reasonable grounds for believing that they may be evidence relating to an offence.

(5) If anything is seized, the person from whom it is seized must be told the reason for the seizure unless the person is —

(a) violent or likely to become violent; or

(b) incapable of understanding what is said to him or her.

(6) Subject to subsection (10), a person may be searched —

(a) if the custody officer considers it necessary to enable the officer to carry out his or her duty under subsection (1); and

(b) to the extent the custody officer considers necessary for that purpose.

(7) A person who is in custody at a place of lawful custody or is in police detention otherwise than at such a place may at any time be searched in order to ascertain whether the person has with him or her anything which the person could use for any of the purposes specified in subsection (4)(a).

(8) Subject to subsection (9), a police officer may seize and retain, or cause to be seized and retained, anything found on a search authorised by this section.

(9) A police officer may only seize clothes and personal effects in the circumstances specified in subsection (4).

(10) An intimate search may not be conducted under this section.

(11) A search under this section must be carried out only by a police officer.

(12) The police officer carrying out a search under this section must whenever practicable be of the same gender as the person searched.

(13) This section applies in the case of a person who is arrested under section 133(3) for failing to comply with the conditions of a conditional caution and is detained in a place of lawful custody under that section as it applies in the case of a person who falls within section 60(7) and is detained at a place of lawful custody under section 61.
[Criminal Justice Ord. s.166; UK PACE Act 1984 s.54]

85. Searches and examinations to ascertain identity
(1) If an officer of the rank of sergeant or above so authorises, a person who is detained in a place of lawful custody as a person involved in the commission of an offence. or as having failed to comply with any of the conditions attached to a conditional caution, may be searched or examined, or both —

(a) for the purpose of ascertaining whether the person has any mark that would tend to identify him or her as a person involved in the commission of an offence; or

(b) for the purpose of facilitating the ascertainment of the person's identity.

(2) An officer may only give an authorisation under subsection (1) for the purpose mentioned in paragraph (a) of that subsection if —

(a) the appropriate consent to a search or examination that would reveal whether the mark in question exists has been withheld; or

(b) it is not practicable to obtain such consent.

(3) An officer may only give an authorisation under subsection (1) for the purpose mentioned in paragraph (b) of that subsection if —

(a) the person in question has refused to identify himself or herself; or

(b) the officer has reasonable grounds for suspecting that that person is not who he or she claims to be.

(4) An officer may give an authorisation under subsection (1) orally or in writing but, if the officer gives it orally, he or she must confirm it in writing as soon as practicable.

(5) Any identifying mark found on a search or examination under this section may be photographed —

(a) with the appropriate consent; or

(b) if the appropriate consent is withheld or it is not practicable to obtain it - without it.

(6) A search or examination carried out, or a photograph taken, under this section may only be carried out or taken by a police officer.

(7) To the extent practicable, a person may not under this section carry out a search or examination of a person of the opposite gender or take a photograph of any part of the body of a person of the opposite gender.

(8) An intimate search may not be carried out under this section.

(9) A photograph taken under this section —

(a) may be used by, or disclosed to, any person for any purpose related to the prevention or detection of crime, the investigation of an offence, the investigation of whether the person in question has failed to comply with any of the conditions attached to a conditional caution, or the conduct of a prosecution; and

(b) after being so used or disclosed, may be retained but may not be used or disclosed except for a purpose so related.

(10) In subsection (9) —

(a) the reference to crime includes a reference to any conduct which —

(i) constitutes one or more criminal offences (whether under the law of the Falkland Islands or of a place outside the Falkland Islands); and

(ii) is, or corresponds to, any conduct which, if it took place in the Falkland Islands, would constitute one or more criminal offences;

(b) the references to an investigation and to a prosecution include references, respectively, to any investigation outside the Falkland Islands of any crime or suspected crime and to a prosecution brought in respect of any crime in a place outside the Falkland Islands.

(11) In this section —

(a) references to ascertaining a person's identity include references to showing that the person is not a particular person; and

(b) references to taking a photograph include references to using any process by means of which a visual image may be produced, and references to photographing a person are to be construed accordingly.

(12) In this section "mark" includes features and injuries; and a mark is an identifying mark for the purposes of this section if its existence in any person's case facilitates the ascertainment of the person's identity or the identification of the person as a person involved in the commission of an offence.

(13) Nothing in this section applies to a person arrested under an extradition arrest power.
[UK PACE Act 1984 s.54A inserted by Police Reform Act 2002]

86. Intimate searches

(1) Subject to this section, if an officer of the rank of inspector or above has reasonable grounds for believing —

(a) that a person who has been arrested and is in police detention may have concealed on him or her anything which he or she —

(i) could use to cause physical injury to himself or herself or any other person; and

(ii) might so use while he or she is in police detention or in the custody of a court; or

(b) that such a person —

(i) may have a Class A drug or Class B drug concealed on him or her; and

(ii) was in possession of it with the appropriate criminal intent before the arrest,

the officer may authorise an intimate search of the person.

(2) An officer may not authorise an intimate search of a person for anything unless the officer has reasonable grounds for believing that it cannot be found without the person being intimately searched.

(3) An officer may give an authorisation under subsection (1) orally or in writing but, if the officer gives it orally, he or she must confirm it in writing as soon as practicable.

(4) A drug offence search must not be carried out unless the appropriate consent has been given in writing.

(5) If it is proposed that a drug offence search be carried out, an appropriate officer must inform the person to be searched —

(a) of the giving of the authorisation; and

(b) of the grounds for giving the authorisation.

(6) An intimate search which is only a drug offence search must be by way of examination by a health care professional.

(7) An intimate search other than a drug offence search must be by way of examination by a health care professional unless an officer of the rank of inspector or above considers that this is not practicable, in which case it must be carried out by a police officer.

(8) A police officer may not carry out an intimate search of a person of the opposite gender.

(9) An intimate search must not be carried out except —

(a) at a police station;

(b) at the prison;

(c) at a hospital;

(d) at a registered medical practitioner's surgery; or

(e) at some other place used for medical purposes.

(10) If an intimate search of a person is carried out, the custody record relating to the person must state —

(a) which parts of the person's body were searched; and

(b) why they were searched.

(11) If the intimate search of a person is a drug offence search, the custody record relating to the person must also state —

(a) the authorisation by virtue of which the search was carried out;

(b) the grounds for giving the authorisation; and

(c) the fact that the appropriate consent was given.

(12) The information required to be recorded by subsections (10) and (11) must be recorded as soon as practicable after the completion of the search.

(13) The custody officer at the place of lawful custody may seize and retain anything which is found on an intimate search of a person, or cause any such thing to be seized and retained —

(a) if the officer believes that the person from whom it is seized may use it —

(i) to cause physical injury to himself or herself or any other person;

(ii) to damage property;

(iii) to interfere with evidence; or

(iv) to assist the person to escape; or

(b) if the officer has reasonable grounds for believing that it may be evidence relating to an offence.

(14) If anything is seized under this section, the person from whom it is seized must be told the reason for the seizure unless the person is —

(a) violent or likely to become violent; or

(b) incapable of understanding what is said to him or her.

(15) If the appropriate consent to a drug offence search of any person was refused without good cause, in any proceedings against that person for an offence the court may draw such inferences from the refusal as appear proper.

(16) The Chief Police Officer must publish an annual report containing information about searches under this section which have been carried out during the period to which it relates, including —

(a) the total number of searches;

(b) the number of searches conducted by way of examination by a suitably qualified person;

(c) the number of searches not so conducted but conducted in the presence of such a person; and

(d) the result of the searches carried out;

and, as separate items —

(e) the total number of drug offence searches; and

(f) the result of those searches.
[Criminal Justice Ord. s.167; UK PACE Act 1984 s.55]

87. X-rays and ultrasound scans

(1) If a police officer of the rank of inspector or above has reasonable grounds for believing that a person who has been arrested for an offence and is in police detention —

(a) may have swallowed a Class A or Class B drug; and

(b) was in possession of it with the appropriate criminal intent before his or her arrest,

the officer may authorise that an X-ray be taken of the person or an ultrasound scan be carried out on the person, or both.

(2) An X-ray must not be taken of a person and an ultrasound scan must not be carried out on the person unless the appropriate consent has been given in writing.

(3) If it is proposed that an X-ray be taken or an ultrasound scan be carried out, an appropriate officer must inform the person who is to be subject to it —

(a) of the giving of the authorisation for it; and

(b) of the grounds for giving the authorisation.

(4) An X-ray may only be taken by a radiographer and an ultrasound scan may only be carried out by a radiographer or a health care professional. Either procedure may only be performed at—

(a) a hospital;

(b) a registered medical practitioner's surgery; or

(c) some other place used for medical purposes.

(5) When an X-ray of a person is taken or an ultrasound scan on a person is carried out, the custody record of the person must also state —

(a) the authorisation by virtue of which the X-ray was taken or the ultrasound scan was carried out;

(b) the grounds for giving the authorisation; and

(c) the fact that the appropriate consent was given.

(6) The information required to be recorded by subsection (5) must be recorded as soon as practicable after the X-ray has been taken or ultrasound scan carried out, as the case may be.

(7) If the appropriate consent to an X-ray or ultrasound scan of any person is refused without good cause, in any proceedings against that person for an offence, the court may draw such inferences from the refusal as appear proper.

(8) The Chief Police Officer must publish an annual report containing information about X-rays which have been taken and ultrasound scans which have been carried out under this section during the period to which it relates, including —

(a) the total number of X-rays;

(b) the total number of ultrasound scans;

(c) the results of the X-rays;

(d) the results of the ultrasound scans.

[UK PACE Act 1984 s.55A, inserted by the Drugs Act 2005]

88. Right to have someone informed when arrested

(1) A person who has been arrested and is being held in custody in a place of lawful custody or other premises is entitled, if he or she so requests, to have one named friend or relative or other person who is known to the person or who is likely to take an interest in the person's welfare told that the person has been arrested and is being detained there.

(2) Delay in telling a named person under subsection (1) is only permitted if —

(a) the detained person is detained for an imprisonable offence; and

(b) an officer of the rank of inspector or above authorises a delay.

(3) Whether or not subsection (2) applies, the detained person must be permitted to exercise the right conferred by subsection (1) within 36 hours after the relevant time.

(4) An officer may give an authorisation under subsection (2) orally or in writing but, if the officer gives it orally, he or she must confirm it in writing as soon as is practicable.

(5) Subject to subsection (6), an officer may only authorise delay in telling a named person of an arrest if the officer has reasonable grounds for believing that the telling will —

(a) lead to interference with or harm to evidence connected with an imprisonable offence;

(b) lead to interference with or physical injury to other persons;

(c) lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or

(d) hinder the recovery of any property obtained as a result of such an offence.

(6) An officer may also authorise delay in telling a named person if the officer has reasonable grounds for believing that —

(a) the person detained for the imprisonable offence has benefited from his or her criminal conduct; and

(b) the recovery of the value of the property constituting the benefit will be hindered by telling the named person of the arrest.

(7) For the purposes of subsection (6) the question whether a person has benefited from the person's criminal conduct is to be decided in accordance with the Proceeds of Crime Ordinance.

(8) If a delay in telling a named person is authorised —

(a) the detained person must as soon as practicable be told the reason for the delay; and

(b) the reason must as soon as practicable be noted on the person's custody record.

(9) The rights conferred by this section on a person in a place of lawful custody or other premises are exercisable whenever the person is transferred from one place to another, and this section applies to each subsequent occasion on which they are exercisable as it applies to the first such occasion.

(10) If delay in telling a named person has been authorised, there must be no further delay in permitting the exercise of the right conferred by subsection (1) once the reason for authorising delay ceases to subsist.
[Criminal Justice Ord. s.171; UK PACE Act 1984 s.56]

89. Additional rights of youths who are arrested

(1) If a youth is in police detention, all practicable steps must be taken to ascertain the identity of a person responsible for the youth's welfare.

(2) If the identity of a person responsible for the welfare of the youth can be ascertained, the person must be informed, unless it is not practicable to do so —

(a) that the youth has been arrested;

(b) why he or she has been arrested; and

(c) where he or she is being detained.

(3) If information is to be given under subsection (2), it must be given as soon as practicable.

(4) For the purposes of this section the persons responsible for the welfare of a youth are —

(a) the youth's parent or guardian; or

(b) any other person who has for the time being assumed responsibility for the youth's welfare.

(5) If information is to be given to a person responsible for the welfare of the youth in accordance with subsection (2), it must be given to the person as soon as is reasonably practicable.

(6) If it appears at the time of the youth's arrest that a supervision order is in force in respect of the youth under the Children Ordinance 2014, the person responsible for the supervision of the youth must also be informed as described in subsection (2) as soon as reasonably practicable.

(7) The reference to a parent or guardian in subsection (4) is, in the case of a youth in the care of the Crown, a reference to the Crown officer with responsibility for the youth.

(8) The rights conferred on a youth by subsections (1) to (6) are in addition to the rights under section 88.
[UK PACE Act 1984 s.57 and Children & Young Persons Act 1933 s.34]

90. Access to legal advice
(1) A person arrested and held in custody in a place of lawful custody or other premises is entitled, if the person so requests, to consult a legal practitioner at any time.

(2) Consultation with a legal practitioner —

(a) is private; and

(b) may be conducted by telephone.

(3) Subject to subsection (4), a request under subsection (1), and the time of its making, must when it is made be recorded in the custody record unless it is made by a person while he or she is at a court after being charged with an offence.

(4) If a person makes such a request, the person must be permitted to consult a legal practitioner as soon as practicable, except to the extent that delay is permitted by this section, and in any case within 36 hours after the relevant time.

(5) Delay in compliance with a request to consult a legal practitioner is only permitted —

(a) in the case of a person who is in police detention for an imprisonable offence; and

(b) if a police officer of the rank of inspector or above authorises it.

(6) An officer may give an authorisation under subsection (5) orally or in writing but, if the officer gives it orally, he or she must confirm it in writing as soon as practicable.

(7) Subject to subsection (6), a police officer may only authorise delay in complying with a request if the officer has reasonable grounds for believing that complying with the request at the time when the person in police detention makes it will —

(a) lead to interference with or physical injury to other persons;

(b) lead to interference with or harm to evidence connected with an imprisonable offence;

(c) lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or

(d) hinder the recovery of any property obtained as a result of such an offence.

(8) An officer may also authorise delay in complying with a request if the officer has reasonable grounds for believing that —

(a) the person detained for the imprisonable offence has benefited from the person's criminal conduct; and

(b) the recovery of the value of the property constituting the benefit will be hindered by the exercise of the rights in subsection (1).

(9) For the purposes of subsection (7), the question whether a person has benefited from the person's criminal conduct is to be decided in accordance with the Proceeds of Crime Ordinance.

(10) If delay in complying with a request is authorised by this section —

(a) the detained person must as soon as practicable be told the reason for it;

(b) the reason must as soon as practicable be noted on the person's custody record;

(c) there must be no further delay once the reason for authorising delay ceases to subsist.
[Criminal Justice Ord. s.172; UK PACE Act 1984 s.58]

Fingerprints, samples, etc.

91. Fingerprinting
(1) Except as provided by this section, no person's fingerprints may be taken without the appropriate consent.

(2) If consent is given when a person is at a place of lawful custody, it must be in writing.

(3) The fingerprints of a person who has answered to bail at a court or place of lawful custody may be taken without the appropriate consent at the court or place if —

(a) the court, or

(b) a police officer of the rank of sergeant or above,

authorises them to be taken.

(4) A court or police officer may only give an authorisation under subsection (3) if —

(a) the person who has answered to bail has answered to it for a person whose fingerprints were taken on a previous occasion and there are reasonable grounds for believing that he or she is not the same person; or

(b) the person who has answered to bail claims to be a different person from a person whose fingerprints were taken on a previous occasion.

(5) A police officer may take a person's fingerprints without the appropriate consentif the officer reasonably suspects that the person is committing or attempting to commit an imprisonable offence, or has committed or attempted to commit an offence, and if —

(a) the name of the person is unknown to, and cannot be readily ascertained by, the officer; or

(b) the officer has reasonable grounds for doubting whether a name given by the person as his or her name is his or her real name.

(6) The taking of fingerprints by virtue of subsection (5) does not count for any of the purposes of this Ordinance as taking them in the course of the investigation of an offence by the police.

(7) The fingerprints of a person detained at a place of lawful custody may be taken without the appropriate consent if the person —

(a) is detained in consequence of his or her arrest for an imprisonable offence; or

(b) has been charged with an imprisonable offence or informed that he or she will be reported for such an offence;

and if —

(c) the person has not had his or her fingerprints taken in the course of the investigation of the offence by the police; or

(d) the person has had his or her fingerprints taken in the course of the investigation, but subsection (12)(a) or (b) applies.

(8) The fingerprints of a person not detained at a place of lawful custody may be taken without the appropriate consent if the person has been charged with an imprisonable offence or informed that he or she will be reported for such an offence and —

(a) the person has not had his or her fingerprints taken in the course of the investigation of the offence by the police; or

(b) the person has had his or her fingerprints taken in the course of that investigation but subsection (12)(a) or (b) applies or subsection (21) applies.

(9) Any person's fingerprints may be taken without the appropriate consent if the person has been convicted of an imprisonable offence or given a caution in respect of an imprisonable offence which, at the time of the caution, the person has admitted, and —

(a) the person has not had his or her fingerprints taken since he or she was convicted or cautioned; or

(b) the person has had his or her fingerprints taken since then but subsection (12)(a) or (b) applies.

(10) The fingerprints of a person may be taken without the appropriate consent if the person has been arrested for an imprisonable offence and released and —

(a) in the case of a person who is on bail – the person has not had his or her fingerprints taken in the course of the investigation of the offence by the police; or

(b) in any case – the person has had his or her fingerprints taken in the course of that investigation but subsection (12)(a) or (b) or subsection (21) applies.

(11) The fingerprints of a person may be taken without the appropriate consent if —

(a) under the law in force in a country or territory outside the Falkland Islands the person has been convicted of an offence under that law, whether or not he or she has been punished for it; and

(b) the act constituting the offence would constitute a qualifying offence if done in the Falkland Islands,

and if —

(c) the person has not had his or her fingerprints taken on a previous occasion under this subsection; or

(d) the person has had his or her fingerprints taken on a previous occasion under this subsection but subsection (12)(a) or (b) applies.

(12) If a person detained at a place of lawful custody has already had his or her fingerprints taken in the course of the investigation of the offence by the police, that fact is to be disregarded for the purposes of subsections (7) to (11) if —

(a) the fingerprints taken on a previous occasion do not constitute a complete set of the person's fingerprints; or

(b) some or all of the fingerprints taken on a previous occasion are not of sufficient quality to allow satisfactory analysis, comparison or matching (whether in the case in question or generally).

(13) If a person's fingerprints are taken without the appropriate consent pursuant to this section—

(a) before the fingerprints are taken, the person must be informed of —

(i) the reason for taking the fingerprints;

(ii) the power by virtue of which they are taken; and

(iii) if the authorisation of the court or a police officer is required for the exercise of the power - the fact that the authorisation has been given; and

(b) those matters must be recorded in writing as soon as practicable after the fingerprints are taken.

(14) If a person's fingerprints are taken pursuant to this section, whether with or without the appropriate consent —

(a) before the fingerprints are taken, a police officer must inform the person that they might be the subject of a speculative search; and

(b) the fact that the person has been informed of this possibility must be recorded as soon as practicable after the fingerprints have been taken, and if the person is detained at a place of lawful custody, included on the person's custody record.

(15) If a person is detained at a place of lawful custody when his or her fingerprints are taken, the matters referred to in subsection (13)(a) and the fact referred to in subsection (14)(b), must be recorded on the person's custody record.

(16) If a person's fingerprints are taken electronically, they must be taken only in a manner, and using devices, that the Governor in Council, after consulting the Criminal Justice Council, has by order approved for the purposes of electronic fingerprinting.

(17) Fingerprints may only be taken as specified in subsections (5), (7), (8), (9), (10), or (11) with the authorisation of an officer of the rank of sergeant or above, who must be satisfied that taking the fingerprints is necessary to assist in the prevention or detection of crime.

(18) A police officer may give an authorisation under subsection (17) orally or in writing but, if it is given orally, the officer must confirm it in writing as soon as practicable.

(19) The power to take the fingerprints of a person detained at a place of lawful custody without the appropriate consent may be exercised by any police officer, once any requisite authorisation has been given.

(20) Nothing in this section applies to a person arrested under an extradition arrest power.

(21) This subsection applies if —

(a) the investigation was discontinued but subsequently resumed; and

(b) before the resumption of the investigation the fingerprints were destroyed pursuant to section 98(3).

[Criminal Justice Ord. s.173; UK PACE Act 1984 s.61; Anti-social Behaviour, Crime and Policing Act 2014 s.144(1)]

92. Impressions of footwear

(1) Except as provided by this section, no impression of a person's footwear may be taken without the appropriate consent.

(2) If consent is given when a person is at a place of lawful custody, it must be in writing.

(3) If a person is detained at a place of lawful custody, an impression of his or her footwear may be taken without the appropriate consent if the person —

(a) is detained in consequence of his or her arrest for an imprisonable offence; and

(b) has not had an impression taken of his or her footwear in the course of the investigation of the offence by the police.

(4) If a person detained at a place of lawful custody has already had an impression taken of his or her footwear in the course of the investigation of the offence by the police, that fact is to be disregarded for the purposes of subsection (3) if the impression of his or her footwear taken previously is —

(a) incomplete; or

(b) not of sufficient quality to allow satisfactory analysis, comparison or matching (whether in the case in question or generally).

(5) If under subsection (3), an impression of a person's footwear is taken without the appropriate consent —

(a) the person must be told the reason before it is taken; and

(b) the reason must be recorded on the person's custody record as soon as practicable after the impression is taken.

(6) If an impression of a person's footwear is taken under this section, whether with or without the appropriate consent —

(a) before it is taken, a police officer must inform the person that it might be the subject of a speculative search; and

(b) the fact that the person has been informed of this possibility must be recorded as soon as practicable after the impression has been taken, and if the person is detained at a place of lawful custody, included on the person's custody record.

(7) An impression of a person's footwear may be taken may only with the authorisation of an officer of the rank of sergeant or above, who must be satisfied that taking the impression is necessary to assist in the prevention or detection of crime.

(8) A police officer may give an authorisation under subsection (7) orally or in writing but, if it is given orally, the officer must confirm it in writing as soon as practicable.

(9) The power to take an impression of the footwear of a person detained at a place of lawful custody without the appropriate consent may be exercised by any police officer, once the requisite authorisation has been given.

(10) Nothing in this section applies to a person arrested under an extradition arrest power.
[UK PACE Act 1984 s.61A added by Serious Organised Crime & Police Act 2005]

93. Intimate samples
(1) Without affecting section 96, an intimate sample may be taken from a person in police detention only if —

(a) a police officer of the rank of inspector or above authorises it to be taken; and

(b) the appropriate consent is given.

(2) An intimate sample may be taken from a person who is not in police detention but from whom, in the course of the investigation of an offence, 2 or more non-intimate samples suitable for the same means of analysis have been taken which have proved insufficient, if —

(a) a police officer of the rank of inspector or above authorises it to be taken; and

(b) the appropriate consent is given.

(3) A police officer may only give an authorisation under subsection (1) or (2) if the officer has reasonable grounds for —

(a) suspecting the involvement of the person from whom the sample is to be taken is an imprisonable offence; and

(b) believing that the sample will tend to confirm or disprove the person's involvement in that offence.

(4) An intimate sample may be taken from a person if —

(a) two or more non-intimate samples suitable for the same means of analysis have been taken from the person under section 94(10) (persons convicted of offences outside the Falkland Islands) but have proved insufficient;

(b) a police officer of the rank of inspector or above authorises it to be taken; and

(c) the appropriate consent is given.

(5) An officer may only give an authorisation under subsection (4) if the officer is satisfied that taking the sample is necessary to assist in the prevention or detection of crime.

(6) An officer may give an authorisation under subsection (1), (2) or (4) orally or in writing but, if it is given orally, the officer must confirm it in writing as soon as practicable.

(7) If consent is given, it must be in writing.

(8) An intimate sample can only be taken from a person at an approved place.

(9) Before an intimate sample is taken from a person, a police officer must inform the person of—

(a) the reason for taking the sample;

(b) the fact that authorisation has been given and the provision of this section under which it has been given; and

(c) the fact that the sample may be the subject of a speculative search.

(10) The reason referred to in subsection (9)(a) must include, unless the sample is taken under subsection (4), a statement of the nature of the offence in which it is suspected that the person has been involved.

(11) After an intimate sample has been taken from a person, the following must be recorded as soon as practicable, and if the person is detained at a place of lawful custody, included on the person's custody record —

(a) the matters referred to in subsection (9)(a) and (b);

(b) the fact that the person has been informed as specified in subsection (9)(c); and

(c) the fact that the appropriate consent was given.

(12) In the case of an intimate sample which is a dental impression, the sample may be taken from a person only by a registered dentist.

(13) In the case of any other form of intimate sample, except in the case of a sample of urine, the sample may be taken from a person only by a health care professional.

(14) If a person refuses to submit to the taking of an intimate sample without good cause, in proceedings against that person for an offence —

(a) the court, in deciding whether there is a case to answer; and

(b) the court or jury, in deciding whether the person is guilty of the offence charged,

may draw such inferences from the refusal as appear proper, and the refusal may, on the basis of such inferences, be treated as, or as capable of amounting to, corroboration of any evidence against a person in relation to which the refusal is material.

(15) Nothing in this section applies to the taking of a specimen for the purposes of section 23 or 24 of the Road Traffic Ordinance.
[Criminal Justice Ord. s.174; UK PACE Act 1984 s.62]

94. Non-intimate samples
(1) Except as provided by this section, a non-intimate sample may not be taken from a person without the appropriate consent.

(2) If consent is given, it must be in writing.

(3) A non-intimate sample may be taken from a person without the appropriate consent if —

(a) the person is in police detention in consequence of being arrested for an imprisonable offence;

(b) the person —

(i) has not had a non-intimate sample of the same type and from the same part of the body taken in the course of the investigation of the offence by the police; or

(ii) has had such a sample taken but it proved insufficient; and

(c) a police officer of the rank of inspector or above authorises it to be taken without the appropriate consent.

(4) A non-intimate sample may be taken from a person without the appropriate consent if —

(a) the person is held in custody for an imprisonable offence by the police on the authority of a court; and

(b) a police officer of the rank of inspector or above authorises it to be taken without the appropriate consent.

(5) A police officer may only give an authorisation under subsection (3) or (4) if the officer has reasonable grounds —

(a) to suspect that the person from whom the sample is to be taken has been involved in an imprisonable offence; and

(b) to believe that the sample will tend to confirm or disprove the person's involvement in that offence.

(6) A non-intimate sample may be taken from a person without the appropriate consent if the person has been arrested for an imprisonable offence and released and —

(a) in the case of a person who is on bail – the person has not had a non-intimate sample of the same type and from the same part of the body taken from him or her in the course of the investigation of the offence by the police; or

(b) in any case – the person has had a non-intimate sample taken from him or her in the course of that investigation but —

(i) it was not suitable for the same means of analysis;

(ii) it proved insufficient; or

(iii) subsection (20) applies.

(7) A non-intimate sample may be taken from a person without the appropriate consent if the person has been charged with an imprisonable offence, or informed that he or she will be charged with such an offence, and the person —

(a) has not had a non-intimate sample taken in the course of the investigation of the offence by the police;

(b) has had a non-intimate sample taken in the course of that investigation but —

(i) it was not suitable for the same means of analysis;

(ii) it proved insufficient; or

(iii) subsection (20) applies.

(c) has had a non-intimate sample taken in the course of that investigation, but —

(i) the sample has been destroyed pursuant to this Part or some other enactment; and

(ii) it is disputed, in relation to any proceedings relating to the offence, whether a DNA profile relevant to the proceedings was derived from the sample.

(8) A non-intimate sample may be taken from a person without the appropriate consent if —

(a) the person has been convicted of an imprisonable offence; or

(b) the person has been given a caution in respect of an imprisonable offence which, at the time of the caution, he or she has admitted,

and if —

(c) a non-intimate sample has not been taken from the person since he or she was convicted or cautioned; or

(d) such a sample has been taken from the person since then but —

(i) it was not suitable for the same means of analysis; or

(ii) it proved insufficient.

(9) A non-intimate sample may be taken without the appropriate consent from a person detained in a hospital following acquittal on the grounds of insanity or a finding of unfitness to plead under Part 34 (Mentally Disordered Offenders).

(10) A non-intimate sample may be taken from a person without the appropriate consent if —

(a) under the law in force in a country or territory outside the Falkland Islands the person has been convicted of an offence under that law (whether or not the person has been punished for it); and

(b) the act constituting the offence would constitute a qualifying offence if done in the Falkland Islands,

and if —

(c) the person has not had a non-intimate sample taken from him or her on a previous occasion under this subsection; or

(d) the person has had such a sample taken from him or her on a previous occasion under this subsection but —

(i) the sample was not suitable for the same means of analysis; or

(ii) it proved insufficient.

(11) If a non-intimate sample is taken from a person without the appropriate consent pursuant to this section —

(a) before the sample is taken, a police officer must inform the person of —

(i) the reason for taking the sample;

(ii) the power by virtue of which it is taken; and

(iii) in a case where the authorisation of an officer is required for the exercise of the power - the fact that the authorisation has been given; and

(b) those matters must be recorded as soon as practicable after the sample is taken.

(12) The reason referred to in subsection (11)(a)(i) must include, except in a case where the non-intimate sample is taken under subsection (8) or (9), a statement of the nature of the offence in which it is suspected that the person has been involved.

(13) If a non-intimate sample is taken from a person under this section, whether with or without the appropriate consent —

(a) before the sample is taken, a police officer must inform the person that it might be the subject of a speculative search; and

(b) the fact that the person has been informed of this possibility must be recorded as soon as practicable after the sample has been taken, and if the person is detained at a place of lawful custody, included on the person's custody record.

(14) A non-intimate sample may only be taken as specified in any of subsections (6) to (10) with the authorisation of an officer of the rank of inspector or above, who must be satisfied that taking the sample is necessary to assist in the prevention or detection of crime.

(15) An officer must not give an authorisation under this section for the taking of a non-intimate sample consisting of a skin impression if a skin impression of the same part of the body has already been taken from the person in the course of the investigation of the offence, unless that skin impression has proved insufficient.

(16) An officer may give an authorisation under this section orally or in writing, but if it is given orally, the officer must confirm it in writing as soon as practicable.

(17) The power to take a non-intimate sample from a person without the appropriate consent may be exercised by any police officer, once any requisite authorisation has been given.

(18) If a non-intimate sample consisting of a skin impression is taken electronically from a person, it must be taken only in a manner, and using a device, that the Governor in Council, after

consulting the Criminal Justice Council, has by order approved for the purpose of the electronic taking of such an impression.

(19) Nothing in this section applies to a person arrested under an extradition arrest power.

(20) This subsection applies if the investigation was discontinued but subsequently resumed, and before the resumption of the investigation —

(a) any DNA profile derived from the sample was destroyed pursuant to section 98(3); and

(b) the sample itself was destroyed pursuant to section 112(4), (5) or (12).

[Criminal Justice Ord. s.175; UK PACE Act 1984 s.63; Anti-social Behaviour, Crime and Policing Act 2014 s.144(2)]

95. Fingerprints and samples: Speculative searches, etc. – Schedule 2

(1) If a person has been —

(a) arrested on suspicion of being involved in an imprisonable offence;

(b) charged with such an offence; or

(c) informed that he or she will be reported for such an offence,

fingerprints, impressions of footwear or samples or the information derived from samples taken under any power conferred by this Part from the person may be checked against —

(d) other fingerprints or samples to which the person seeking to check has access and which are held by or on behalf of a relevant law-enforcement authority or in connection with or as a result of an investigation of an offence; and

(e) information derived from other samples if the information is contained in records to which the person seeking to check has access and which are held as mentioned in paragraph (d).

(2) Fingerprints taken by virtue of section 91(5) may be checked against other fingerprints to which the person seeking to check has access and which are held by or on behalf of a relevant law-enforcement authority or in connection with or as a result of an investigation of an offence.

(3) If fingerprints or samples have been taken from any person under section 91(11), 93(4) or 94(10) (persons convicted of offences outside the Falkland Islands) the fingerprints or samples, or information derived from the samples, may be checked against any of the fingerprints, samples or information mentioned in subsection (1)(d) or (e) of this section.

(4) If samples have been taken from any person under section 91(9) or 94(8) (persons convicted, etc.), the samples, or information derived from the samples, may be checked against any of the samples or information mentioned in subsection (1)(d) or (e) of this section.

(5) In subsection (1) and (2) “relevant law-enforcement authority” means —

(a) the Royal Falkland Islands Police Force;

(b) any other public authority in the Falkland Islands whose functions include the investigation of crimes or the charging of offenders;

(c) any person with functions in any country or territory outside the Falkland Islands which—

(i) correspond to those of a police force; or

(ii) otherwise consist of or include the investigation of conduct contrary to the law of that place, or the apprehension of persons guilty of such conduct;

(d) any person with functions under any international agreement which consist of or include the investigation of conduct which is —

(i) unlawful under the law of one or more places;

(ii) prohibited by such an agreement; or

(iii) contrary to international law,

or the apprehension of persons guilty of such conduct.

(6) If —

(a) fingerprints, impressions of footwear or samples have been taken from any person in connection with the investigation of an offence but not in circumstances to which subsection (1) applies; and

(b) the person has given his or her consent in writing to the use in a speculative search of the fingerprints, impressions of footwear or of the samples and of information derived from them,

the fingerprints, impressions of footwear or, as the case may be, those samples and that information may be checked against any of the fingerprints, impressions of footwear, samples or information mentioned in paragraph (d) or (e) of subsection (1).

(7) A consent given for the purposes of subsection (5) cannot be withdrawn.

(8) If a sample of hair other than pubic hair is to be taken, the sample may be taken either by cutting hairs or by plucking hairs by their roots, so long as no more are plucked than the person taking the sample reasonably considers necessary for a sufficient sample.

(9) If there is power to take a sample in relation to any person, the sample may be taken in a prison.

(10) If —

(a) the power to take a non-intimate sample under section 94(8) is exercisable in relation to a person detained under Part 3 of the Mental Health Ordinance 2010; or

(b) the power to take a non-intimate sample under section 94(9) is exercisable in relation to any person,

the sample must be taken in the hospital in which the person is detained.

(11) Schedule 2 (Fingerprinting and samples: Attendance at a place of lawful custody) has effect for the purposes of this Part.
[UK PACE Act 1984 s.63A ins. by Criminal Justice & Public Order Act 1994]

96. Testing for presence of Class A drugs or Class B drugs

(1) A sample of urine or a non-intimate sample may be taken from a person in police detention for the purpose of ascertaining whether the person has any Class A drug or Class B drug in his or her body if —

(a) either the arrest condition or the charge condition is met; and

(b) both the age condition and the request condition are met.

(2) The arrest condition is that the person concerned has been arrested for an imprisonable offence but has not been charged with that offence and either —

(a) the offence is an offence under the Misuse of Drugs Ordinance; or

(b) a police officer of the rank of inspector or above has reasonable grounds for suspecting that the misuse by the person of a Class A drug or Class B drug caused or contributed to the offence and has authorised the sample to be taken.

(3) The charge condition is that the person concerned —

(a) has been charged with an imprisonable offence under the Misuse of Drugs Ordinance; or

(b) has been charged with any imprisonable offence and a police officer of the rank of inspector or above, who has reasonable grounds for suspecting that the misuse by the person of any Class A drug or Class B drug caused or contributed to the offence, has authorised the sample to be taken.

(4) The age condition is —

(a) if the arrest condition is met - that the person concerned has attained the age of 18;

(b) if the charge condition is met - that the person has attained the age of 14.

(5) The request condition is that a police officer has requested the person concerned to give the sample.

(6) Before requesting the person concerned to give a sample, an officer must —

(a) warn the person that if, when requested to give a sample, he or she fails to do so without good cause he or she may be prosecuted; and

(b) in a case within subsection (2)(b) or (3)(b) - inform the person of the giving of the authorisation and of the grounds in question.

(7) In the case of a person who has not attained the age of 18 —

(a) the making of the request under subsection (5);

(b) the giving of the warning and (where applicable) the information under subsection (6); and

(c) the taking of the sample,

may not take place except in the presence of an appropriate adult.

(8) If a sample is taken under this section from a person in respect of whom the arrest condition is met, no other sample may be taken from the person under this section during the same continuous period of detention, but —

(a) if the charge condition is also met in respect of the person at any time during that period, the sample must be treated as a sample taken because the charge condition is met;

(b) the fact that the sample is to be so treated must be recorded in the person's custody record.

(9) Despite subsection (1)(a) (which requires certain conditions to be met for a sample to be taken from a person), a sample may be taken from a person under this section if —

(a) the person was arrested for an offence (the first offence);

(b) the arrest condition is met but the charge condition is not met;

(c) before a sample is taken by virtue of subsection (1) the person would (but for his or her arrest for an offence as mentioned in paragraph (d)) be required to be released from police detention;

(d) the person continues to be in police detention by virtue of having been arrested for an offence not falling within subsection (2); and

(e) the sample is taken no later than 24 hours after the person's detention by virtue of his or her arrest for the first offence began.

(10) A sample must not be taken from a person under this section if the person is detained in a place of lawful custody unless he or she has been brought before the custody officer.

(11) A sample, other than a urine sample, may be taken under this section only by a health care professional.

(12) Information obtained from a sample taken under this section may be disclosed —

(a) for the purpose of informing any decision about granting bail in criminal proceedings to the person concerned;

(b) if the person concerned is in police detention or remanded in or committed to custody by an order of a court, or has been granted bail - for the purpose of informing any decision about the person's supervision;

(c) if the person concerned is convicted of an offence - for the purpose of informing any decision about the appropriate sentence to be passed by a court and any decision about the person's supervision or release;

(d) for the purpose of ensuring that appropriate advice and treatment is made available to the person concerned; and

(e) for any other purpose prescribed by law.

[UK PACE Act 1984 s.63B inserted by Criminal Justice & Public Order Act 1994]

97. Testing for presence of Class A drugs or Class B drugs: Supplementary

(1) A person who fails without good cause to give any sample which can lawfully be taken from the person under section 96 commits an offence.

Penalty: Imprisonment for 3 months or a fine at level 4 on the standard scale, or both.

(2) A police officer may give an authorisation under section 96 orally or in writing but, if the officer gives it orally, he or she must confirm it in writing as soon as practicable.

(3) If a sample is taken under section 96 by virtue of an authorisation, the authorisation and the grounds for the suspicion must be recorded as soon as practicable after the sample is taken.

(4) If the sample is taken from a person detained in a place of lawful custody, the matters required to be recorded by subsection (3) must be recorded in the person's custody record.

(5) Nothing in section 96 applies to the taking of a specimen for the purposes of section 23 or 24 of the Road Traffic Ordinance.

(6) Section 96 does not limit sections 93 and 94 as to the taking of samples for other purposes.
[UK PACE Act 1984 s.63C inserted by Criminal Justice & Public Order Act 1994]

Retention and destruction of samples, etc.

98. Destruction of fingerprints and DNA profiles
(1) This section applies to —

(a) fingerprints taken from a person under any power conferred by this Part, or taken by the police, with the consent of the person from whom they were taken, in connection with the investigation of an offence by the police; and

(b) a DNA profile derived from a DNA sample taken as mentioned in paragraph (a).

(2) Fingerprints and DNA profiles to which this section applies (in this Part called "relevant material") must be destroyed if it appears to the Chief Police Officer that —

(a) the taking of the fingerprint (or, in the case of a DNA profile, the taking of the sample from which the DNA profile was derived) was unlawful; or

(b) the fingerprint was taken (or, in the case of a DNA profile, was derived from a sample taken) from a person in connection with that person's arrest and the arrest. was unlawful or based on mistaken identity.

(3) In any other case, relevant material must be destroyed unless it is retained under any power conferred by sections 99 to 108 (including those sections as applied by section 109.)

(4) Relevant material which ceases to be retained under a power mentioned in subsection (3) may continue to be retained under any other such power which applies to it.

(5) Nothing in this section prevents a speculative search, in relation to relevant material, from being carried out within such time as may reasonably be required for the search if the Chief Police Officer considers the search to be desirable.
[UK PACE Act 1984 s.63D inserted by Part 1 of Protection of Freedoms Act 2012]

99. Retention of relevant material pending investigation or proceedings
(1) This section applies to relevant material taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of an offence in which it is suspected that the person to whom the material relates has been involved.

(2) The material may be retained until the conclusion of the investigation of the offence or, if the investigation gives rise to proceedings against the person for the offence, until the conclusion of those proceedings.

[UK PACE Act 1984 s.63E inserted by Part 1 of Protection of Freedoms Act 2012]

100. Retention of material: Persons arrested for or charged with a qualifying offence

(1) This section applies to relevant material which —

(a) relates to a person who is arrested for, or charged with, a qualifying offence but is not convicted of that offence; and

(b) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence.

(2) If the person has previously been convicted of an imprisonable offence which is not an excluded offence, or is so convicted before the material is required to be destroyed by virtue of this section, the material may be retained indefinitely.

(3) Otherwise, material falling within subsection (4) or (5) may be retained until the end of the retention period specified in subsection (6).

(4) Material falls within this subsection if it —

(a) relates to a person who is charged with a qualifying offence but is not convicted of that offence; and

(b) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence.

(5) Material falls within this subsection if —

(a) it relates to a person who is arrested for a qualifying offence but is not charged with that offence;

(b) it was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence; and

(c) the Governor has in writing consented under section 101 to the retention of the material.

(6) The retention period is —

(a) in the case of samples, the period of 3 years beginning with the date on which the fingerprints were taken; and

(b) in the case of a DNA profile, the period of 3 years beginning with the date on which the DNA sample from which the profile was derived was taken (or, if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken).

(7) The Chief Police Officer may apply to the Magistrate's Court for an order extending the retention period.

(8) An application for an order under subsection (7) must be made within the period of 3 months ending on the last day of the retention period.

(9) An order under subsection (7) may extend the retention period by a period which —

(a) begins with the end of the retention period; and

(b) ends with the end of the period of 2 years beginning with the end of the retention period.

(10) The following persons may appeal to the Supreme Court against an order under subsection (7), or a refusal to make such an order —

(a) the Chief Police Officer;

(b) the person from whom the material was taken.

[UK PACE Act 1984 s.63F inserted by Part 1 of Protection of Freedoms Act 2012]

101. Retention of material by virtue of section 100(5): Consent of Governor

(1) The Chief Police Officer may apply under subsection (2) or (3) to the Governor for consent to the retention of relevant material which falls within section 100(5)(a) and (b).

(2) The Chief Police Officer may make an application under this subsection if he or she considers that the material was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of an offence where any alleged victim (or alleged intended victim) of the offence was, at the time of the offence —

(a) under the age of 18;

(b) a vulnerable adult; or

(c) associated with the person to whom the material relates.

(3) The Chief Police Officer may make an application under this subsection if he or she considers that —

(a) the material is not material to which subsection (2) relates; but

(b) the retention of the material is necessary to assist in the prevention or detection of crime.

(4) An application under this section must be in writing.

(5) The Governor in his or her discretion may, on an application under this section, consent to the retention of material to which the application relates if the Governor considers that it is appropriate to retain the material.

(6) But where notice is given under subsection (7) in relation to the application, the Governor must, before deciding whether or not to give consent, consider any representations by the person to whom the material relates which are made within the period of 28 days beginning with the day on which the notice is given.

(7) The Chief Police Officer must give to the person to whom the material relates notice of —

(a) an application under this section; and

(b) the right to make representations,

unless the whereabouts of the person to whom the material relates is not known and cannot, after reasonable inquiry, be ascertained.
[UK PACE Act 1984 s.63G inserted by Part 1 of Protection of Freedoms Act 2012]

102. Retention of material: Persons arrested for or charged with a minor offence
(1) This section applies to relevant material which —

(a) relates to a person who —

(i) is arrested for or charged with an imprisonable offence other than a qualifying offence;

(ii) if arrested for or charged with more than one offence arising out of a single course of action, is not also arrested for or charged with a qualifying offence; and

(iii) is not convicted of the offence or offences in respect of which the person is arrested or charged; and

(b) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence or offences in respect of which the person is arrested or charged.

(2) If the person has previously been convicted of an imprisonable offence which is not an excluded offence, the material may be retained indefinitely.
[UK PACE Act 1984 s.63H inserted by Part 1 of Protection of Freedoms Act 2012]

103. Retention of material: Persons convicted of an imprisonable offence
(1) This section applies, subject to subsection (3), to —

(a) relevant material which —

(i) relates to a person who is convicted of an imprisonable offence; and

(ii) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence; or

(b) material taken under section 91(10) or 94(8) which relates to a person who is convicted of an imprisonable offence.

(2) The material may be retained indefinitely.

(3) This section does not apply to relevant material to which section 105 applies.
[UK PACE Act 1984 s.63I inserted by Part 1 of Protection of Freedoms Act 2012]

104. Retention of material: Persons convicted of an offence outside the Falkland Islands
(1) This section applies to material falling within subsection (2) relating to a person who is convicted of an offence under the law of any country or territory outside the Falkland Islands.

(2) Material falls within this subsection if it is —

(a) fingerprints taken from the person under section 91(12) (power to take fingerprints without consent in relation to offences outside the Falkland Islands); or

(b) a DNA profile derived from a DNA sample taken from the person under section 93(4) or 94(10) (persons convicted of offences outside the Falkland Islands).

(3) The material may be retained indefinitely.
[UK PACE Act 1984 s.63J inserted by Part 1 of Protection of Freedoms Act 2012]

105. Retention of material: Exception for persons under 18 convicted of first minor offence
(1) This section applies to relevant material which —

(a) relates to a person who –

(i) is convicted of an imprisonable offence other than a qualifying offence;

(ii) has not previously been convicted of an imprisonable offence; and

(iii) is aged under 18 at the time of the offence, and

(b) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence.

(2) If the person is given a custodial sentence of less than 5 years in respect of the offence, the material may be retained until the end of the period consisting of the term of the sentence plus 5 years.

(3) If the person is given a relevant custodial sentence of 5 years or more in respect of the offence, the material may be retained indefinitely.

(4) If the person is given a sentence other than a relevant custodial sentence in respect of the offence, the material may be retained until —

(a) in the case of fingerprints, the end of the period of 5 years beginning with the date on which the fingerprints were taken; and

(b) in the case of a DNA profile, the end of the period of 5 years beginning with —

(i) the date on which the DNA sample from which the profile was derived was taken; or

(ii) if the profile was derived from more than one DNA sample - the date on which the first of those samples was taken.

(5) But if, before the end of the period within which material may be retained by virtue of this section, the person is again convicted of an imprisonable offence, the material may be retained indefinitely.
[UK PACE Act 1984 s.63K inserted by Part 1 of Protection of Freedoms Act 2012]

106. Retention of material for purposes of national security
(1) Relevant material may be retained for as long as a national security determination made by the Governor has effect in relation to it.

(2) A national security determination is made if the Governor determines that it is necessary for any relevant material to be retained for the purposes of national security.

(3) A national security determination —

(a) must be made in writing;

(b) has effect for a maximum of 2 years beginning with the date on which it is made; and

(c) may be renewed.
[UK PACE Act 1984 s.63M inserted by Part 1 of Protection of Freedoms Act 2012]

107. Retention of material given voluntarily
(1) This section applies to the following relevant material —

(a) fingerprints taken with the consent of the person from whom they were taken; and

(b) a DNA profile derived from a DNA sample taken with the consent of the person from whom the sample was taken.

(2) Material to which this section applies may be retained until it has fulfilled the purpose for which it was taken or derived.

(3) Material to which this section applies which relates to —

(a) a person who is convicted of an imprisonable offence; or

(b) a person who has previously been convicted of an imprisonable offence (other than a person who has only one excluded conviction),

may be retained indefinitely.
[UK PACE Act 1984 s.63N inserted by Part 1 of Protection of Freedoms Act 2012]

108. Retention of material with consent
(1) This section applies to the following material —

(a) fingerprints (other than fingerprints taken under section 91(5)) to which section 98 applies; and

(b) a DNA profile to which section 98 applies.

(2) If the person to whom the material relates consents to material to which this section applies being retained, the material may be retained for as long as that person consents to it being retained.

(3) Consent given under this section —

(a) must be in writing; and

(b) can be withdrawn at any time.
[UK PACE Act 1984 s.63O inserted by Part 1 of Protection of Freedoms Act 2012]

109. Material obtained for one purpose and used for another
(1) Subsection (2) applies if —

(a) relevant material is taken (or, in the case of a DNA profile, derived from a sample taken) from a person in connection with the investigation of an offence; and

(b) the person is subsequently arrested for or charged with a different offence, or convicted of or given a penalty notice for a different offence.

(2) Sections 99 to 108 and sections 110 and 113 have effect in relation to the material as if the material were also taken (or, in the case of a DNA profile, derived from a sample taken) —

(a) in connection with the investigation of the offence mentioned in subsection (1)(b);

(b) on the date on which the person was arrested for that offence (or charged with it or given a penalty notice for it, if the person was not arrested).

[UK PACE Act 1984 s.63P inserted by Part 1 of Protection of Freedoms Act 2012 and replaced by Anti-social Behaviour, Crime & Policing Act 2014 s.145]

110. Destruction of copies of relevant material

(1) If fingerprints are required by section 98 to be destroyed, any copies of the fingerprints held by the police must also be destroyed.

(2) If a DNA profile is required by that section to be destroyed, no copy may be retained by the police except in a form which does not include information which identifies the person to whom the DNA profile relates.

[UK PACE Act 1984 s.63Q inserted by Part 1 of Protection of Freedoms Act 2012]

111. Destruction of samples

(1) This section applies to samples —

(a) taken from a person under any power conferred by this Part; or

(b) taken by the police, with the consent of the person from whom they were taken, in connection with the investigation of an offence by the police.

(2) Samples to which this section applies must be destroyed if it appears to the Chief Police Officer that —

(a) the taking of the samples was unlawful; or

(b) the samples were taken from a person in connection with that person's arrest and the arrest was unlawful or based on mistaken identity.

(3) Subject to this, the rule in subsection (4) or (as the case may be) (5) applies.

(4) A DNA sample to which this section applies must be destroyed —

(a) as soon as a DNA profile has been derived from the sample; or

(b) if sooner, before the end of the period of 6 months beginning with the date on which the sample was taken.

(5) Any other sample to which this section applies must be destroyed before the end of the period of 6 months beginning with the date on which it was taken.

(6) The Chief Police Officer may apply to the Senior Magistrate for an order to retain a sample to which this section applies beyond the date on which the sample would otherwise be required to be destroyed by virtue of subsection (4) or (5) if —

(a) the sample was taken from a person in connection with the investigation of a qualifying offence; and

(b) the Chief Police Officer considers that the condition in subsection (7) is met.

(7) The condition is that, having regard to the nature and complexity of other material that is evidence in relation to the offence, the sample is likely to be needed in any proceedings for the offence for the purposes of —

(a) disclosure to, or use by, a defendant; or

(b) responding to any challenge by a defendant in respect of the admissibility of material that is evidence on which the prosecution proposes to rely.

(8) An application under subsection (6) must be made before the date on which the sample would otherwise be required to be destroyed by virtue of subsection (4) or (5).

(9) If, on an application made by the Chief Police Officer under subsection (6), the Senior Magistrate is satisfied that the condition in subsection (7) is met, the Senior Magistrate may make an order under this subsection which —

(a) allows the sample to be retained for a period of 12 months beginning with the date on which the sample would otherwise be required to be destroyed by virtue of subsection (4) or (5); and

(b) may be renewed (on one or more occasions) for a further period of not more than 12 months from the end of the period when the order would otherwise cease to have effect.

(10) An application for an order under subsection (9) (other than an application for renewal)—

(a) may be made without notice of the application having been given to the person from whom the sample was taken; and

(b) may be heard and determined in private in the absence of that person.

(11) A sample retained by virtue of an order under subsection (9) must not be used other than for the purposes of any proceedings for the offence in connection with which the sample was taken.

(12) A sample that ceases to be retained by virtue of an order under subsection (9) must be destroyed.

(13) Nothing in this section prevents a speculative search, in relation to samples to which this section applies, from being carried out within such time as may reasonably be required for the search if the Chief Police Officer considers the search to be desirable.
[UK PACE Act 1984 s.63R inserted by Part 1 of Protection of Freedoms Act 2012]

112. Destruction of impressions of footwear

(1) This section applies to impressions of footwear —

(a) taken from a person under any power conferred by this Part; or

(b) taken by the police, with the consent of the person from whom they were taken, in connection with the investigation of an offence by the police.

(2) Impressions of footwear to which this section applies must be destroyed unless they are retained under subsection (3).

(3) Impressions of footwear may be retained for as long as is necessary for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution.

[UK PACE Act 1984 s.63S inserted by Part 1 of Protection of Freedoms Act 2012]

113. Use of retained material

(1) Any material to which any of sections 98, 111 or 112 applies must not be used other than —

(a) in the interests of national security;

(b) for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution; or

(c) for purposes related to the identification of a deceased person or of the person to whom the material relates.

(2) Material which is required by any of sections 98, 111 or 112 to be destroyed must not at any time after it is required to be destroyed be used —

(a) in evidence against the person to whom the material relates; or

(b) for the purposes of the investigation of any offence.

(3) In this section —

(a) the reference to using material includes a reference to allowing any check to be made against it and to disclosing it to any person;

(b) the reference to crime includes a reference to any conduct which —

(i) constitutes one or more criminal offences (whether under the law of the Falkland Islands or of any country or territory outside the Falkland Islands); and

(ii) is, or corresponds to, any conduct which, if it all took place in the Falkland Islands, would constitute one or more criminal offences; and

(c) the references to an investigation and to a prosecution include references, respectively, to any investigation outside the Falkland Islands of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside the Falkland Islands.

[UK PACE Act 1984 s.63T inserted by Part 1 of Protection of Freedoms Act 2012]

114. Transitional and exclusionary provisions

(1) If relevant material was taken or derived before the commencement of this Part —

(a) in the case of material taken or derived 3 years or more before the commencement day from a person who —

(i) was arrested for, or charged with, an offence; and

(ii) has not been convicted of the offence,

the material must be destroyed on or before the commencement day if the offence was a qualifying offence;

(b) in the case of material taken or derived less than 3 years before the commencement day from a person who —

(i) was arrested for, or charged with, the offence; and

(ii) has not been convicted of the offence,

the material must be destroyed within the period of 3 years beginning with the day on which the material was taken or derived if the offence was a qualifying offence; and

(c) in the case of material taken or derived before the commencement day from a person who—

(i) was arrested for, or charged with, the offence; and

(ii) has not been convicted of the offence,

the material must be destroyed on or before the commencement day if the offence was not a qualifying offence.

[UK Protection of Freedoms Act 2012 s.25]

(2) Sections 98 to 113 do not apply to material which —

(a) is taken from a person; but

(b) relates to another person.

(3) Sections 98 to 113 do not apply to material which is, or may become, disclosable under Part 14 (Disclosure of Material) or under any code of practice published under this Ordinance and relating to disclosure of material in a criminal trial.

(4) A sample that —

(a) falls within subsection (3); and

(b) but for that subsection would be required to be destroyed under section 111,

must not be used other than for the purposes of any proceedings for the offence in connection with which the sample was taken.

(5) A sample that once fell within subsection (3) but no longer does, and so becomes a sample to which section 111 applies, must be destroyed immediately if the time specified for its destruction under that section has already passed.

(6) Nothing in sections 98 to 113 affects any power conferred by the Immigration Ordinance to take reasonable steps to identify a person detained, or to disclose police information to the Governor for use for immigration purposes.

(7) Sections 98 to 113 do not apply to material which under any enactment that applies to the Falkland Islands is required to be destroyed.
[UK PACE Act 1984 s.63U inserted by Part 1 of Protection of Freedoms Act 2012 and am. by Anti-social Behaviour, Crime & Policing Act 2014 s.145]

Miscellaneous provisions

115. Photographing of suspects, etc.
(1) A person who is detained in a place of lawful custody may be photographed —

(a) with the appropriate consent; or

(b) if the appropriate consent is withheld or it is not practicable to obtain it - without it.

(2) A person falling within subsection (3) may, on the occasion of the relevant event referred to in that subsection, be photographed elsewhere than at a place of lawful custody —

(a) with the appropriate consent; or

(b) if the appropriate consent is withheld or it is not practicable to obtain it, without it.

(3) A person falls within this subsection if the person has been —

(a) arrested by a police officer for an offence; or

(b) taken into custody by a police officer after being arrested for an offence by a person other than a police officer.

(4) A person proposing to take a photograph of any person under this section may —

(a) for the purpose of doing so, require the removal of any item or substance worn on or over the whole or part of the head or face of the person to be photographed; and

(b) if the requirement is not complied with - remove the item or substance.

(5) Only a police officer may take a photograph under this section.

(6) A photograph taken under this section —

(a) may be used by, or disclosed to, any person for any purpose related to —

(i) the prevention or detection of crime;

(ii) the investigation of an offence;

(iii) the conduct of a prosecution; or

(iv) the enforcement of a sentence; and

(b) after being so used or disclosed, may —

(i) be retained; but

(ii) not be used or disclosed except for a purpose so related.

(7) In subsection (6) —

(a) the reference to crime includes a reference to any conduct which —

(i) constitutes one or more criminal offences under the law of the Falkland Islands or of a country or territory outside the Falkland Islands; and

(ii) is, or corresponds to, any conduct which, if it all took place in the Falkland Islands, would constitute one or more criminal offences;

(b) the references to an investigation and to a prosecution include references respectively to any investigation outside the Falkland Islands of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside the Falkland Islands.

(8) References in this section to taking a photograph include references to using any process by means of which a visual image may be produced; and references to photographing a person are to be construed accordingly.
[UK PACE Act 1984 s.64A as amended]

116. Audio and visual recording of interviews
(1) Audio or visual recording of interviews with suspects must be conducted only at a place of lawful custody.

(2) Audio recording must be conducted in accordance with Code of Practice E set out in Schedule 3 to this Ordinance.

(3) Visual recording must be conducted in accordance with Code of Practice F set out in Schedule 3 to this Ordinance.

(4) A visual recording may include an audio recording component.

117. Regulations
(1) The Governor in Council, after consulting the Criminal Justice Council, may make regulations providing for the storage and record-keeping of samples and DNA profiles and the circumstances in which they can be accessed.

(2) Regulations made under this section —

(a) may create offences carrying a maximum penalty of 3 months' imprisonment or a fine at level 5 on the standard scale, or both;

(b) must be consistent with the provisions of this Ordinance and of any Code of Practice included in Schedule 3.

PART 7 – CODES OF PRACTICE

118. Codes of practice on search, arrest, seizure, etc. – Schedule 3
(1) There are to be one or more codes of practice in connection with —

(a) the exercise by police officers of statutory powers to —

(i) search a person without first arresting the person;

(ii) search a vehicle without making an arrest;

(iii) arrest a person;

(b) the detention, treatment, questioning and identification of persons by police officers;

(c) searches of premises, vehicles and vessels by police officers; and

(d) the seizure and treatment of property found by police officers on persons, premises, vehicles or vessels.

(2) Codes must in particular include provisions in connection with the exercise of police officers of powers in relation to testing for drugs, as in section 96.

(3) Codes A to D and Code G in Schedule 3 have effect as codes of practice under this section.
[UK PACE Act 1984 s.66]

119. Codes of practice on recording of interviews
(1) There are to be one or more codes of practice —

(a) governing the audio recording of interviews conducted by police officers at the place of lawful custody of persons suspected of committing offences; and

(b) governing the visual recording of interviews conducted by police officers at the place of lawful custody of persons suspected of committing offences; and

(2) In this section, references to a visual recording include a visual recording which includes an audio recording.

(3) A code of practice under this section may relate to specified cases or specified places, or both.

(4) Code E and F in Schedule 3 have effect as codes of practice under this section.
[UK PACE Act 1984 ss.60 & 60A]

120. Codes of practice on criminal investigations
(1) There are to be one or more codes of practice designed to ensure that —

(a) when a criminal investigation is conducted all reasonable steps are taken for the purposes of the investigation and all reasonable lines of inquiry are pursued;

(b) information obtained in the course of a criminal investigation that may be relevant to the investigation is recorded;

(c) any record of such information is retained;

(d) any other material obtained in the course of a criminal investigation that may be relevant to the investigation is retained;

(e) information and material as described in paragraphs (b) and (d) are revealed to specified persons involved in the prosecution of criminal proceedings arising out of or relating to the investigation; and

(f) such information and material are disclosed to defendants at the request of those persons and defendants are allowed to inspect it or are given copies of them unless that is not practicable or desirable.

(2) The code or codes may include provision that —

(a) specified police officers are to carry out specified activities, including ensuring the carrying out by other persons (whether or not police officers) of the specified activities;

(b) duties are to be discharged by different people in succession in specified circumstances (as where a person dies or retires);

(c) specified persons are given written statements that specified activities have been carried out.

(3) The code or codes may include provision about the form in which information is to be recorded.

(4) The code or codes may include provision about the manner in which and the period for which —

(a) a record of information is to be retained; and

(b) any other material is to be retained,

and if a person is charged with an offence the period may extend beyond a conviction or an acquittal.

(5) The code or codes may provide that if the person required to reveal material has possession of material which the person believes is sensitive, he or she must give a document which —

(a) indicates the nature of that material; and

(b) states that the person so believes.

(6) The code or codes may provide that if the person required to reveal material has possession of material which is of a specified description and which the person does not believe is sensitive, he or she must give a document which —

(a) indicates the nature of that material; and

(b) states that the person does not so believe.

(7) The code or codes may provide that if —

(a) a document is given pursuant to a provision contained in a code by virtue of this section; and

(b) a person identified in a specified way asks for any of the material,

the person giving the document must give a copy of the material asked for to the person asking for it or allow the person to inspect it.

(8) The code or codes may provide that if a person is entitled to material of a specified description, the person who has the document must give a copy of the material to that person or allow the person to inspect it.

(9) The code or codes may provide that if the person required to reveal material has possession of material which is of such a sensitive nature that it should not be copied or shown to a person who would otherwise be entitled to receive it, the person must notify a specified person and allow that person to inspect the material.

(10) For the purposes of this section material is sensitive to the extent that its disclosure under this Part would be contrary to the public interest.

(11) The 'Disclosure Code' in Schedule 3 has effect as a code of practice under this section.
[Criminal Procedure & Investigations Ord. ss.25 and 26; UK Criminal Procedure & Investigations Act 1996 ss.23 and 24]

121. Code of practice on police interviews of witnesses notified by defendant
(1) There is to be a code of practice which gives guidance to police officers, and other persons charged with the duty of investigating offences, in relation to arranging and conducting interviews of persons —

(a) particulars of whom are given in a defence statement in accordance with section 219(2); or

(b) who are included as proposed witnesses in a notice given under section 221.

(2) The code must include (in particular) guidance in relation to —

(a) information that should be provided to the interviewee and the defendant in relation to such an interview;

(b) the notification of the defendant's legal practitioner of such an interview;

(c) the attendance of the interviewee's legal practitioner at such an interview;

(d) the attendance of the defendant's legal practitioner at such an interview;

(e) the attendance of any other appropriate person at such an interview, taking into account the interviewee's age or any disability of the interviewee.

(3) Any police officer or other person charged with the duty of investigating offences who arranges or conducts such an interview must have regard to the code.

(4) The 'Defence Witnesses Code' in Schedule 3 has effect as a code of practice under this section.
[UK Criminal Procedure & Investigations Act 1996 s.21A added by Criminal Justice Act 2003]

122. Amendment of codes of practice
(1) The Governor, after consulting the Criminal Justice Council, may by order amend or replace or add to any of the codes of practice set out in Schedule 3, but only in a manner consistent with the requirements for such codes set out in this Part.

(2) An order under subsection (1) may amend a code of practice so that it has effect only for a specified period, or in relation to specified offences or descriptions of offences.

(3) An order made under subsection (1) must be laid before the Legislative Assembly and if the Assembly has not passed a motion disapproving the code within 30 days of the commencement of the next sitting, it will be deemed to be approved by the Legislative Assembly.

(4) Before laying an order before the Legislative Assembly, the Governor —

(a) must publish it in the form of a draft;

(b) must consider any representations made about the draft; and

(c) may modify the draft accordingly.

(5) If not disapproved by the Legislative Assembly as provided in subsection (3), an order amending a code —

(a) must be published in the Gazette;

(b) does not come into operation until the Governor, after consulting the Criminal Justice Council, by further order so provides.

(6) An order bringing an amendment of a code into operation may include transitional or saving provisions.

(7) A code may be amended so as to —

(a) apply only in relation to one or more specified areas of the Falkland Islands;

(b) have effect only for a specified period;

(c) apply only in relation to specified offences or descriptions of offender.

[Criminal Procedure & Investigations Ord. s.27; UK PACE Act 1984 s.67; Criminal Procedure & Investigations Act 1996 s. 25]

123. Effect and status of codes of practice

(1) In all criminal and civil proceedings —

(a) a code of practice set out in Schedule 3 or amended under section 122 is admissible in evidence;

(b) if any provision of a code appears to the court or tribunal conducting the proceedings to be relevant to any question arising in the proceedings, it is to be taken into account in deciding that question.

(2) Persons other than police officers who have a duty to investigate offences or charge offenders must in the discharge of that duty have regard to any relevant provision of a code of practice that would apply if the investigation were conducted by police officers.

(3) A failure —

(a) by a police officer to comply with any provision of a code of practice; or

(b) by any person to comply with a provision of a code as mentioned in section 120; or

(c) by any person to whom a code of practice applies to have regard to any provision of the code,

does not invalidate any action taken by the police officer or other person or in itself render the officer or other person liable to any criminal or civil proceedings.

(4) If it appears to a court or tribunal conducting criminal or civil proceedings that —

(a) any provision of a code of practice set out in Schedule 3 or amended under section 122; or

(b) any failure mentioned in subsection (3),

is relevant to any question arising in the proceedings, the provision or failure may be taken into account in deciding the question.

(5) A police officer is liable to disciplinary proceedings for a failure to comply with any provision of a code of practice.

(6) Any Code of Practice purporting to have been issued under the Criminal Justice Ordinance 1989 and the Code of Practice set out in the Code of Practice in Relation to Disclosure Order 2003 cease to have effect upon the commencement of this Part.

[Criminal Procedure & Investigations Ord. s.28; UK PACE Act 1984 s.67; Criminal Procedure & Investigations Act 1996 s. 26]

124. Publication of Codes of Practice

(1) Without affecting any other requirement about publication of written laws, every Code of Practice, and any amendment of a Code of Practice, must be —

(a) published on one or more official websites of the Government; and

(b) available for reading by members of the public in such civic locations as the Governor directs by order or, in the absence of such direction, as the Chief Police Officer considers appropriate.

(2) Every Code of Practice must be available for reading by persons arrested and members of the public, at —

(a) every police station; and

(b) every place designated as a place of lawful custody, for as long as the place is so designated.

CHAPTER 3 – CAUTIONING

PART 8 – SIMPLE AND CONDITIONAL CAUTIONS

125. Interpretation

In this Part —

"caution" means —

(a) a simple or conditional caution given under this Part;

(b) anything corresponding to a simple or conditional caution, given to a person in respect of an offence under the law of a country outside the Falkland Islands;

"conditional caution" means a caution which is given in respect of an offence committed by the offender and which has conditions attached to it with which the offender must comply, in accordance with this Part;

"simple caution" means a caution given in accordance with section 127;

"police detention" has the same meaning as in Part 5.

126. Cautions generally

(1) For purposes of this Part, a caution is a form of disposal of a case without a prosecution when a person arrested for or suspected of an offence admits the offence. It may be either a simple caution or a conditional caution.

(2) A caution may be given —

(a) to an individual;

(b) by a police officer in uniform;

(c) in respect of an offence triable summarily.

(3) A caution may only be given if —

(a) there is –

(i) evidence that the offender has committed an offence; and

(ii) a realistic prospect of a conviction on the evidence;

(b) there has been a clear and reliable admission of the offence by the offender; and

(c) the offender agrees to accept a caution.

(4) The decision on whether to administer a caution, and whether it should be a simple caution or a conditional caution —

(a) is for the Attorney General, or a representative of the Attorney General to make;

(b) must be based on a report of the circumstances of the arrest of the person made as soon as practicable after the arrest by the arresting officer; and

(c) must be communicated to custody officer at the place of lawful custody to which the arrested person is taken.

(5) Even if the conditions in subsection (3) are satisfied, the Attorney General may in any particular case decide not to authorise a caution if he or she considers that it is in the public interest to prosecute the offender or not to proceed with the case rather than to authorise a caution.

(6) A signed caution, whether a simple or conditional caution —

(a) becomes part of the police records in respect of the person who signed it; and

(b) may be produced in any proceedings as rebuttable evidence of its contents until spent.

(7) This Part does not affect the operation of sections 639 to 645 as to disregarding of cautions for certain offences.
[UK Criminal Justice Act 2003 ss.22 and 23 (part) adapted]

Simple cautions

127. Simple cautions
(1) A simple caution may be given to an adult or youth and is a warning that the criminal conduct will be recorded for possible reference in future criminal proceedings or relevant security checks.

(2) A simple caution may be given in a case in which attaching conditions to a caution would not be appropriate, such as (but not limited to) a case in which the offender is about to leave the Falkland Islands.

(3) A person to whom a simple caution is given must be asked to sign a form which sets out details of the offence and which makes clear the implications of accepting a caution.

Conditional cautions

128. Conditional cautions
(1) The Attorney General may authorise a police officer to give a conditional caution to a person aged 10 or over ("the offender") if the Attorney General is satisfied of each of the matters set out in section 126(3) and (4) as justifying the giving of a caution, and that it is appropriate to attach conditions to a caution.

(2) In addition to being satisfied as required by subsection (1), the Attorney General must, before deciding whether to authorise a conditional caution of an offence in the case of a youth, take into consideration a report from the probation officer on the offender and his or her personal circumstances

(3) Before a conditional caution is given to a person, a police officer or the probation officer must explain to the person the effect of the conditional caution and warns the person that failure to comply with any of the conditions attached to the caution may result in the person being prosecuted for the offence.

(4) If the offender is under 18, the warning must be given in the presence of the person's parent or guardian or an appropriate adult.

(5) When a conditional caution is given to a person, the person must sign a document (the 'notice of caution') which contains —

(a) details of the offence;

(b) an admission by the person that the person committed the offence;

(c) the person's consent to being given the conditional caution;

(d) the conditions attached to the caution.

(6) The notice of caution must also specify a date by which any conditions must be complied with, being a date —

(a) determined by the prosecutor; and

(b) not later than 6 months after the date of the notice.

[UK Criminal Justice Act 2003 ss.22 and 23 (part) adapted]

129. Attaching of conditions

(1) The conditions to be attached to a conditional caution in any particular case are to be decided by the Attorney General, after consultation with the probation officer and the Chief Police Officer (or his or her representative appointed for the particular case.)

(2) If the offender is a youth, the probation officer must, if practicable, consult the parent or guardian of the youth before advising the Attorney General on the conditions to be imposed.

(3) The conditions which may be attached to a conditional caution may not be conditions intended to punish the offender, but may only be conditions that have as their object —

(a) facilitating the rehabilitation of the offender; or

(b) ensuring that the offender makes reparation for the offence,

or both. They must be appropriate, proportionate and achievable.

(4) The conditions which may be attached include (but are not limited to) —

(a) a condition that the offender attend at a place and at times specified in the caution for purposes of rehabilitation under the guidance of the probation officer;

(b) a condition that the offender make physical reparation either to the victim of the offence or to the community generally;

(c) (subject to section 130) a condition that the offender pay financial reparation.

(5) A condition attached by virtue of subsection (4)(a) may not require the offender to attend a specified place for more than 20 hours in total.

(6) A condition attached by virtue of subsection (4)(b) may include unpaid labour to the extent that this is required to make reparation to the victim or the community, such as (but not limited to) work to repair damaged property.

(7) Any conditions attached to a conditional caution must be complied with by the date specified in the notice of caution under section 128(6).

130. Financial reparation

(1) A condition that the offender pay financial reparation must be limited to meeting the quantified cost of any proven damage or loss occasioned by the offence.

(2) The amount of financial reparation that may be included as a condition in respect of any offence must not exceed a sum equal to a fine at level 1 on the standard scale.

(3) If a financial reparation condition is attached to a conditional caution, the caution must also specify —

(a) the amount of the reparation;

(b) the person to whom the reparation is to be paid;

(c) how and when it is to be paid.

(4) To comply with the condition, the offender must pay the penalty in accordance with the matters specified under subsection (3).
[UK Criminal Justice Act 2003 s.23A adapted]

131. Variation of conditions

The Attorney General, with the consent of the offender, and after consultation as mentioned in section 129(1) and (2), may vary the conditions attached to a conditional caution by —

(a) modifying or omitting any of the conditions;

(b) adding a condition.
[UK Criminal Justice Act 2003 s.23B adapted]

132. Failure to comply with conditions

(1) If an offender who has been given a conditional caution fails, without reasonable excuse, to comply with any of the conditions attached to the caution, criminal proceedings may be commenced against the person for the offence in question, as provided in subsection (2).

(2) In the circumstances mentioned in subsection (1), prosecution must follow, unless the Attorney General or a representative of the Attorney General, after consulting the probation officer, is satisfied that there is good reason for non-compliance.

(3) The document mentioned in section 128(5) is admissible in such proceedings.

(4) If such proceedings are commenced, the conditional caution ceases to have effect.
[UK Criminal Justice Act 2003 s.24]

133. Consequences of failure to comply

(1) If the Attorney General directs a prosecution under section 132(1), a police officer may arrest the offender without warrant.

(2) A person arrested under this section must be —

(a) charged with the offence in question;

(b) released without charge and on bail to enable a decision to be made as to whether the person should be charged with the offence; or

(c) released without charge and without bail (with or without any variation in the conditions attached to the caution).

(3) Subsection (2) also applies in the case of —

(a) a person who, having been released on bail under subsection (2)(b), returns to a place of lawful custody to answer bail or is otherwise in police detention at a place of lawful custody;

(b) a person who, having been released on bail under section 51 (Bail elsewhere than at a place of lawful custody) as modified by section 134, attends at a place of lawful custody to answer bail or is otherwise in police detention at a place of lawful custody;

(c) a person who is arrested under section 56 (Arrest for failure to answer to police bail).

(4) If a person is released under subsection (2)(b), the custody officer must inform the person that he or she is being released to enable a decision to be made as to whether the person should be charged with the offence in question.

(5) A person arrested under this section, or any other person in whose case subsection (1) applies, may be kept in police detention —

(a) to enable the person to be dealt with in accordance with that subsection; or

(b) if applicable, to enable the power under section 64(1) (power of custody officer to vary time for answering to police bail), to be exercised.

If the person is not in a fit state to be so dealt with, or for that power to be exercised, the person may be kept in police detention until he or she is in a fit state.

(6) The power under subsection (5)(a) includes power to keep the person in police detention if it is necessary to do so for the purpose of investigating whether the person has failed, without reasonable excuse, to comply with any of the conditions attached to the conditional caution.

(7) Subsection (2) must be complied with as soon as practicable after the person arrested arrives at a place of lawful custody or, in the case of a person arrested at a place of lawful custody, as soon as practicable after the arrest.

(8) Subsection (2) does not require a person who —

(a) falls within subsection (3)(a) or (b); and

(b) is in police detention in relation to a matter other than the conditional caution,

to be released if the person is liable to be kept in detention in relation to that other matter.
[UK Criminal Justice Act 2003 s.24A ins. By Police & Justice Act 2006]

134. Application of other provisions of this Ordinance

(1) If a person is arrested under section 133 for failure to comply with the conditions attached to a conditional caution, the provisions of this Ordinance relating to the powers of police officers on and after making an arrest and the treatment of arrested persons apply, with the modifications mentioned in the following subsections and any other necessary modifications.

(2) The modifications are —

(a) in section 50(1)(a) and (b) by adding after the words "for an offence" the words ", or for failure to comply with the conditions of a conditional caution";

(b) in section 65(2)(a)(iii) and (v), after "arrested for" insert "failure to comply with conditions attached to a conditional caution given in respect of";

(c) in section 66(2) and (3), for references to an offence substitute references to a failure to comply with conditions attached to a conditional caution.

(3) Section 67 (Review of police detention) applies to a person in police detention by virtue of section 131 as it applies to a person in police detention in connection with the investigation of an offence, but with the following modifications —

(a) omit subsection (7);

(b) delete subsection (8) and substitute —

"(8) If a person who has been arrested for failure to comply with the conditions of a conditional caution is not in a fit state to be dealt with under section 46(1) to(6), the person may be kept in police detention until he or she is in a fit state."

(4) The following provisions of this Ordinance apply to a person released on bail under section 133(3)(b) as they apply to a person released on bail under section 61(7) —

(a) section 64(1) to (3) (power of custody officer to appoint a different or additional time for answering to police bail);

(b) section 75 (Power of arrest for failure to answer to police bail);

(c) section 76 (Bail after arrest).

[UK Criminal Justice Act 2003 s.24B ins. By Police & Justice Act 2006]

135. Guidelines

(1) The Governor, after consulting the Attorney General and the Chief Police Officer, must prepare and publish guidelines in relation to conditional cautions.

(2) Without limiting subsection (1), the guidelines may include provision, consistent with this Part, as to —

(a) the circumstances in which conditional cautions may be given;

(b) consultation as appropriate with the victim or victims of the offence in question;

(c) the procedure to be followed in connection with the giving of such cautions;

(d) the conditions which may be attached to such cautions;

(e) the category of police officer by whom such cautions may be given;

(f) the form that such cautions are to take and the manner in which they are to be given and recorded;

(g) the places where such cautions may be given;

(h) the monitoring of compliance with conditions attached to such cautions.

(i) the exercise of the power of arrest conferred by section 133(2);

(j) who is to decide how a person should be dealt with under section 133(3);

(k) the circumstances in which a caution may be given more than once to the same person.

(3) Guidelines prepared under this section come into force when included in an order made by the Governor, after consulting the Criminal Justice Council, and may be amended in the same manner.

[UK Criminal Justice Act 2003 s.25 modified]

Spent cautions

136. Spent cautions

(1) For the purposes of this Part a caution becomes spent —

(a) in the case of a simple caution - when the caution is given;

(b) in the case of a conditional caution - 3 months after the caution was given, unless subsection (2) applies.

(2) If the person concerned is subsequently prosecuted and convicted of the offence in respect of which a conditional caution was given —

(a) the caution becomes spent at the end of the rehabilitation period for the offence, as specified in Schedule 10; and

(b) if the conviction occurs after the end of the period of 3 months, the caution is to be treated for the purposes of this Part as not having become spent in relation to any period before the end of the rehabilitation period for the offence as so specified.

(3) A person who is given a caution for an offence must, from the time the caution is spent, be treated for all purposes in law as a person who has not committed, been charged with or prosecuted for, or been given a caution for the offence; and —

(a) no evidence is admissible in any proceedings before a judicial authority in the Falkland Islands to prove that any such person has committed, been charged with or prosecuted for, or been given a caution for the offence; and

(b) a person must not, in any such proceedings, be asked and, if asked, must not be required to answer, any question relating to his or her past which cannot be answered without acknowledging or referring to a spent caution.

(4) If a question seeking information with respect to a person's previous cautions, offences, conduct or circumstances is put to that person or to any other person otherwise than in proceedings before a judicial authority —

(a) the question must be treated as not relating to spent cautions, and the answer may be framed accordingly; and

(b) the person questioned must not be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose a spent caution in answer to the question.

(5) Any obligation imposed on any person by any rule of law or by the provisions of any agreement or arrangement to disclose any matters to any other person does not extend to requiring the person to disclose a spent caution (whether of that person or another person.)

(6) A caution which has become spent, or any failure to disclose such a caution, is not a proper ground for dismissing or excluding a person from any office, profession, occupation or employment, or for prejudicing the person in any way in any occupation or employment.

(7) The Governor, after consulting the Criminal Justice Council, may by order —

(a) exclude or modify the application of either or both of paragraphs (a) and (b) of subsection (4) in relation to questions put in specified circumstances;

(b) provide for exceptions from subsections (5) and (6) in specified cases or classes of case, and in relation to cautions of a specified description.

(8) Subsection (3) does not affect —

(a) the operation of the caution in question;

(b) the operation of any enactment by virtue of which, in consequence of any caution, a person is subject to any disqualification, disability, prohibition or other restriction or effect after the caution becomes spent;

(c) section 637 with regard to court proceedings; or

(d) section 638 with regard to including of spent cautions in character reports;

(e) section 372 with regard to evidence of bad character.

[UK Rehabilitation of Offenders Act 1974 s.8A ins. by CJI Act 2008 s.49 and Schedule 10 (part) adapted]

137. Unauthorised disclosure of spent cautions

(1) In this section —

(a) "official record" means a record which —

(i) contains caution information; and

(ii) is kept for the purposes of its functions by any court, police force, Government department or other public authority in the Falkland Islands;

(b) "caution information" means information imputing that a named or otherwise identifiable living person ("the named person") has committed, been charged with or prosecuted or cautioned for any offence which is the subject of a spent caution; and

(c) "relevant person" means any person who, in the course of his or her official duties has or at any time has had custody of or access to any official record or the information contained in it.

(2) Subject to an order under subsection (5), a relevant person commits an offence if, knowing or having reasonable cause to suspect that any caution information he or she has obtained in the course of official duties is caution information, the person discloses it, otherwise than in the course of those duties, to another person.
Penalty: A fine at level 4 on the standard scale.

(3) In any proceedings for an offence under subsection (2) it is a defence to show that the disclosure was made —

(a) to the named person or to another person at the express request of the named person;

(b) to a person whom the defendant reasonably believed to be the named person or to another person at the express request of a person whom the defendant reasonably believed to be the named person.

(4) A person who obtains any caution information from any official record by means of fraud, dishonesty or a bribe commits an offence.
Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(5) The Governor, after consulting the Criminal Justice Council, may by order make provision for excepting the disclosure of caution information derived from an official record from the provisions of subsection (2) in specified cases or classes of case.

(6) Proceedings for an offence under subsection (2) or (4) may not be commenced except by, or with the consent of, the Attorney General.
[UK Rehabilitation of Offenders Act 1974 s.9A ins. by CJI Act 2008 s.49 and Schedule 10 (part) adapted]

CHAPTER 4 – BAIL

PART 9 – BAIL IN CRIMINAL PROCEEDINGS

138. Interpretation and application of Part
(1) In this Part "bail in criminal proceedings" means —

(a) bail granted in or in connection with proceedings for an offence to a person who is accused or convicted of the offence; or

(b) bail granted in connection with an offence to a person who is under arrest for the offence or for whose arrest for the offence a warrant (endorsed for bail) has been issued,

whether under an enactment or at common law.

(2) In this Part, unless the context otherwise requires —

"answer to bail" means to attend a specified place of lawful custody or a specified court at the time and place specified in the grant of bail;

"conviction" includes —

(a) a finding that a person is not guilty by reason of mental disorder;

(b) a finding under section 764 that the person in question did the act or made the omission charged; and

(c) a conviction of an offence for which an order is made discharging him or her absolutely or conditionally,

and "convicted" is to be construed accordingly;

"court officer" means the appropriate officer of the court;

"judicial authority" means a judge, the Senior Magistrate, or 2 justices of the peace sitting together;

"offence" includes an alleged offence;

"security" means an asset other than cash which is promised by a person who is granted bail, or by the person's surety, and which will be forfeited if the person fails to answer to bail or breaches any condition of bail, and giving of security means promising the asset;

"serious crime" means —

(a) treason, murder, or rape;

(b) attempted murder, manslaughter or attempted rape;

(c) conspiracy to commit treason, murder or rape;

(d) encouraging, or aiding and abetting, any of those offences;

"surety" means a person who provides a recognisance or security for a person who is granted bail that will be forfeited if the person fails to answer to bail;

"surrender to custody" means, in relation to a person released on bail, surrendering into the custody of the court or of the police officer (according to the conditions of the grant of bail) at the time and place for the time being appointed for the person to do so;

"vary", in relation to bail, means imposing further conditions after bail is granted, or varying or rescinding conditions.

(3) In this Part —

(a) a "recognisance" means an undertaking given by a person who is granted bail, or by a surety of such a person, to pay a cash sum if the person fails to answer to bail or breaches any condition of bail;

(b) a recognisance is "entered" when a signed undertaking is given by the person to pay the recognisance when called on to do so;

(c) a recognisance is "taken" by a police officer or appropriate officer of the court accepting a signed undertaking by a person to pay a recognisance when called on to do so;

(d) if the time for answering to bail is deferred, the recognisance may be "enlarged" (i.e. varied) accordingly.

(4) In reckoning for the purposes of this Part any period of days or hours, Saturdays, Sundays and public holidays are to be excluded.

(5) Unless otherwise expressly stated, this Part, including provisions as to conditions that may be imposed when bail is granted, applies to bail granted by a police officer at a place of lawful custody as it applies to bail granted by a court. Bail granted by a police officer elsewhere than at a place of lawful custody is governed by section 51.

(6) This Part applies —

(a) whether the offence was committed in the Falkland Islands or elsewhere; and

(b) whether it is an offence under the law of the Falkland Islands, or of some other country or territory.

(7) This Part does not apply to bail —

(a) in or in connection with proceedings outside the Falkland Islands; or

(b) granted before the coming into force of this Part.

[Criminal Justice Ord. ss.139 and 140; UK Bail Act 1976 ss.1 and 2 & Schedule am. by Coroners & Justice Act 2009]

Principles for bail decisions

139. General provisions

(1) A person granted bail in criminal proceedings is under a duty to surrender to custody, and that duty is enforceable in accordance with section 157 and158.

(2) The decision whether to grant bail in criminal proceedings or to remand or commit a person in custody, and if bail is granted, whether it should be unconditional or with conditions, must be made in accordance with this Part.

(3) No recognisance for the surrender to custody of a person granted bail may be taken from the person.

(4) A person granted bail may be required, before release on bail, to provide a surety or sureties, or to give security, to secure his or her surrender to custody.

(5) If security is required under subsection (4), it may be given by the person or on his or her behalf.

(6) If there is no judge present in the Falkland Islands when a bail decision falls to be made by the Supreme Court or by a judge —

(a) the application for the decision may be made in writing by or on behalf of the party making the application, with a copy to the other party;

(b) the decision may be made by a judge on a reading of the relevant documents, including any written submission by or on behalf of the Attorney General and by or on behalf of the defendant;

(c) the decision must be communicated in writing to the parties and to the Registrar and to the Chief Police Officer.

(7) Subsection (6) applies with necessary modifications to bail decisions that fall to be made by the Court of Appeal.

140. Remand in custody or on bail

(1) If a court has power to remand any person, then, subject to any enactment modifying that power, the court may —

(a) remand the person in custody to be brought before the court at the end of the period of remand or at any earlier time the court may require; or

(b) remand the person on bail, with or without security, conditioned as provided in subsection (3).

(2) If the Summary Court commits a person to the Magistrate's Court for sentence, or if either the Summary Court or Magistrate's Court sends a person to the Supreme Court for trial, the Summary Court or Magistrate's Court may commit or send the person on bail, conditioned as provided in subsection (3).

(3) A person's bail may be conditioned —

(a) for the person's appearance before the Supreme Court, either for trial or for directions, at the end of the period of remand; or

(b) for the person's appearance at every time and place to which during the course of the proceedings the hearing is from time to time adjourned.

(4) If the bail is conditioned as provided in subsection (3)(b), the fixing at any time of the time for the next appearance is deemed to be a remand, but nothing in this subsection deprives the court of power at any subsequent hearing to remand a person afresh.

(5) If a court is satisfied that any person who has been remanded is unable by reason of illness or accident to appear or be brought before the court at the expiration of the period for which the person was remanded, the court may, in the person's absence, remand the person for a further period.

(6) The power of the court under subsection (5) to remand a person on bail for a further time may be exercised by varying the conditions of bail and enlarging the recognisance of the person's sureties, if any, to a later time.

(7) If a person remanded on bail is bound to appear before a court at any time, and the court has no power to further remand the person under subsection (5), the court may in the person's absence appoint a later time as the time at which the person is to appear and may enlarge the recognisances of any sureties for the person to that time.
[UK Magistrates' Courts Act 1980 ss.128 and 129 adapted]

141. Right to bail
(1) A person to whom this section applies must be granted bail except as provided in this Part.

(2) This section applies to a person who is accused of an offence when the person —

(a) appears or is brought before a court in the course of or in connection with proceedings for the offence; or

(b) applies to a court for bail or for a variation of the conditions of bail in connection with the proceedings.

(3) Subsection (2) does not apply in relation to —

(a) proceedings on or after a person's conviction of the offence; or

(b) proceedings against a person whose extradition or rendition to a country or territory outside the Falkland Islands is sought by the judicial authorities of that country.

(4) This section also applies to a person who —

(a) having been convicted of an offence, appears or is brought before a court to be dealt with for breach of a community sentence; or

(b) has been convicted of an offence and whose case is adjourned by the court for the purpose of enabling inquiries or a report to be made to assist the court in dealing with the person for the offence.

(5) This section is subject to sections 161 and 162.

(6) In taking any decision required by this Part, the court must have regard, among other considerations, and so far as is relevant, to any misuse by the defendant of controlled drugs,
and for the purpose of this section "misuse" has the same meaning as in the Misuse of Drugs Ordinance.
[Criminal Justice Ord. s.143; UK Bail Act 1976 s.4]

142. Reasons for not granting bail
(1) Section 141 does not require the court to remand or commit a person on bail if the person fails to provide sufficient and satisfactory sureties if required to do so.

(2) The defendant need not be granted bail if the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not) would —

(a) fail to surrender to custody;

(b) commit an offence while on bail; or

(c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or herself or any other person.

(3) Without limiting subsection (2)(a), the defendant need not be granted bail if —

(a) it appears to the court that, having been previously granted bail in criminal proceedings, he or she has failed to surrender to custody in accordance with his or her obligations under the grant of bail; and

(b) the court believes, in view of that failure, that the defendant, if released on bail (whether subject to conditions or not) would fail to surrender to custody.

(4) Without limiting subsection (2), the defendant need not be granted bail if —

(a) if the court is satisfied that the defendant should be kept in custody for his or her own protection or, if the person is a youth, for his or her own welfare;

(b) the defendant is in custody pursuant to the sentence of a court;

(c) the court is satisfied that it has not been practicable to obtain sufficient information for the purpose of taking the decisions required by this Part because of lack of time since the institution of the proceedings against the defendant;

(d) the defendant, having been released on bail in or in connection with the proceedings for the offence, has been arrested pursuant to section 158;

(e) the act or any of the acts constituting the offence with which the person is charged consisted of an assault on or threat of violence to another person, or of having or possessing a firearm, an imitation firearm, an explosive or an offensive weapon, or of indecent conduct with or toward a person under the age of 16.

(5) If the case is adjourned for inquiries or a report, the defendant need not be granted bail if it appears to the court that it would be impracticable to complete the inquiries or make the report without keeping the defendant in custody.
[UK Bail Act 1976 s.4 & Schedule]

143. Conditions of bail
(1) A person granted bail may be required to comply, before release on bail or later, with any conditions that the court considers necessary to ensure that the person —

(a) surrenders to custody;

(b) does not commit an offence while on bail;

(c) does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or herself or any other person; and

(d) makes himself or herself available for the purpose of enabling inquiries or a report to be made to assist the court in dealing with the person for the offence.

(2) If a person is remanded or released on bail by a court, it may be made a condition of bail that the person's passport or other travel document is to be deposited with the court until the conclusion of the proceedings against the person, unless sooner required by the person for emergency reasons.

(3) Other conditions that may be imposed include, but are not limited to —

(a) requiring the person to live at a specified place, or to live away from a specified place;

(b) requiring the provision of sureties or the giving of a security;

(c) imposing a curfew condition;

(d) directing that the person not have contact with another specified person;

(e) directing that the person not enter specified premises.

(4) A court or a police officer of the rank of sergeant or above may require a person as a condition of bail to comply with a requirement imposed in accordance with section 144 for the purpose of securing the electronic monitoring of the person's compliance with any other requirement imposed on the person as a condition of bail.

(5) If a court when granting, or directing the granting of, bail to any person imposes a condition under subsection (1) or (2), it may not require the person to find sureties in respect of that condition.

(6) Subsection (1) applies on any application to the court to vary the conditions of bail or to impose conditions in respect of bail which has been granted unconditionally.
[Criminal Justice Ord. s.141(part) modified; UK Bail Act 1976 ss.3(6) and 3(6ZAA) and Schedule adapted]

144. Electronic monitoring of compliance
(1) A court or police officer must not impose on a person a requirement under section 143(4) (an "electronic monitoring requirement") unless each of the following conditions is satisfied.

(2) The first condition is that the person has attained the age of 12 years.

(3) The second condition is that the person —

(a) is charged with or has been convicted of a violent or sexual offence, or an offence punishable in the case of an adult with imprisonment for a term of 14 years or more; or

(b) is charged with or has been convicted of one or more imprisonable offences which, together with any other imprisonable offences of which the person has been convicted in any proceedings —

(i) amount; or

(ii) would, if the person were convicted of the offences with which he or she is charged, amount,

to a recent history of repeatedly committing imprisonable offences while remanded on bail.

(4) The third condition is that the court is satisfied that the requisite equipment is available in the Falkland Islands at the date of the imposing of the requirement.

(5) The fourth condition is that in the case of a youth the probation officer has informed the court that in his or her opinion the imposition of such a requirement will be suitable in the case of that youth.

(6) If a court imposes an electronic monitoring requirement, the requirement must include provision for making the Chief Police Officer, the probation officer or some other public officer responsible for the monitoring in any particular case.
[UK Bail Act 1976 s.3AA]

145. Basis for bail decisions
(1) In taking a decision required by section 142 or 143, the court must have regard to any of the following considerations that appear to it to be relevant —

(a) the nature and seriousness of the offence or default (and the probable method of dealing with the defendant for it);

(b) the character, antecedents, associations and community ties of the defendant;

(c) the defendant's record as respects the fulfilment of his or her obligations under previous grants of bail in criminal proceedings;

(d) except in the case of a defendant whose case is adjourned for inquiries or a report, the strength of the evidence of his or her having committed the offence or having defaulted,

as well as to any other considerations which appear to the court to be relevant.

(2) If the court is considering remanding the defendant in custody for more than 8 clear days, under powers conferred by Part 16 (Summary Procedure), it must have regard to the total length of time which the defendant would spend in custody if it were to exercise the power to refuse bail.

(3) In taking any decision required by section 142 or 143, the court must have regard, among other considerations, and so far as is relevant, to any misuse by the defendant of controlled drugs, and for the purpose of this section "misuse" has the same meaning as in the Misuse of Drugs Ordinance.
[UK Bail Act 1976 Schedule simplified]

146. Record of reasons for bail decisions
(1) Subsection (2) applies if —

(a) a court or police officer grants bail in criminal proceedings;

(b) a court refuses bail in criminal proceedings from a person pursuant to section 142;

(c) a court, court officer or police officer appoints a time or place, or a court or court officer appoints a different time or place for a person granted bail in criminal proceedings to surrender to custody; or

(d) a court or police officer varies any conditions of bail or imposes conditions in respect of bail in criminal proceedings.

(2) If this subsection applies, the court, court officer or police officer must —

(a) make a written record of the decision;

(b) give the person to whom the decision relates (or, if the person is legally represented, the person's legal practitioner) a copy of the record of the decision as soon as practicable after the record is made.

(3) If bail in criminal proceedings is granted by endorsing a warrant of arrest for bail, the police officer who releases on bail the person arrested must make the record required by subsection (2).

(4) If a court grants bail in criminal proceedings to a person to whom section 142 applies after hearing representations from the prosecutor in favour of refusing bail, the court must give reasons for granting bail.

(5) A court on giving reasons for a decision pursuant to subsection (4) must include a note of the reasons in the record of its decision and must give to the defendant or to the defendant's legal practitioner and to the prosecutor a copy of the record of the decision as soon as practicable after the record is made.

(6) If a court, pursuant to sections 142 and 143 —

(a) refuses bail in criminal proceedings;

(b) imposes conditions in granting bail in criminal proceedings; or

(c) varies any conditions of bail or imposes conditions in respect of bail in criminal proceedings,

the court must, with a view to enabling the person to consider making an application in the matter to another court, give reasons for the decision.

(7) A court on giving reasons for a decision as required by subsection (6) must include a note of the reasons in the record of its decision and must give a copy of the note to the person in relation to whom the decision was taken, or to the person's legal practitioner, if any, and to the prosecutor.

(8) Without affecting subsection (7), if the Magistrate's Court or the Summary Court remands a person in custody under any powers in that behalf after hearing full argument on an application for bail from the person, and the court —

(a) has not previously heard such argument on an application for bail from the person in those proceedings; or

(b) has previously heard full argument from the person on such an application but is satisfied that there has been a change in the person's circumstances or that new considerations have been placed before the court,

the court must issue a certificate that it heard full argument on the application for bail before it refused the application, and give a copy to the person to whom it refuses bail, or to the person's legal practitioner, if any, and to the prosecutor.

(9) If a court issues a certificate under subsection (8) in a case to which paragraph (b) of that subsection applies, it must state in the certificate the nature of the change of circumstances or the new considerations which caused it to hear a further fully argued bail application.

(10) If the Magistrate's Court or the Summary Court refuses bail in criminal proceedings from a person who is not represented by a legal practitioner the court must inform the person of the right to apply to the Supreme Court to be granted bail.
[Criminal Justice Ord. s.144 (part); UK Bail Act 1976 s.5 (part)]

147. Bail when youth charged
(1) If a youth is charged before a court with an offence then, if the court adjourns the trial and remands the youth, it may remand the youth on bail, with or without sureties, on conditions that will, in the opinion of the court, secure the attendance of the youth upon the hearing of the charge.

(2) The court must release a youth on bail unless —

(a) the charge is for an offence of treason, murder or some other serious crime (in which case section 161 or 162 applies);

(b) it is necessary in the interest of the youth to remove him or her from association with persons with recorded convictions for such an offence; or

(c) the court has reason to believe that releasing the youth would defeat the ends of justice, whether by reference to the matters set out in section 143(1) or otherwise.

(3) If a parent or guardian of a youth consents to be surety for the youth for the purposes of this section, the parent or guardian may be required to ensure that the youth complies with any condition of bail imposed on him or her by virtue of section 143(1) but —

(a) no condition may be imposed on the parent or guardian of a youth by virtue of this subsection if it appears that the youth will attain the age of 18 before the time to be appointed for the youth to surrender to custody; and

(b) the parent or guardian must not be required to ensure compliance with any condition to which his or her consent does not extend.
[Criminal Justice Ord. s.141(1) to (7); UK Bail Act s.3(7)]

Variation of bail, etc.

148. Variation of police bail

(1) If a person has been granted bail at a place of lawful custody under Part 5 (Police Detention) to appear before the Magistrate's Court or the Summary Court, the court before which the person is to appear may —

(a) appoint a later time as the time at which the person is to appear;

(b) enlarge the recognisances of any surety for the person to that time;

(c) vary the conditions of bail, and in doing so may impose more onerous conditions.

(2) If a police officer has granted bail in connection with any offence, the Magistrate's Court or the Summary Court, on an application by or on behalf of the Attorney General for the decision to be reconsidered, may —

(a) refuse bail;

(b) vary the conditions of bail; or

(c) impose conditions in respect of bail which has been granted unconditionally.

(3) If a police officer has refused bail in connection with any offence, the Magistrate's Court or the Summary Court may, on an application by the defendant for the decision to be reconsidered, grant bail on any terms on which the police officer could have granted bail.

(4) There is no right to a further review by a court after a review under subsection (2) or (3) unless circumstances have changed since the previous review, or the person has still not been charged 28 days after the previous review.

(5) This section does not apply to bail granted by a police officer elsewhere than at a place of lawful custody (as to which see sections 50 to 53).

[Criminal Justice Ord. s.141(8); UK Magistrates' Courts Act 1980 ss.43 and 43B modified]

149. Variation of court bail

(1) If a court decides at a hearing not to grant the defendant bail, the court must consider, at each subsequent hearing, whether the defendant ought to be granted bail.

(2) If a court has granted bail in criminal proceedings, the court may, on application by or on behalf of the Attorney General for the decision to be reconsidered, refuse bail.

(3) If a court has refused bail in connection with any offence, the court may, on an application by the defendant for the decision to be reconsidered, grant bail on any terms on which the court could originally have granted bail.

(4) If a court has granted bail in criminal proceedings, the court may on application —

(a) by or on behalf of the person to whom bail was granted; or

(b) by or on behalf of the Attorney General,

for the decision to be reconsidered, vary the conditions of bail or impose conditions in respect of bail which has been granted unconditionally.

(5) No application for the reconsideration of a decision under this section may be made unless it is based on information which was not available to the court when the decision was taken.

(6) If the Summary Court commits a person to the Magistrate's Court for sentence, the Magistrate's Court may grant bail, if the committal was in custody, or may vary the conditions of bail as provided by subsection (4), if the committal was on bail.

(7) If the Summary Court or the Magistrate's Court sends a person for trial to the Supreme Court, the Supreme Court may grant bail, if the sending was in custody, or may vary the conditions of bail as provided by subsection (3), if the sending was on bail.
[UK Bail Act 1976 ss.3(8) and 5B (part)]

150. Variation of bail: Supplementary

(1) If a defendant is remanded or committed in custody, at any hearing after the one at which bail was refused, the defendant may apply for bail and may support the application with any argument as to fact or law that he or she desires (whether or not the defendant has advanced that argument previously).

(2) Any variation of bail by a court under subsection (1) or section 148 or 149 —

(a) must be done in a manner consistent with this Part; but

(b) may include conditions not requested by either party.

(3) If the decision of the court on a reconsideration under section 148 or 149 is to refuse bail to a person to whom it was originally granted the court must remand the person in custody, or (if the person is not before the court) order the person to surrender forthwith into the custody of the court.

(4) If a person surrenders into the custody of the court in compliance with an order under subsection (3), the court must remand the person in custody.

(5) A person who has been ordered to surrender to custody under subsection (3) may be arrested without warrant by a police officer if he or she fails without reasonable cause to surrender to custody within 48 hours of receiving the order.

(6) A person arrested pursuant to subsection (5) must be brought as soon as practicable, and in any event within 24 hours after arrest before a judicial authority, who must remand the person in custody.

(7) When an application is made for variation of bail under subsection (1) or section 148 or 149, the court must give notice of the application and of the grounds for it to the other party and must include notice of the powers available to the court on the application.

(8) Any representations made by the defendant or by or on behalf of the Attorney General (whether in writing or orally) must be considered by the court before making its decision.
[Criminal Justice Ord. s.145; UK Bail Act 1976 ss.3(8) and 5B (part)]

151. Appeal from Summary Court to Magistrate's Court on bail decisions

(1) If the defendant or the Attorney General is dissatisfied with a bail decision made by the Summary Court, the defendant or the Attorney General may appeal to the Magistrate's Court against the bail decision in accordance with this section.

(2) A defendant who wishes to exercise the right of appeal set out in subsection (1) must serve written notice of appeal on the Magistrate's Court and on the Summary Court within 14 days of the bail decision.

(3) The Attorney General can only exercise the right of appeal set out in subsection (1) if —

(a) the prosecutor made representations that bail should not be granted;

(b) the representations were made before bail was granted;

(c) oral notice of appeal was given by the prosecutor to the court which granted bail at the conclusion of the proceedings in which bail was granted and before the release from custody of the defendant; and

(d) written notice of appeal was served on the court which granted bail and on the defendant within 2 hours of the conclusion of those proceedings.

(4) If the prosecutor gives oral notice of appeal as provided in subsection (3)(c), the court which granted bail must remand the defendant in custody until the appeal is determined or otherwise disposed of.

(5) The hearing of an appeal under subsection (1) against a bail decision of the Summary Court must be commenced within 2 days after the time at which notice of appeal is received by the Clerk of the court pursuant to subsection (2).

(6) An appeal under this section is by way of rehearing and the Senior Magistrate may remand the person concerned in custody or may grant bail subject to such conditions, if any, as the Senior Magistrate thinks fit, but subject to the provisions of this Part as to the making of bail decisions.

(7) In relation to a youth, the reference in subsection (6) to remand in custody is to be read subject to the provisions of this Ordinance in respect of the detention of youths.
[UK Bail (Amendment) Act 1993 s.1 adapted]

152. Defence appeal against refusal of bail or conditions of bail
(1) If in connection with any criminal proceedings the Magistrate's Court or the Summary Court has power to grant bail to any person, but either refuses to do so, or does so or offers to do so on terms unacceptable to the person, the Supreme Court may, on an application by or on behalf of the person —

(a) grant the person bail or direct that the person be granted bail; or

(b) if the person has been granted bail - vary any conditions on which bail was granted or reduce the amount in which any surety is bound or discharge any of the sureties.

(2) The conditions as to the time and place of appearance of a person who has been granted bail under this section which must be made a condition of the grant of bail are the same conditions that the Magistrate's Court or the Summary Court had power to impose.

(3) On an application under this section, the Supreme Court may grant bail, with or without conditions, or vary the conditions of bail, in a manner consistent with this Part, but subject to subsection (2).

(4) The powers conferred on the Supreme Court by this section do not affect any other powers of the Supreme Court to grant bail or direct the granting of bail to persons.
[UK Criminal Justice Act 1948 s.37; Criminal Justice Act 2003 s.16; Senior Courts Act 1981 s.81 (part)]

153. Bail on an appeal
(1) If a person has given notice of appeal to the Supreme Court against a decision of the Magistrate's Court or the Summary Court in any proceedings, including by way of a case stated for the opinion of the Supreme Court, then, if the person is in custody, the Magistrate's Court or the Summary Court, as the case may be, may release the person, with or without sureties, conditioned for his or her appearance at the hearing of the appeal.

(2) Subsection (1) does not apply to a person who has been committed to the Magistrate's Court for sentence, but section 140(2)] applies in such a case.

(3) The Court of Appeal, in making a bail decision under section 7 of the Court of Appeal Ordinance must be guided by the principles for the grant of bail set out in this Part.

(4) There is no right of appeal to the Court of Appeal on a bail decision.
[UK Magistrate's Courts Act 1980 s.113]

154. Bail by the Supreme Court
(1) The Supreme Court may grant bail to any person who —

(a) has been sent in custody to the Supreme Court for trial under Part 12 (Sending for Trial);

(b) is in custody pursuant to a sentence imposed by the Magistrate's Court or the Summary Court, and who has appealed to the Supreme Court against conviction or sentence;

(c) is in custody pending the disposal of his or her case by the Supreme Court;

(d) is in custody pursuant to a sentence imposed by the Supreme Court, wishes to appeal to the Court of Appeal against conviction or sentence, or both, and has been granted leave to do so by the Supreme Court under section 4(2) of the Court of Appeal Ordinance; or

(e) has been remanded in custody by the Magistrate's Court or the Summary Court on adjourning a case under any provision of this Ordinance.

(2) The power conferred by subsection (1)(c) does not extend to a case to which section 762 (Finding of unfitness to be tried) or 762 (Finding that the defendant did the act or made the omission charged) applies.

(3) The power to grant bail under subsection (1)(d) must be exercised within 28 days from the date of the conviction appealed against, or in the case of appeal against sentence, from the date on which sentence was passed or, in the case of an order made or treated as made on conviction, from the date of the making of the order.

(4) The power under subsection (1)(d) may not be exercised if the appellant has made an application to the Court of Appeal for bail in respect of the offence or offences to which the appeal relates.

(5) If the Supreme Court grants a person bail under subsection (1)(e) it may direct the person to appear at a time and place which the Magistrate's Court or the Summary Court, as the case may be, could have directed and the recognisance of any surety must be conditioned accordingly.

(6) The Supreme Court may only grant bail to a person under subsection (1)(e) if the Magistrate's Court or the Summary Court, as the case may be, has stated in its reasons for refusing bail that it heard full argument on the application for bail before it refused the application.

(7) A person in custody pursuant to a warrant issued by the Supreme Court with a view to the person's appearance before that court must be brought forthwith before either the Supreme Court or the Magistrate's Court or the Summary Court.
[UK Senior Courts Act 1981 s.81 (part)]

Sureties and recognisances

155. Bail with sureties

(1) This section applies if a person is granted bail in criminal proceedings on condition that the person provides one or more sureties for the purpose of securing that he or she surrenders to custody.

(2) In considering the suitability for that purpose of a proposed surety, regard may be had (amongst other things) to —

(a) the surety's financial resources;

(b) the character and any previous convictions of the surety; and

(c) the proximity (whether in point of kinship, place of residence or otherwise) of the surety to the person for whom he or she is to be surety.

(3) If a court grants a person bail in criminal proceedings on a condition referred to in subsection (1) but is unable to release the person because no surety or no suitable surety is available, the court must fix the amount in which the surety is to be bound and the following subsections apply for the purpose of enabling the recognisance of the surety to be entered into subsequently.

(4) The recognisance of the surety may be entered into before any of the following persons —

(a) if the decision was by the Magistrate's Court or the Summary Court - before a justice of the peace, the Clerk of the Court or a police officer of the rank of sergeant or above;

(b) if the decision was by the Supreme Court or the Court of Appeal - before any of the persons specified in paragraph (a) or the Registrar.

(5) If a court has power to take a recognisance from a surety, the court may, instead of taking it, fix the amount of the recognisance, after which it may be taken by any person mentioned in subsection (4).

(6) If, pursuant to subsection (5), a recognisance is taken by a person other than the court that fixed the amount, the same consequences follow as if it had been entered into before that court.

(7) If a surety ('A') seeks to enter into a recognisance before any person ('B') in accordance with subsection (4) but B declines to take A's recognisance because B is not satisfied of A's suitability, A may apply to the Magistrate's Court or the Summary Court to take A's recognisance and that court must, if satisfied of A's suitability, take his or her recognisance.
[Criminal Justice Ord. s.148; UK Bail Act 1976 s.8; Magistrates' Courts Act s.119]

156. Forfeiture of security or recognisance

(1) If a defendant or other person has given security or entered into a recognisance pursuant to this Part and a court is satisfied that the defendant failed to surrender to custody then, unless it

appears that the defendant had reasonable cause for the failure, the court may order the forfeiture of the security or the recognisance, or of any lesser amount the court thinks fit.

(2) An order under subsection (1), unless revoked, takes effect after 21 days.

(3) A court that has ordered the forfeiture of a security or recognisance under subsection (1) may, if satisfied on an application made by or on behalf of the person who gave it that the defendant had reasonable cause for the failure to surrender to custody, remit the forfeiture or any part of it.

(4) An application under subsection (3) may be made before or after the order for forfeiture has taken effect, but must not be entertained unless the court is satisfied that the prosecution was given reasonable notice of the applicant's intention to make it.

(5) A security that has been ordered to be forfeited by a court under subsection (1) must, to the extent of the forfeiture —

(a) if it consists of money - be accounted for and paid in the same manner as a fine imposed by that court;

(b) if it does not consist of money - be enforced by the Magistrate's Court as a civil debt.

(6) If an order is made under subsection (3) after forfeiture of the security in question has occurred, any money which has been overpaid must be repaid.

(7) The provisions of Part 27 (Fines and Recognisances) as to enforcement of recognisances apply to recognisances forfeited under this section.
[Criminal Justice Ord. s.144 (part); UK Bail Act 1976 s.5 as amended and adapted]

Bail offences

157. Offence of absconding
(1) A person granted bail under this Part or Part 5 (Police Detention) is under a duty to surrender to custody in accordance with the provisions of this Part.

(2) A person who —

(a) has been released on bail; and

(b) fails without reasonable cause to surrender to custody,

commits an offence.
Penalty: Imprisonment for 3 years or a fine at level 7 on the standard scale, or both.

(3) A person who —

(a) has been released on bail;

(b) with reasonable cause has failed to surrender to custody; but

(c) fails to surrender to custody at the appointed place as soon after the appointed time as is reasonably practicable,

commits an offence.
Penalty: Imprisonment for 3 years or a fine at level 7 on the standard scale, or both.

(4) It is for the defendant to prove that he or she had reasonable cause for failure to surrender to custody or, that having a reasonable cause for failure, he or she surrendered to custody as soon as reasonably practicable.

(5) A failure to give to a person granted bail in criminal proceedings a copy of the record of the decision is not a reasonable cause for that person's failure to surrender to custody.

(6) If the Magistrate's Court or the Summary Court, having convicted a person of an offence under subsection (2) or (3) —

(a) sends the person for trial to the Supreme Court for another offence; and

(b) considers that it would be appropriate for the person to be dealt with for the offence under subsection (2) or (3) by the Supreme Court,

the Magistrate's Court or the Summary Court, as the case may be, may commit the person in custody or on bail to the Supreme Court for sentence.

(7) In any proceedings for an offence under subsection (2) or (3) a document purporting to be a certified copy of the part of the written record which relates to the time and place appointed for the person specified in the record to surrender to custody is evidence of the time and place appointed for that person to surrender to custody.

(8) For the purposes of subsection (7) —

"certified", in relation to a written record of a bail decision, means certified by the police officer who made the relevant decision, or any other police officer of the rank of sergeant or above;

"written record" means the record of the decision of the court, court officer or police officer made pursuant to section 145(1).
[Criminal Justice Ord. s.141(1) and 146; UK Bail Act 1976 ss.2 and 6 modified by UK PACE Act 1984]

158. Liability to arrest for absconding or breaking conditions of bail
(1) If a person who has been released on bail by a court and is under a duty to surrender into the custody of the court fails to surrender to custody at the place and time appointed for the person to do so, the court may issue a warrant for the person's arrest, unless he or she is absent in accordance with leave given to him or her by an officer of the court.

(2) If a person who has been released on bail by a court absents himself or herself from the court at any time after he or she has surrendered into the custody of the court and before the court is ready to begin or to resume hearing of those proceedings, the court may issue a warrant for the person's arrest, unless the person is absent in accordance with leave given to him or her by an officer of the court.

(3) A person who has been released on bail by a court and is under a duty to surrender into custody may be arrested without warrant by a police officer —

(a) if the police officer has reasonable grounds for believing that the person is not likely to surrender to custody;

(b) if the police officer has reasonable grounds for believing that the person is likely to break any of the conditions of his or her bail or has reasonable grounds to suspect that the person has broken any of those conditions; or

(c) if the person is released on bail with one or more sureties and a surety notifies the police officer in writing —

(i) the person is unlikely to surrender to custody; and

(ii) that for that reason the surety wishes to be relieved of his or her obligations as surety.

(4) A person arrested pursuant to subsection (3) must be brought before a judicial authority as soon as practicable, and in any event within 24 hours after the arrest.

(5) A judicial authority before whom a person is brought under subsection (4) may, if of the opinion that the person —

(a) is not likely to surrender to custody; or

(b) has broken or is likely to break any conditions of his or her bail,

remand the person in custody or commit the person to custody as the case may require, or alternatively grant the person bail subject to the same or to different conditions, but, if not of that opinion, must grant the person bail subject to the same conditions, if any, as were originally imposed.

(6) If the person so brought before a judicial authority is a youth and bail is not then granted to that person, subsection (5) has effect subject to the provisions of this Ordinance as to custody of youths.

(7) Nothing in this section affects the liability to arrest of a person who is released from police detention on bail under Part 5 (Police Detention).
[Criminal Justice Ord. s.147; UK Bail Act 1976 s.7 as amended]

159. Offence of agreeing to indemnify sureties in criminal proceedings

(1) If a person ('A') agrees with another person ('B') to indemnify B against any liability which B may incur as a surety to ensure the surrender to custody of a person granted bail, A and B both commit an offence.

Penalty: Imprisonment for one year or a fine at level 5 on the standard scale, or both.

(2) An offence under subsection (1) is committed —

(a) whether the agreement is made before or after B becomes a surety;

(b) whether or not B becomes a surety; and

(c) whether the agreement contemplates compensation in money or money's worth.

(3) If the Magistrate's Court or the Summary Court convicts a person for an offence under subsection (1), the court, if it —

(a) sends the person for trial to the Supreme Court on another offence; and

(b) considers that it would be appropriate for the person to be dealt with for the offence under subsection (1) by the Supreme Court,

may commit the person in custody or on bail to the Supreme Court for sentence.

[Criminal Justice Ord. s.149; UK Bail Act 1976 s.9 as amended]

Miscellaneous provisions

160. Calculating terms of imprisonment

(1) For the purpose of calculating a term of imprisonment —

(a) time spent on remand in custody is to be deducted from the term, as provided by section 563;

(b) subject to subsection (2), the time during which a person is granted bail under this Part does not count as part of any term of imprisonment under his or her sentence;

(c) if a person is granted bail after a sentence of imprisonment has been imposed on him or her, the term is deemed to begin to run or to be resumed as from the day on which the person is received into prison under the sentence.

(2) Any day on bail during which a person is subject to curfew for at least 12 hours counts as part of a term of imprisonment under the person's sentence.

[UK Senior Courts Act 1981 s.81 (part); CPR Rule 68.8]

161. Bail in cases of treason or murder

(1) If a person is charged with treason or murder —

(a) bail may not be granted to the person except by order of a judge; and

(b) other provisions of this Part apply with necessary modifications.

(2) In this section a reference to a person charged with treason or murder includes a person charged with treason or murder and one or more other offences.

(3) If a person appears before the Magistrate's Court or the Summary Court charged with treason or murder —

(a) the court must commit the person in custody for a bail decision to be made by a judge;

(b) the judge must make a decision about bail in respect of the person as soon as reasonably practicable and, in any event, within 28 days of the person being committed to custody by the Magistrate's Court or the Summary Court.

(4) In the case of a person charged with treason or murder the judge considering granting bail must, unless he or she considers that satisfactory reports on his or her mental condition have already been obtained, impose as conditions of bail a requirement —

(a) that the defendant undergo examination by 2 medical practitioners for the purpose of enabling such reports to be prepared; and

(b) that for that purpose the defendant attend an institution or place that the judge directs and comply with any other directions given to the defendant for that purpose by either of those practitioners.

(5) A person charged with treason or murder must not be granted bail unless the judge is of the opinion that there is no significant risk of the defendant committing, while on bail, any further imprisonable offence.

(6) If bail is granted to a person in accordance with this section, the court must impose as a condition of bail a requirement that any passport or other travel document held by or for the person be deposited with the court until the conclusion of the proceedings against the person, unless sooner required by the person for emergency reasons.
[Criminal Justice Ord. s.143; UK Bail Act 1976 s.3(6A) and (6B); Magistrate's Courts Act 1980 s.41; Criminal Justice & Public Order Act 1994 s.25 (part) modified; Coroners and Justice Act 2009 s.115]

162. Bail in cases of other serious crime

(1) If a person charged with or convicted of any serious crime other than treason or murder has been previously convicted by or before a court in the Falkland Islands, the United Kingdom, a British Overseas Territory or a Crown Dependency of any such crime and was then sentenced —

(a) to imprisonment (whether or not suspended); or

(b) if the person was then a youth, to detention under any relevant enactment,

subsection (2) applies.

(2) In the circumstances mentioned in subsection (1), the person may be granted bail only if the court considering the grant of bail is satisfied that there are exceptional circumstances that justify it.

(3) If bail is granted to a person in accordance with this section, the court must impose as a condition of bail a requirement that any passport or other travel document held by or for the person be deposited with the court until the conclusion of the proceedings against the person, unless sooner required by the person for emergency reasons.

(4) This section applies whether or not an appeal is pending against the previous conviction mentioned in subsection (1).
[UK Criminal Justice & Public Order Act 1994 s.25 (part)]

163. Warrant of arrest may be endorsed for bail
Whenever a warrant is issued for the arrest of any person, the court or judicial authority issuing the warrant may (if in all the circumstances it appears just and reasonable so to do) incorporate in it a direction that the officer executing the warrant may, instead of bringing the person arrested before the court, release the person on bail to appear before the court at a time and place specified in the direction.
[UK Magistrates' Courts Act 1980 s.117; Senior Courts Act 1981 s.81(4)]

164. Criminal procedure rules
The Chief Justice may by criminal procedure rules make provision —

(a) directing that a recognisance must not be entered into or other security given by persons of a specified description;

(b) prescribing the persons who may take a recognisance;

(c) prescribing the manner in which a recognisance is to be entered into or other security given, and the persons by whom and the manner in which the recognisance or security may be enforced;

(d) varying or dispensing with requirements as to sureties;

(e) regulating the manner in which applications for reconsideration of bail conditions are to be made;

(f) regulating the manner in which prosecution appeals against the grant of bail or the conditions of bail are to be made;

(g) regulating the manner in which defence appeals against the refusal of bail or the conditions of bail are to be made;

(h) regulating the manner in which bail decisions are to be recorded; and

(i) generally, for the implementation of this Part.
[UK Bail Act 1976 passim; Criminal Procedure Rules 2012 Rule 19.]

CHAPTER 5 – JURISDICTION

PART 10 – CONTROL OF PROSECUTIONS

165. Power to appoint prosecuting counsel
(1) Without affecting section 72 of the Constitution, the Attorney General may appoint any person who has a right of audience in the courts of the Falkland Islands to be a prosecuting counsel for the purposes of any case.

(2) A prosecuting counsel may appear and plead without any written authority before any court in which any case of which he or she has charge is under inquiry, trial or appeal.

(3) Every prosecuting counsel is subject to the directions of the Attorney General in the conduct of the prosecution.
[Common law]

166. Public officers as prosecutors
(1) In any trial in the Magistrate's Court or the Summary Court, if the proceedings have been commenced by a police officer, or any public officer who has powers to commence proceedings, any police officer or other public officer may, with the consent of the Attorney General, appear and conduct the prosecution whether or not that officer is the officer who laid the information.

(2) A police officer or other public officer conducting a prosecution pursuant to subsection (1) is subject to the directions of the Attorney General in the conduct of the prosecution.
[Common law]

167. Private prosecutions
(1) Subject to any requirement of this or any other written law for the consent of the Attorney General to a prosecution, a private person may commence and conduct a prosecution for any criminal offence.

(2) As provided by the Constitution, the Attorney General may at any time discontinue or take over the conduct of a prosecution commenced by a private person.

(3) If a private person instructs counsel to prosecute in any case in any court, the counsel so instructed must act in the case under the directions of the Attorney General or a prosecuting counsel.

(4) Any private person conducting a prosecution may do so personally or by a legal practitioner.
[UK Prosecution of Offences Act 1985 s.6 adapted]

168. Consents to prosecutions
(1) A requirement for the consent of any person to a prosecution —

(a) does not prevent the arrest without warrant, or the issue or execution of a warrant for the arrest, of a person for any offence, or the remand in custody or on bail of a person charged with any offence; and

(b) is subject to any enactment concerning the apprehension of children or young persons.

(2) Any document purporting to be the consent of the Attorney General to —

(a) the institution of any criminal proceedings; or

(b) the institution of criminal proceedings in any particular form,

and to be signed by the Attorney General is admissible as *prima facie* evidence without further proof.
[UK Prosecution of Offences Act 1985 ss.25 and 26]

Time limits for preliminary stages

169. Time limits for preliminary stages of criminal proceedings
(1) The periods set out in subsection (2) are the maximum periods for which a person (including a youth) can be held in custody after the person is charged with the offence or, as the case may be, an information is laid charging the person with the offence.

(2) The periods are —

(a) for a summary offence, between first appearance and the start of the trial - 70 days;

(b) for a summary offence which is a serious offence, between first appearance and the start of the trial – 182 days;

(c) for an indictment-only offence, between first appearance and the start of the trial - 182 days;

(d) for an indictment- only offence on a voluntary bill of indictment, from preferment of the bill to the start of the trial – 182 days.

(3) If a person is sent for trial on more than one indictment-only offence, the period specified in subsection (2)(c) applies separately in relation to each offence.

(4) If an indictment is preferred by direction of the Court of Appeal, following the ordering of a retrial under Part 32 (Retrials, References, etc.) the limit specified in subsection (1)(c) applies from the date of that preferment.

(5) For the purposes of this section —

(a) the start of a trial on indictment before a jury is when a jury is sworn to consider the issue of guilt or fitness to be tried or, if the court accepts a plea of guilty before the time when a jury is sworn, when that plea is accepted;

(b) the start of a summary trial, or of a trial on indictment without a jury, occurs —

(i) when the court begins to hear evidence for the prosecution at the trial or to consider whether to exercise its power to make a hospital order without convicting the defendant; or

(ii) if the court accepts a plea of guilty without proceeding as mentioned above - when that plea is accepted.

(6) The Chief Justice may, by criminal procedure rules, make provision with respect to any specified preliminary stage of proceedings for an offence —

(a) disapplying the time limit prescribed by subsection (2) in relation to proceedings against persons of specified classes or descriptions;

(b) prescribing the procedure to be followed in criminal proceedings that the Chief Justice considers appropriate in consequence of this section and section 170;

(c) providing for an appeal to the Supreme Court against a refusal of an extension of time limit under section 170;

(d) providing for Part 5 (Police Detention) or Part 9 (Bail in Criminal Proceedings) to apply in relation to cases to which time limits apply (subject to specified modifications which the Chief Justice considers necessary in consequence of this section or section 170); and

(e) making transitional provisions in relation to proceedings commenced before the commencement of this section.

[UK Prosecution of Offences Act 1985 s.22 (part) adapted; Prosecution of Offences (Custody Time-Limits) Regulations 1987 adapted]

170. Time limits: Supplementary provisions

(1) The court may, in any particular case, at any time before the expiry of the time limit prescribed by section 169(2), extend, or further extend, that limit if it is satisfied —

(a) that the need for the extension is due to —

(i) the illness or absence of the defendant, a necessary witness, a judge or a justice of the peace;

(ii) a postponement which is occasioned by the court ordering separate trials in the case of 2 or more defendants or 2 or more offences; or

(iii) some other good and sufficient cause; and

(b) that the prosecution has acted with all due diligence and expedition.

(2) If, in relation to any proceedings for an offence, the time limit prescribed by section 169(2) or as varied by the court has expired before the completion of the stage of the proceedings to which the limit applies, the defendant must be released on bail, either with or without conditions, in accordance with Part 9 (Bail in Criminal Proceedings).

(3) If a person is convicted of an offence in any proceedings, the exercise, in relation to any preliminary stage of those proceedings, of the power conferred by subsection (2) may not be called into question in any appeal against that conviction.

(4) If —

(a) a person escapes from arrest; or

(b) a person who has been released on bail under Part 5 (Police Detention) fails to surrender to bail at the appointed time,

and is accordingly unlawfully at large for any period, that period is to be disregarded, so far as the offence in question is concerned, for the purposes of a time limit prescribed in section 169.
[UK Prosecution of Offences Act 1985 s.22 (part) adapted]

171. Additional time limits for youths

(1) The Chief Justice may by criminal procedure rules make provision —

(a) with respect to a person who is a youth at the time of his or her arrest in connection with an offence - as to the maximum period to be allowed for the completion of the stage beginning with the arrest and ending with the date fixed for the person's first appearance in court in connection with the offence ("the initial stage");

(b) with respect to a person convicted of an offence who was under that age at the time of his or her arrest for the offence or (if the person was not arrested for it) the laying of the information charging the person with it - as to the period within which the stage between the person's conviction and his or her being sentenced for the offence should be completed.

(2) The Magistrate's Court or the Summary Court may, at any time before the expiry of the time limit imposed by rules made under subsection (1)(a) ("the initial stage time limit"), extend, or further extend, that limit; but must not do so unless satisfied —

(a) that the need for the extension is due to some good and sufficient cause; and

(b) that the investigation has been conducted, and (where applicable) the prosecution has acted, with all due diligence and expedition.

(3) If the initial stage time limit (whether as originally imposed or as extended or further extended under subsection (3)) expires before the person arrested is charged with the offence, the person must not be charged with it unless further evidence relating to it is obtained, and —

(a) if the person is then under arrest - he or she must be released;

(b) if the person is then on bail under Part 5 (Police Detention) - his or her bail (and any duty or conditions to which it is subject) must be discharged.

(4) If the initial stage time limit (whether as originally imposed or as extended or further extended under subsection (2)) expires after the person arrested is charged with the offence but before the date fixed for the person's first appearance in court in connection with it, the court must stay the proceedings.

(5) Subsections (2) to (4) of section 170 apply for the purposes of this section, at any time after the person arrested has been charged with the offence in question, as if any reference to a time limit were a reference to the initial stage time limit.
[UK Prosecution of Offences Act 1985 s.22A ins. by Crime & Disorder Act 1988]

172. Re-institution of proceedings stayed under section 171
(1) If proceedings for an offence ("the original proceedings") are stayed by a court under section 171(4) and the Attorney General so directs, fresh proceedings for the offence may be commenced within 3 months (or any longer period the court allows) after the date on which the original proceedings were stayed by the court.

(2) Fresh proceedings are commenced —

(a) if the original proceedings were stayed by the Supreme Court - by preferring a bill of indictment;

(b) if the original proceedings were stayed by the Magistrate's Court or the Summary Court - by laying an information (regardless of any limit of time provided in any other enactment.)

(3) If fresh proceedings are commenced, anything done in relation to the original proceedings is to be treated as done in relation to the fresh proceedings if the court so directs or it was done by the prosecutor or the defendant in compliance or purported compliance with this Ordinance.

(4) If a person is convicted of an offence in fresh proceedings under this section, the institution of those proceedings may not be called into question in any appeal against that conviction.
[UK Prosecution of Offences Act 1985 s.22B ins. by Crime & Disorder Act 1988]

Discontinuance of proceedings

173. Power of Attorney General to enter *nolle prosequi*

(1) In any trial on indictment, at any stage before the verdict, the Attorney General may enter a *nolle prosequi*, either by stating in court or by informing the court in writing that the Crown intends that the proceedings are not to continue.

(2) If the Attorney General enters a *nolle prosequi* —

(a) the defendant must be at once discharged in respect of the charge for which the *nolle prosequi* is entered;

(b) if the defendant has been committed to prison he or she must be released, or if on bail, his or her recognisances must be discharged;

(c) the discharge of the defendant does not operate as a bar to any subsequent proceedings against him or her on account of the same facts.

(3) If the defendant is not before the court when a *nolle prosequi* is entered, the Registrar or Clerk of the court must forthwith cause notice in writing of the entry of the *nolle prosequi* to be given —

(a) if the defendant is in prison - to the Chief Police Officer;

(b) if the defendant has been sent for trial - to the Supreme Court;

(c) if the trial is a summary one - to the Magistrate's Court or the Summary Court, as the case may be.

(4) Upon the entry of a *nolle prosequi* the court must forthwith cause a notice of it to be given in writing to any witnesses bound over to give evidence and to their sureties, if any, and also to the defendant and his or her sureties if the defendant has been admitted to bail.

(5) Any document purporting to be the fiat, order, sanction, consent or *nolle prosequi* of the Attorney General and to be signed by the Attorney General is admissible as *prima facie* evidence without further proof.

(6) This section is in addition to and does not limit the powers of the Attorney General under the Constitution or any other law.
[Common law]

174. Discontinuance of proceedings at preliminary stage

(1) If the Attorney General has the conduct of proceedings in the Magistrate's Court or the Summary Court for an offence, this section applies in relation to the preliminary stages of those proceedings.

(2) In this section, "preliminary stage" in relation to proceedings for an offence does not include any stage of the proceedings —

(a) after the court has begun to hear evidence for the prosecution at a summary trial of the offence; or

(b) after the defendant has been sent for trial for the offence.

(3) If, at any time during the preliminary stages of the proceedings, the Attorney General gives notice under this section to the court that the Crown does not wish the proceedings to continue, they must be discontinued with effect from the giving of that notice but may be revived by notice given by the defendant under subsection (7).

(4) If, in the case of a person charged with an offence after being taken into custody without a warrant, the Attorney General gives the person notice, before the Magistrate's Court or the Summary Court has been informed of the charge, that the proceedings against the person are discontinued, they must be discontinued with effect from the giving of that notice.

(5) The Attorney General must, in any notice given under subsection (3), give reasons for not wishing the proceedings to continue.

(6) On giving notice under subsection (3) the Attorney General —

(a) must inform the defendant of the notice and of the defendant's right to require the proceedings to be continued; but

(b) need not give the defendant any indication of the reasons for not wishing the proceedings to continue.

(7) If the Attorney General has given notice under subsection (3), the defendant must, if the defendant wishes the proceedings to continue, give notice to that effect to the court within 21 days; and if notice is so given the proceedings must continue as if no notice had been given by the Attorney General under subsection (3).

(8) The defendant must inform the Attorney General if the defendant has notified the court under subsection (7).

(9) The discontinuance of any proceedings by virtue of this section does not prevent the institution of fresh proceedings in respect of the same offence.
[UK Prosecution of Offences Act 1985 s.23]

175. Discontinuance of proceedings after defendant has been sent for trial
(1) This section applies if —

(a) the Attorney General has the conduct of proceedings for an offence; and

(b) the defendant has been sent for trial to the Supreme Court for the offence.

(2) If, at any time before the indictment is preferred, the Attorney General gives notice under this section to the Supreme Court that the Crown does not wish the proceedings to continue, they must be discontinued with effect from the giving of that notice.

(3) The Attorney General must, in any notice given under subsection (2), give reasons for not wishing the proceedings to continue.

(4) On giving notice under subsection (2) the Attorney General —

(a) must inform the defendant of the notice; but

(b) need not give the defendant any indication of the reasons for not wishing the proceedings to continue.

(5) The discontinuance of any proceedings by virtue of this section does not prevent the institution of fresh proceedings in respect of the same offence.

(6) This section and sections 173 and 174 are in addition to and do not limit the powers of the Attorney General under section 72 of the Constitution or any other law to discontinue criminal proceedings in any court.
[UK Prosecution of Offences Act 1985 s.23A ins. by Crime & Disorder Act 1988]

PART 11 – CRIMINAL JURISDICTION

Criminal jurisdiction generally

176. Criminal jurisdiction of the Supreme Court

(1) The Supreme Court has and may exercise —

(a) unlimited jurisdiction to hear and determine any criminal proceedings under any law;

(b) the jurisdiction and powers in criminal proceedings conferred upon it by section 19 and other provisions of the Constitution and by any other written law of the Falkland Islands or any enactment.

(2) Without limiting subsection (1), the Supreme Court has within the Falkland Islands all the power, jurisdiction and authority vested in the High Court of Justice and the Crown Court in England in respect of criminal proceedings.

(3) The Supreme Court may on convicting a person of that offence, subject to 483 (sentencing powers) and any other written law of the Falkland Islands —

(a) sentence the person in any manner provided for by law in respect of that offence; and

(b) make any other order which by law may be made in consequence of or otherwise upon the conviction of the offender.

(4) The practice and procedure of the Supreme Court in the exercise of its criminal appellate jurisdiction is to be as prescribed by Part 31 (Appeals to the Supreme Court) and by criminal procedure rules. Until such rules are in force, the practice and procedure, to the extent that it is not provided for by Part 31, is to be the same as that of the Court of Appeal in England with necessary modifications (including disregarding or modifying any provisions related to a multiplicity of judges).

(5) The practice and procedure of the Supreme Court on and related to a trial on indictment is to be as prescribed by Part 17 (Supreme Court Procedure) and other provisions of this Ordinance, and by criminal procedure rules. Until such rules are in force, the practice and procedure, to the extent that it is not provided for by Part 17 and other provisions of this Ordinance, is to be the same as that of the Crown Court in England, with necessary modifications.

(6) The power of the Supreme Court to deal with summary offences, other than an offence committed in the face of the court, is as prescribed in Part 17.

(7) The jurisdiction and authority conferred by this section are to be exercised subject to this Ordinance, any relevant criminal procedure rules or practice direction, and any other written law of the Falkland Islands.
[Admin. of Justice Ord. s.38 and s.48(2) and (3)]

177. Criminal jurisdiction of the Magistrate's Court
(1) The Magistrate's Court has jurisdiction to try and determine any summary offence under the law of the Falkland Islands.

(2) If the Magistrate's Court has jurisdiction to try an offence, it may on convicting a person of that offence, subject to section 480 (sentencing powers) and any other written law of the Falkland Islands —

(a) sentence the person in any manner provided for by law in respect of that offence; and

(b) make any other order which by law may be made in consequence of or otherwise upon the conviction of the offender.

(3) Without affecting section 184 as to observers, the jurisdiction of the Magistrate's Court under this section must be exercised by the Senior Magistrate sitting alone.

(4) The Senior Magistrate is by virtue of the office a justice of the peace and may exercise all the jurisdiction, powers and authority of a justice of the peace.

(5) The practice and procedure of the Magistrate's Court in criminal proceedings is to be as prescribed by Part 16 (Summary Proceedings), by other provisions of this Ordinance relating to summary offences, and by criminal procedure rules. Until such rules are in force, the practice

and procedure is to be the same as that of a District Judge (Magistrate's Court) in England with necessary modifications.

(6) The jurisdiction and authority conferred by this section are to be exercised subject to this Ordinance, any criminal procedure rules or practice direction, and any other written law of the Falkland Islands.

(7) Until provisions equivalent to those in the UK Extradition Act 2003 are enacted in the Falkland Islands, the Senior Magistrate has the like powers and jurisdiction in relation to extradition as is possessed by a person holding appointment as a District Judge under sections 67 and 139 of that Act.
[Admin. of Justice Ord. ss.28 and 29]

178. Criminal jurisdiction of the Summary Court
(1) Subject to this Part, the Summary Court has a like jurisdiction in criminal proceedings to the jurisdiction that the Magistrate's Court has under section 177(1) and (2).

(2) If the Summary Court has jurisdiction to try an offence, it may on convicting a person of that offence, subject to subsections (3) and (4) and any other written law of the Falkland Islands —

(a) sentence the person in any manner provided for by law in respect of that offence; and

(b) make any other order which by law may be made in consequence of or otherwise upon the conviction of the offender.

(3) Except as otherwise provided by this or any other Ordinance, the Summary Court does not have power to impose imprisonment or any other custodial sentence for more than 6 months in respect of any one offence, even if the offence in question is one for which a person would otherwise be liable on conviction to imprisonment or other custodial sentence for more than 6 months.

(4) If the Summary Court imposes 2 or more terms of imprisonment to run consecutively, the aggregate of the terms must not exceed 6 months.

(5) The limitations in subsections (3) and (4) on the power to impose a term of imprisonment do not apply in respect of any power of the Summary Court to impose a term of imprisonment for non-payment of a fine, or for want of sufficient distress to satisfy a fine.

(6) The Summary Court may impose a fine up to the limits prescribed by section 589(3).

(7) The composition of the Summary Court when hearing criminal proceedings is as provided by Part 16 (Summary Procedure).

(8) The practice and procedure of the Summary Court in criminal proceedings is to be as prescribed by Part 16 (Summary Proceedings), by other provisions of this Ordinance relating to summary offences, and by relevant criminal procedure rules. Until such rules are in force, the

practice and procedure is to be the same as that of the Magistrates' Courts in England with necessary modifications.

(9) The jurisdiction and authority conferred by this section are to be exercised subject to this Ordinance, any relevant criminal procedure rules or practice direction, and any other written law of the Falkland Islands.
[Admin. of Justice Ord. ss.11 and 12 and 48(5)]

179. Offshore activities
(1) This section applies to —

(a) the territorial sea of the Falkland Islands;

(b) any designated area of the continental shelf as defined in the Offshore Minerals Ordinance.

(2) Any act or omission which —

(a) takes place on, under or above an installation in waters to which this section applies or any waters within 500 metres of any such installation; and

(b) would, if it had taken place in the Falkland Islands, constitute an offence under the law of the Falkland Islands,

is to be treated for the purposes of that law as if it had taken place in the Falkland Islands.
[Criminal Jurisdiction (Offshore Activities) Order 1998]

Trial of offences

180. Trial of offences
(1) All offences are triable summarily except offences which by virtue of section 181 or any other written law of the Falkland Islands are required to be tried on indictment.

(2) An offence which is triable summarily may be tried on indictment if it is a linked offence as defined in section 189.

(3) An offence may only be tried on indictment under subsection (1) or (2) if the defendant is sent to the Supreme Court for trial in respect of that offence by the Summary Court or the Magistrate's Court, in accordance with Part 12.
[Criminal Justice Ord. s4 as amended by s.14 of Admin of Justice (Am) Ord. 2013]

181. Indictment-only offences
(1) The following offences must be tried on indictment —

(a) an offence under the Crimes Ordinance 2014 specified as triable on indictment only;

(b) an offence under this or any other Ordinance specified as triable on indictment only;

(c) an offence which, by virtue of any law of the United Kingdom having effect in the Falkland Islands (other than by its application by or under a written law of the Falkland Islands), must be tried on indictment;

(d) an attempt to commit any of the offences mentioned in paragraphs (a) to (c);

(e) conspiracy to commit any of those offences;

(f) encouraging, or aiding and abetting, any of those offences.

(2) All other offences are triable summarily.

182. Time for commencement of criminal proceedings

(1) This section prescribes the periods within which prosecutions for offences must be commenced and has effect despite any provision of an enactment which prescribes a shorter period in relation to an offence to which that provision relates.

(2) The periods prescribed in this section are subject to —

(a) any provision of a written law of the Falkland Islands which, in relation to any particular offence or offences, prescribes a greater period;

(b) any power of a court to dismiss a prosecution by reason of a delay in bringing it so great that a fair trial of the defendant cannot be held; and

(c) any power of a court to dismiss a prosecution as an abuse of the process of the court.

(3) There is no limit on the time within which a prosecution may be commenced for an indictment-only offence or for a summary offence that is an imprisonable offence.

(4) A prosecution for a summary offence that is not an imprisonable offence must be commenced within 12 months of the date of the offence.

(5) For the purposes of this section, a prosecution of a person is commenced when the complaint or information in relation to the offence in question is presented to the office of the Magistrate's Court or of the Summary Court, as the case may be.

183. Place of sittings of the courts

(1) For the hearing of criminal proceedings, no court may sit in any premises licensed for the sale of intoxicating liquor or in any building ordinarily used for religious purposes.

(2) All courts must sit in the Falkland Islands, except as provided by section 92(3) of the Constitution as regards the Court of Appeal.

(3) A judge may exercise judicial functions by electronic means or otherwise while outside the Falkland Islands if and to the extent that a provision of this Ordinance or of criminal procedure rules so provides, or in accordance with subsection (4) of this section.

(4) A judge may sit outside the Falkland Islands for the purpose of dealing by electronic means with any matter in criminal proceedings which does not require the judge to sit in open court, not limited to matters falling for decision under the provisions listed in subsection (3), if —

(a) the Head of Courts certifies that facilities are available for dealing with the matter by electronic means;

(b) the parties to the matter are given an opportunity to make representations to the Head of Courts as to whether the matter should be so dealt with; and

(c) the judge is satisfied that sitting outside the Falkland Islands is in the interests of justice.

(5) Before making a decision in a matter while outside the Falkland Islands, pursuant to subsection (3) or (4), the judge must give to all parties who are entitled to notice of the matter the opportunity to make representations about the matter by electronic means or otherwise.

(6) The requirement in subsection (5) does not apply in respect of a party to a matter if —

(a) it has not been possible (despite reasonable efforts in all of the circumstances) to contact the party; and

(b) the urgency of the matter is such that the power must be exercised outside the Falkland Islands without further delay in seeking to give the party the opportunity to make representations.

(7) The rules of evidence, practice and procedure do not have effect to restrict the powers of a judge by virtue of the place in which the judge sits and, in particular, a judge sitting outside the Falkland Islands —

(a) is to be treated as sitting in the Falkland Islands in order to preserve the judge's powers;

(b) may receive evidence or representations from outside the Falkland Islands.

(8) In this section —

(a) "electronic means" include telephone, fax, visual computer link and other electronic means of communication;

(b) "judge" includes the Senior Magistrate if and to the extent that jurisdiction is conferred on the Senior Magistrate in respect of any matter.

[Admin. of Justice Ord. s.41 am. by AOJ (Am)(No.2) Ord. 2013 modified]

184. Observers

(1) The Senior Magistrate may invite one or more justices of the peace to sit with the Senior Magistrate as observers when the Senior Magistrate is exercising the criminal jurisdiction of the Magistrate's Court in any criminal proceedings.

(2) A justice of the peace invited to sit as an observer —

(a) attends for training purposes only and must not take part in the proceedings; but

(b) may join the Senior Magistrate when the Senior Magistrate retires to consider evidence given and submissions made in open court; and

(c) may remain when the court sits in private.

(3) In this Ordinance, any requirement for facilities to be made available to enable the judge and the jury, if any, to see a witness extends to a justice of the peace sitting as an observer under this section.

(4) Any observer invited under this section must be duly qualified as a justice of the peace and if he or she becomes disqualified must cease to be an observer.

185. Reasons for judgement to be given

(1) The person presiding over criminal proceedings in any court must keep a record of all judgments and rulings of the court, except the reasons for the verdict of a jury.

(2) If there are facilities for electronic recording of the proceedings, an electronic record may be kept instead of a written record.

(3) Every such judgment or ruling must —

(a) contain the point or points for determination, the decision on each point and the reasons for the decision; and

(b) be dated by the person presiding at the time of pronouncement.

Transfer of cases between courts

186. Transfer of cases between Summary Court and Magistrate's Court

(1) This section applies to a case if it could have been brought in either the Summary Court or the Magistrate's Court, and —

(a) proceedings have been commenced in one of those courts but have not yet come to trial in either of those courts; or

(b) proceedings (including sentencing in the event of a conviction) have been concluded in one of those courts but any sentence has not been enforced or monetary judgment.

(2) A case to which this section applies may (if the interests of justice require) be transferred —

(a) from the Summary Court to the Magistrate's Court; or

(b) from the Magistrate's Court to the Summary Court.

(3) A case may be transferred from one court to the other even if it has been transferred on one or more previous occasions.

(4) Either the Summary Court or the Magistrate's Court may make an order for a case to be transferred from one court to the other.

(5) An order for a case to be transferred from one court to the other may be made —

(a) on an application from one or more of the parties to the case; or

(b) on the court's own initiative.

[Admin. of Justice Ord. s.35A (part) expanded]

187. Transfer of cases: Orders and directions

(1) A judge may, if the interests of justice require —

(a) order that a case that is currently before the Magistrate's Court or the Summary Court is to be transferred from that court to the other court;

(b) direct (in relation to a specific case) that an order of the Summary Court transferring it from the Magistrate's Court to the Summary Court may only take effect if it is approved by a judge.

(2) A judge may direct (in relation to a category of cases) that an order of the Summary Court transferring a case in that category from the Magistrate's Court to the Summary Court may only take effect if it is approved by a judge.

(3) In this section, "judge" includes the Senior Magistrate, even if —

(a) the Senior Magistrate has already dealt with the same case in the Magistrate's Court; or

(b) the effect of an order or direction would be for the Senior Magistrate to hear that case.

[Admin. of Justice Ord. s.35A (part)]

188. Transfer of cases: Practice directions

(1) The Chief Justice may issue practice directions about —

(a) how the power for cases to be transferred from one court to another is to be exercised; and

(b) what procedures are to apply in cases that have been transferred from one court to another (which may be different from the procedures that would normally apply in the court to which the case has been transferred).

(2) When determining whether or not to transfer a case from one court to the other, the Magistrate's Court and the Summary Court must each have proper regard to practice directions that have been issued about how the power to do that is to be exercised.
[Admin. of Justice Ord. s.35A (part)]

PART 12 – SENDING FOR TRIAL
Preliminary

189. Application and interpretation of Part

(1) This Part governs the procedure for sending persons to the Supreme Court for trial in respect of —

(a) indictment-only offences;

(b) offences that may be tried summarily but which are related to indictment-only offences that may have been committed by —

(i) persons charged with indictment-only offences; or

(ii) other persons charged jointly with them.

(2) This Part also governs the procedure after persons are sent to the Supreme Court for trial and before the trial commences.

(3) The powers of the Supreme Court to deal with summary offences that are related to indictment-only offences are contained in sections 309 to 311 in Part 17 (Supreme Court Procedure).

(4) In this Part —

"application for dismissal" means an application under section 199 for one or more charges against a person to be dismissed;

"judge" may include the Senior Magistrate if appointed to sit as an acting judge of the Supreme Court, even if the Senior Magistrate has already dealt with the same case in the Magistrate's Court;

"linked offence" means an offence that may be tried summarily but which —

(a) is founded on the same facts or evidence as a count charging an indictment-only offence; or

(b) is part of a series of offences of the same or similar character as an indictment-only offence which is also charged;

"relevant issues" means —

(a) the circumstances of the case;

(b) if written notice has been (or was) given of an intention to apply for dismissal orally - the matters stated in that notice; and

(c) the matters stated in the application for dismissal;

"sending proceedings" means proceedings pursuant to the power or requirement to send a person to the Supreme Court for trial.

190. Power to send adults to Supreme Court for trial

(1) The Magistrate's Court and the Summary Court both have power to send a person for trial before the Supreme Court, in accordance with this Part.

(2) When an adult person appears before the Magistrate's Court or the Summary Court (or is brought before either of them), for an offence, the court must send the person to the Supreme Court for trial in respect of the offence in accordance with this Part if the person —

(a) is before the court in relation to one or more indictment-only offences;

(b) has already been sent to the Supreme Court in relation to one or more offences that have not yet come to trial; or

(c) is charged jointly with someone else who has been, is being or could be sent to the Supreme Court in accordance with this Part.

(3) The Magistrate's Court and the Summary Court may also send a person to the Supreme Court for trial in respect of an offence if —

(a) the offence can be tried summarily; but

(b) it appears to the Magistrate's Court or the Summary Court, as the case may be, that it is a linked offence.

(4) If a person who has been sent for trial under subsection (2) or (3) subsequently appears or is brought before the Magistrate's Court or the Summary Court charged with another indictment-only offence or with a linked offence, the court may send the person forthwith to the Supreme Court for trial for that offence.

(5) If —

(a) the Magistrate's Court or the Summary Court commits a person ('A') for trial under subsection (2) on an indictment-only offence; and

(b) another person ('B') appears or is brought before the court on the same or a subsequent occasion charged jointly with A with an indictment-only offence or a linked offence,

the court must if it is the same occasion, and may if it is a subsequent occasion, send B forthwith to the Supreme Court for trial for that offence.
[UK Crime & Disorder Act 1998 ss.51 & 51A]

191. Power to send youths to Supreme Court for trial
(1) When a youth appears before the Magistrate's Court or the Summary Court (or is brought before either of them) and one or more of the circumstances listed in paragraphs (a) to (c) of section 190(2) applies, the court must —

(a) deal with the youth in accordance with this Part; but

(b) adapt its procedure in whatever way the interests of justice require to take account of the youth's age and level of understanding.
UK Crime & Disorder Act 1998 s.51 replaced by CJ Act 2003 Sched.3]

(2) Subsection (3) applies if —

(a) a youth has been sent to the Supreme Court for trial in respect of one or more offences; and

(b) the youth —

(i) appears (or is brought) before the Supreme Court in connection with those offences; or

(ii) is being tried on indictment for those offences.

(3) When this subsection applies, the Supreme Court must adapt its procedure in whatever way the interests of justice require to take account of the youth's age and level of understanding.
[Admin. of Justice Ord. s.48A]

Procedure for sending persons to Supreme Court

192. Adjournment of summary trial
(1) If a person is sent to the Supreme Court for trial in respect of a summary offence, the trial in respect of that offence is to be treated as if it had been adjourned by the Magistrate's Court or the Summary Court without a date being fixed for its resumption.

(2) A date may be fixed for the resumption of the trial for a summary offence if the powers of the Supreme Court cease in respect of that offence under section 208(10).
[Admin of Justice Ord. Sched.4]

193. Sending notice

(1) If the Magistrate's Court or the Summary Court sends a person to the Supreme Court for trial in respect of one or more offences, it must issue a notice (a "sending notice") specifying the offence or offences for which the person is being sent to the Supreme Court for trial.

(2) Copies of the sending notice must as soon as practicable be —

(a) served on the person being sent to the Supreme Court for trial; and

(b) forwarded to the Supreme Court.

(3) Subsections (4) and (5) apply if the person is being sent to the Supreme Court for trial in respect of one or more summary offences, whether or not the person is also being sent to the Supreme Court for trial in respect of one or more indictment-only offences.

(4) The Magistrate's Court or the Summary Court must specify in the sending notice the indictment-only offence (or offences) in relation to which the summary offence appears to the court to be a linked offence.

(5) If the person is being sent to the Supreme Court in respect of more than one summary offence, the Magistrate's Court or the Summary Court must comply with subsection (4) in relation to each of the summary offences separately.

[Admin of Justice Ord. Sched.4; UK Criminal Justice Act 1987 s.5; Criminal Justice Act 1991 Sched.6 para.4; Crime & Disorder Act 1998 Sched. 3 para.1, etc.]

194. Sending may be in custody or on bail

(1) The Magistrate's Court or the Summary Court may send a person to the Supreme Court for trial either —

(a) in custody, by committing the person to custody to be kept there safely until delivered in due course of law; or

(b) on bail to appear before the Supreme Court for trial.

(2) When deciding whether to send a person to the Supreme Court for trial in custody or on bail, the Magistrate's Court or the Summary Court must apply the bail provisions of Part 9 (Bail in Criminal Proceedings).

(3) If a person is granted bail on condition of providing one or more sureties, the court may remand the person in custody until that condition is satisfied.

(4) If the conditions specified in subsection (5) are satisfied, a court may exercise the powers conferred by subsection (1) in relation to a person charged without being brought before it in any case in which it would have power further to remand the person on an adjournment.

(5) The conditions mentioned in subsection (4) are that —

(a) the person has given written consent to the powers conferred by subsection (1) being exercised without his or her being brought before the court; and

(b) the court is satisfied that, when the person gave his or her consent, the person knew that a sending notice had been issued in relation to the person.

(6) If a sending notice is given after a person to whom it relates has been remanded on bail to appear before the Magistrate's Court or the Summary Court on an appointed day, the requirement that the person so appear ceases on the giving of the notice, unless the notice states that it is to continue.

(7) If the requirement that a person to whom the sending notice relates should appear before the Magistrate's Court or the Summary Court ceases by virtue of subsection (6), the person must appear before the Supreme Court at the time specified in the notice.

(8) If the notice states that the requirement mentioned in subsection (6) is to continue and the person to whom the notice relates appears before the Magistrate's Court or the Summary Court, that court has —

(a) the powers and duties conferred on it under subsection (1); and

(b) power to enlarge, in the surety's absence, a recognisance conditioned so that the surety is bound to ensure that the person charged appears before the Supreme Court.

(9) The Magistrate's Court and the Summary Court have jurisdiction to hear and determine applications relating to the further remand (in custody or on bail) of a person who has been sent to the Supreme Court for trial in respect of one or more offences.

(10) If the defendant has not yet reached the age of 18, the court must adapt its procedure in relation to remand in whatever way the interests of justice require to take account of the person's age and level of understanding.
[Admin of Justice Ord. Sched. 4; UK Criminal Justice Act 1987 s.5; Criminal Justice Act 1991 Sched.6 para.2; Crime & Disorder Act 1998 ss.51E and 52]

195. Documents containing evidence
(1) Whenever a person is sent to the Supreme Court for trial in respect of one or more offences, copies of the documents containing the evidence on which the charge or charges are based must be —

(a) served on the person being sent to the Supreme Court for trial; and

(b) forwarded to the Supreme Court,

within 56 days.

(2) A judge may on an application under subsection (3) extend (and, if need be, further extend) the period specified in subsection (1).

(3) An application for an extension —

(a) may be made and dealt with orally or in writing; and

(b) if dealt with in writing, may be dealt with by the judge while outside the Falkland Islands.

(4) The following documents fall within subsection (1) —

(a) a statement of a kind which is capable of being admitted in evidence under section 408 (Proof by written statement);

(b) any document which by virtue of any enactment is evidence in proceedings before the Magistrate's Court or the Summary Court;

(c) any document which by virtue of any enactment is admissible, or may be used, or is to be admitted or received, in or as evidence in such proceedings;

(d) any document which by virtue of any enactment may be considered in such proceedings;

(e) any document the production of which constitutes proof in such proceedings by virtue of any enactment;

(f) any document by the production of which evidence may be given in such proceedings by virtue of any enactment.

(5) The Chief Justice may, by criminal procedure rules, make provision —

(a) requiring the documents referred to in subsection (4) to be sent to other persons specified in the rules;

(b) requiring additional material to be sent with a sending notice;

(c) regulating an application for the extension or further extension of a period under subsection (2); and

(d) making any further provision in relation to sending notices that the Chief Justice considers appropriate.

[Admin of Justice Ord. Sched.4; UK Criminal Justice Act 1987 s.5; Criminal Justice Act 1991 Sched.6 para.4; Crime & Disorder Act 1998 Sched. 3]

196. Public notice of outcome

(1) When the Magistrate's Court or the Summary Court sends any person for trial, the Clerk of the court must, on the day on which the sending proceedings are concluded or the next day, cause to be displayed in a part of the court house to which the public have access a notice —

(a) in either case giving the person's name, address and age, if known; and

(b) stating the charge or charges on which the person is sent for trial.

(2) This section has effect subject to section 200 restricting the reporting of sending proceedings.

(3) A notice displayed pursuant to subsection (1) must not contain the name or address of any person under the age of 18 years unless the Magistrate's Court or the Summary Court has stated that in its opinion the person should be mentioned in it for the purpose of avoiding injustice to the person.

[UK Magistrates Courts Act 1980 s.6 (part) adapted]

197. Avoidance of delay

(1) If a sending notice under section 193 has been given in relation to a person, the person must appear or be brought before the Supreme Court at the next session of the court after the notice has been given, unless the Chief Justice otherwise directs in the interests of justice and in accordance with any relevant criminal procedure rules.

(2) If a sending notice under section 193 has been given in relation to any case, the Supreme Court and the Magistrate's Court or the Summary Court, as the case may be, when exercising functions in relation to the case, must in exercising those functions, have regard to the desirability of avoiding prejudice to the welfare of any relevant child witness that may be occasioned by unnecessary delay in bringing the case to trial.

(3) In this section "relevant child witness" means a child who will be called as a witness at the trial and who is alleged —

(a) to be a person against whom an offence to which the notice of transfer relates was committed; or

(b) to have witnessed the commission of such an offence.

[UK Criminal Justice Act 1991 Sched.6 para.7 adapted]

198. Filing of indictment and evidence

(1) Within 56 days (or any longer time a judge allows) of the order sending a defendant to the Supreme Court for trial, the Attorney General must —

(a) draw up an indictment in accordance with the provisions of this Ordinance;

(b) cause the indictment to be filed (together with copies of the statements of evidence of the witnesses upon whose evidence the prosecution intends to rely) in the registry of the

Supreme Court; and

(c) cause a copy of it to be served on the defendant.

(2) In an indictment drawn up pursuant to this section, the Attorney General may charge the defendant with any offence which, in the opinion of the Attorney General, is disclosed by the documentary evidence, either in addition to, or in substitution for, the offence on which the defendant has been sent for trial.

(3) In subsection (2), "documentary evidence" includes documents sent to the Supreme Court pursuant to section 195, depositions taken pursuant to section 207 and any exhibit referred to in any such document or deposition.

(4) The defendant may, within 21 days of the service of the indictment and copy statements in accordance with subsection (1), file in the Supreme Court any representations which the defendant wishes the judge to consider in relation to the indictment or the admissibility of any of the statements.

(5) All indictments drawn up pursuant to this section must be in the name of and signed by the Attorney General and must be in a form prescribed by criminal procedure rules or, in the absence of such rules, as the Chief Justice approves.

(6) If the prosecution is brought by a private prosecutor, the references in this section to the Attorney General are to be read as references to the private prosecutor.
[SH Criminal Procedure Ordinance ss.171 and 177 and common law]

Applications for dismissal

199. Applications for dismissal
(1) A person who has been sent to the Supreme Court for trial in respect of one or more offences may apply to the Supreme Court for one or more of the charges in the case to be dismissed.

(2) An application for dismissal may only be made —

(a) after the person is served with copies of the documents containing the evidence on which the charge or charges are based; but

(b) before either —

(i) the person has entered a plea to the charge or charges; or

(ii) a plea to the charge or charges has been entered for the person.

(3) An application for dismissal may —

(a) be made and dealt with in writing (and, if so, may be dealt with by the judge while

outside the Falkland Islands); or

(b) be made orally instead, but only if —

(i) the applicant has given written notice to the Supreme Court of an intention to make the application orally; and

(ii) a judge has decided (having had regard to the relevant issues) that the interests of justice require that the application should be made orally.

(4) Oral evidence may only be given on an application for dismissal —

(a) with the leave of a judge; or

(b) in accordance with an order of a judge.

(5) A judge may only give leave under subsection (4)(a) or make an order under subsection (4)(b) if it appears to the judge (having regard to the relevant issues) that the interests of justice require leave to be given or an order made.

(6) Subsection (7) applies if —

(a) a judge —

(i) gives leave permitting a person to give oral evidence; or

(ii) makes an order requiring a person to give oral evidence; but

(b) the person does not give oral evidence.

(7) If this subsection applies —

(a) the judge hearing or considering an application for dismissal may disregard a document indicating the evidence that the person might have given; or

(b) if there is more than one document indicating the evidence that the person might have given, the judge hearing or considering an application for dismissal may disregard —

(i) all of those documents; or

(ii) one or more of them.

(8) The judge hearing or considering an application for dismissal must dismiss a charge which is the subject of an application if it appears to the judge that the evidence against the applicant would not be sufficient for a jury properly to convict the applicant.

(9) If one or more charges against an applicant are dismissed, then —

(a) if the dismissed charge or charges relate only to one count in an indictment preferred against the applicant, the judge must quash that count;

(b) if the dismissed charge or charges relate to more than one count in one or more indictments, the judge must quash all of those counts;

(c) further proceedings may only be brought on the dismissed charge or charges by the preferment of a voluntary bill of indictment; and

(d) unless the applicant is in custody otherwise than on the dismissed charge or charges, the applicant must be discharged.

(10) A judge may —

(a) issue practice directions about the conduct of applications for dismissal generally; and

(b) make orders about the conduct of particular applications for dismissal.

(11) Without limiting the power in subsection (10), practice directions issued and orders made pursuant to it may make provision about —

(a) the time or stage in the proceedings at which things required (or allowed) to be done under this section are to be done (unless a judge grants leave to do one or more of those things at some other time or stage);

(b) the contents and form of notices or other documents;

(c) the manner in which evidence is to be submitted; and

(d) persons to be served with notices or other material.

[Admin. of justice Ord. Sched.4; UK Criminal Justice Act 1987 s.6; Crime & Disorder Act 1998 Sched. 3]

Reporting restrictions

200. Restriction on reporting sending proceedings

(1) Except as provided by this Part, no person may in the Falkland Islands make a report of a kind described in section 201(1)(a) to (d) of any sending proceedings.

(2) The Magistrate's Court or the Summary Court may, with reference to any sending proceedings, on an application for the purpose made by the prosecutor or any of the defendants, order that subsection (1) does not apply to reports of those proceedings.

(3) If there is only one defendant and he or she objects to the making of an order under subsection (2), the court may make the order only if it is satisfied, after hearing the representations of the prosecutor and defendant, that it is in the interests of justice to do so.

(4) If in the case of 2 or more defendants one of them objects to the making of an order under subsection (2), the court may make the order only if it is satisfied, after hearing the representations of the prosecutor and all the defendants, that it is in the interests of justice to do so.

(5) An order under subsection (2) must not be made in respect of reports of proceedings under subsection (3) or (4), but any decision of the court to make or not to make such an order may be contained in reports published or included in a relevant programme before the time authorised by subsection (6).

(6) If at any time during the proceedings the court proceeds to try summarily the case of one or more of the defendants under Part 16 (Summary Procedure), while committing the other defendant or one or more of the other defendants for trial, it is not unlawful under this section to publish or include in a relevant programme, as part of a report of the summary trial after the court decides so to proceed, a report, containing matter that is not permitted by section 202, of the part of the sending proceedings that takes place before the decision.
[UK Magistrates Courts Act 1980 s.8; Crime & Disorder Act 1998 s.52A]

201. Restriction on reporting applications for dismissal

(1) This section applies to reports of applications for dismissal and proceedings relating to them, including —

(a) every written report published (either by itself or as part of a newspaper or periodical) for distribution or circulation to the public (or a section of it) in the Falkland Islands;

(b) every report included in a programme service intended for reception within the Falkland Islands;

(c) every report included in an audio or video recording intended for distribution to the public (or a section of it) in the Falkland Islands; and

(d) every report —

(i) made in another way (including by e-mail, the internet and other messaging services); and

(ii) intended to be received by the public (or a section of it) within the Falkland Islands.

(2) A person may only make a report to which this section applies to the extent that —

(a) it is not prohibited or restricted by another provision in —

(i) a written law of the Falkland Islands; or

(ii) relevant United Kingdom legislation (as it applies in the Falkland Islands); and

(b) it is permitted under subsection (3).

(3) A report to which this section applies is permitted under this subsection if —

(a) it only contains unrestricted information; or

(b) it contains additional information, but —

(i) an order has been made under section 203 and the report complies with that order;

(ii) section 204(2) applies; or

(iii) section 205(2)] applies.

(4) This section is in addition to, and does not derogate from, the provisions of any other enactment with respect to the publication of reports of court proceedings.
[Admin. of Justice Ord. Sched.4; UK Crime & Disorder Act 1998 Schedule 3]

202. Unrestricted information
For the purpose of sections 200 and 201 "unrestricted information" means the following information about sending proceedings, or proceedings relating to an application for dismissal —

(a) the identity of the court and the name of the judge;

(b) the name, age and address of the defendant (or each of them, if there is more than one;

(c) the offence or offences (or a summary of them) with which the defendant is (or the defendants are) charged;

(d) the names of legal practitioners engaged in the proceedings;

(e) if the proceedings have been adjourned, the date to which they have been adjourned;

(f) the arrangements as to bail; and

(g) whether legal aid has been granted to the defendant (or one or more of them).
[Admin. of Justice Ord. Sched.4; UK Crime & Disorder Act 1998 Schedule 3]

203. Orders allowing additional information to be reported
(1) A judge dealing with an application for dismissal may make an order allowing additional information to be included in reports to which section 201 applies.

(2) An order allowing other information to be included in reports may —

(a) specify what additional information may be reported (and what may not); and

(b) contain conditions about how that information is reported.

(3) Subsection (4) applies if —

(a) there are 2 or more defendants in the same case; and

(b) one or more of them objects to an order being made allowing other information to be included in reports.

(4) If this subsection applies, the court or judge, as the case may be, may only make an order allowing other information to be included in reports —

(a) after each of the defendants has been given the opportunity to make representations; and

(b) if the court or judge is satisfied that it is in the interests of justice that the order be made in those terms.

(5) Proceedings about whether or not to make an order allowing other information in reports may not themselves be reported in reports to which this section applies (even if the order is made), but the decision about whether or not to make an order may be included in a report to which this section applies.
[Admin. of Justice Ord. Sched.4; UK Crime & Disorder Act 1998 Schedule 3]

204. Lifting of reporting restrictions if application for dismissal successful
(1) In relation to reporting of an application for dismissal, subsection (2) applies —

(a) if —

(i) there is only one defendant in a case;

(ii) the defendant applies for dismissal; and

(iii) the application is successful;

(b) if —

(i) there is more than one defendant in a case; but

(ii) only one defendant applies for dismissal; and

(iii) the application is successful; or

(c) if —

(i) there is more than one defendant in a case;

(ii) more than one of the defendants applies for dismissal; and

(iii) all of the applications are successful.

(2) If this subsection applies, reports of applications for dismissal to which section 201 applies may include additional information about the successful application (or applications) and the proceedings relating to that application (or those applications).
[Admin. of Justice Ord. Sched.4; UK Crime & Disorder Act 1998 Schedule 3]

205. Lifting of reporting restrictions at end of case
(1) Subsection (2) applies —

(a) if —

(i) there is only one defendant in a case;

(ii) the defendant applies for dismissal; but

(iii) the application is unsuccessful;

(b) if —

(i) there is more than one defendant in a case; and

(ii) only one of the defendants applies for dismissal; but

(iii) the application is unsuccessful; or

(c) if —

(i) there is more than one defendant in a case; and

(ii) more than one of the defendants applies for dismissal; but

(iii) one or more of the applications is unsuccessful.

(2) If this subsection applies, information about the application (or applications) and the proceedings relating to that application (or those applications) may be included in reports to which section 201 applies —

(a) if there was only one defendant in the case - after the conclusion of the trial; or

(b) if there was more than one defendant in the same case - after the conclusion of the trial of the last of them to be tried.

[Admin. of Justice Ord. Sched.4; UK Crime & Disorder Act 1998 Schedule 3]

206. Reporting restrictions: Offences and penalties

(1) If a report to which either section 200 or section 201 applies is made in contravention of the section, each of the following persons commits an offence —

(a) in the case of a publication of a written report as part of a newspaper or periodical – the proprietor, editor or publisher of the newspaper or periodical;

(b) in the case of a publication of a written report otherwise than as part of a newspaper or periodical - the person who publishes it;

(c) in the case of the inclusion of a report in a programme service —

(i) the provider of the service; and

(ii) the person or persons who have functions in relation to the service that correspond to those of the editor of a newspaper;

(d) in the case of the inclusion of a report in a recording —

(i) the publisher of the recording; and

(ii) the person or persons who have functions in relation to the recording that correspond to those of the editor of a newspaper;

(e) in the case of a report made in another way —

(i) the person making the report; and

(ii) if there is a person who has functions in relation to the report that correspond to those of the editor of a newspaper (or more than one person who has such functions) - that person (or those persons).

Penalty: A fine at level 5 on the standard scale.

(2) Proceedings for an offence under subsection (1) may not be commenced except by or with the consent of the Attorney General.

[Admin. of Justice Ord. Sched.4; UK Crime & Disorder Act 1998 s.52B and Schedule 3]

Taking of depositions, etc.

207. Power of justices to take depositions, etc.

(1) If a person ("the defendant") has been sent for trial to the Supreme Court for trial under this Part, and a justice of the peace is satisfied that —

(a) another person ("the witness") is likely to be able to make on behalf of the prosecutor a written statement containing material evidence for the purposes of proceedings for an offence for which the defendant has been sent for trial; but

(b) the witness will not voluntarily make that statement,

subsection (3) applies.

(2) Subsection (3) also applies if a justice of the peace is satisfied that —

(a) a person ("the witness") is likely to be able to produce on behalf of the prosecutor one or more documents or other exhibits likely to be material evidence for the purposes of proceedings for an offence for which a person has been sent to the Supreme Court for trial; but

(b) the witness will not voluntarily produce them.

(3) If this subsection applies, the justice of the peace must issue a summons directed to the witness requiring the witness to —

(a) attend before a justice at the time and place appointed in the summons; and

(b) do either or both of the following —

(i) have the evidence taken as a deposition;

(ii) produce the documents or other exhibits.

(4) Subsection (5) applies if a justice of the peace is satisfied (by evidence on oath) that —

(a) the witness is likely to be able to —

(i) make on behalf of the prosecutor a written statement containing material evidence for the purposes of proceedings for an offence for which a person has been sent to the Supreme Court for trial;

(ii) produce on behalf of the prosecutor one or more documents or other exhibits likely to be material evidence for the purposes of proceedings for an offence for which a person has been sent to the Supreme Court for trial; or

(iii) do both of those things;

(b) it is probable that a summons under subsection (3) would not procure the result required by it; and

(c) the person is within the Falkland Islands.

(5) If this subsection applies, the justice of the peace may (instead of issuing a summons) issue a warrant to —

(a) arrest the witness; and

(b) bring the witness before a justice at the time and place specified in the warrant.

(6) Subsection (7) applies if —

(a) a witness fails to attend before a justice of the peace in answer to a summons issued under subsection (3);

(b) the justice is satisfied (by evidence on oath) that the witness is likely to be able to —

(i) make on behalf of the prosecutor a written statement containing material evidence for the purposes of proceedings for an offence for which a person has been sent to the Supreme Court for trial;

(ii) produce on behalf of the prosecutor one or more documents or other exhibits likely to be material evidence for the purposes of proceedings for an offence for which a person has been sent to the Supreme Court for trial; or

(iii) do both of those things;

(c) the justice is satisfied (by evidence on oath or in some other way) that —

(i) the witness has been duly served with the summons; and

(ii) a reasonable sum has been paid or offered to the witness for costs and expenses; and

(d) it appears to the justice that there is no just excuse for the failure.

(7) If this subsection applies, the justice of the peace may issue a warrant to —

(a) arrest the witness; and

(b) bring the witness before a justice at the time and place specified in the warrant.

(8) Subsection (9) applies if —

(a) a summons is issued under subsection (3) or a warrant is issued under subsection (5) or (7); and

(b) the summons or warrant is issued with a view to securing that the evidence of the witness is taken as a deposition.

(9) If this subsection applies, the time appointed in the summons (or specified in the warrant) must be appointed (or specified) so that the evidence can be taken as a deposition before the time by which copies of evidence must be served and forwarded under section 195.
[Admin. of Justice Ord. Sched.4; UK Crime & Disorder Act 1998 Sched. 3]

208. Taking of depositions: Supplementary

(1) Subsections (2) to (5) apply if a person attending (or brought) before a justice of the peace pursuant to section 207 refuses (without just excuse) to —

(a) have evidence taken as a deposition;

(b) produce the documents or other exhibits; or

(c) do either of those things.

(2) If this subsection applies, the justice of the peace may commit the witness to custody.

(3) A committal under subsection (2) must be ended once —

(a) if the witness had attended (or been brought) before a justice of the peace for evidence to be taken as a deposition - that evidence has been taken as a deposition;

(b) if the witness had attended (or been brought) before a justice to produce one or more documents or other exhibits, the documents or other exhibits have been produced;

(c) if the witness had attended (or been brought) before a justice to do both of those things, both of those things have been done.

(4) A committal under subsection (2) also comes to an end after the witness has been in custody on that committal for a period of one month.

(5) If this subsection applies —

(a) the justice of the peace may (instead of or as well as committing the witness to custody) impose on the witness a fine of up to level 5 on the standard scale;

(b) that fine is to be treated as a sum adjudged to be paid on a conviction.

(6) Subsection (7) applies to a person if either or both of the following things have been done —

(a) the person has been committed to custody under subsection (2);

(b) a fine has been imposed on the person under subsection (5).

(7) A person to whom this subsection applies may appeal to a judge against the committal or fine (or both of them).

(8) An appeal under subsection (7) —

(a) may be made and dealt with orally or in writing; and

(b) if dealt with in writing, may be dealt with by the judge while outside the Falkland Islands.

(9) If, pursuant to section 207, a person has evidence taken as a deposition, the justice of the peace before whom the deposition was taken must arrange for copies of the deposition to be sent (as soon as is reasonably practicable) to the prosecutor and the Supreme Court.

(10) If, pursuant to section 207, a person produces an exhibit which is a document, the justice of the peace to whom the document was produced must arrange for copies of the document to be sent (as soon as is reasonably practicable) to the prosecutor and the Supreme Court.

(11) If, pursuant to this section, a person produces an exhibit which is not a document, the justice of the peace to whom the exhibit was produced must arrange for the following information to be provided to the prosecutor and the Supreme Court as soon as is reasonably practicable —

(a) the fact that the exhibit has been produced; and

(b) the nature of the exhibit.

[Admin. of Justice Ord. Sched.4; UK Crime & Disorder Act 1998 Sched. 3]

209. Use of depositions as evidence

(1) Unless subsection (2) applies, a deposition taken under section 207 may (without further proof) be read as evidence of the person from whom it was taken on the trial of a defendant for—

(a) an offence for which the person was sent to the Supreme Court for trial; or

(b) another offence arising out of the same transaction or set of circumstances.

(2) This subsection applies (and a deposition may not be read as evidence) if one or more of the following apply —

(a) it is proved that the deposition was not signed by the justice of the peace by whom it purports to have been signed;

(b) the judge presiding over the trial orders that the deposition is not to be read as evidence; or

(c) a party to the proceedings objects to the deposition being read as evidence, unless the judge presiding over the trial —

(i) considers that the interests of justice require that the objection should have no effect;

and

(ii) orders that the deposition may be read as evidence.
[Admin. of Justice Ord. Sched.4; UK Crime & Disorder Act 1998 Sched. 3]

PART 13 – COMMITTAL FOR SENTENCE

210. Committal for sentence by Summary Court
(1) If, on the conviction of a person for an offence for which the maximum penalty prescribed by law exceeds the maximum penalty which the Summary Court can impose, it appears to the court, after obtaining information regarding the character and antecedents of the person, that a sentence should be imposed greater than that which it may lawfully impose, the court may commit the person to the Magistrate's Court for sentence.

(2) If the court commits a person under subsection (1), section 211 applies.

(3) A person may be committed under this section either in custody or on bail.

(4) Subsections (1) and (2) apply to corporations as they do to individuals.
[UK Powers of Criminal Courts (Sentencing) Act 2000 s.3]

211. Power to commit for other offences
(1) If under section 210 the Summary Court commits a person to the Magistrate's Court for sentence, the court may also commit the person, in custody or on bail as the case may require, to the Magistrate's Court to be dealt with in respect of —

(a) any other offence in respect of which the Summary Court has power to deal with the person and of which the person has been convicted by that Court;

(b) any suspended sentence in respect of which the Summary Court has power under section 569 to deal with the person;

(c) any offence which appears to the Summary Court to have been committed by the person while the subject of an order of conditional discharge.

(2) The other offence mentioned in subsection (1)(a) may be an offence in respect of which the Summary Court has a power or duty under the Road Traffic Ordinance to order the person to be disqualified from holding or obtaining a driving licence.
[UK Powers of Criminal Courts (Sentencing) Act 2000 s.6]

212. Duty of Magistrate's Court on a committal for sentence
(1) If under section 210 the Summary Court commits a person to the Magistrate's Court for sentence, the Magistrate's Court —

(a) must inquire into the circumstances of the case; and

(b) may deal with the person in any way in which the Magistrate's Court could have dealt with the person if the person had just been convicted of the offence before that court.

(2) Subsection (1) does not apply if the Summary Court commits a person under section 211(1)(b) to be dealt with by the Magistrate's Court in respect of a suspended sentence, but in such a case the powers under section 568 (Power of court on conviction for further offence) are exercisable by the Magistrate's Court.

(3) Without affecting subsection (1) or (2), if the Summary Court commits a person to the Magistrate's Court for sentence, any duty or power which, apart from this section, would fall to be discharged or exercised by the Summary Court must not be discharged or exercised by that court but must be discharged or may be exercised by the Magistrate's Court.
UK Powers of Criminal Courts (Sentencing) Act 2000 ss.5 and 7]

213. Committal of youths for sentence
If under section 210 the Summary Court commits a youth to the Magistrate's Court for sentence, the Magistrate's Court —

(a) must constitute itself as a Youth Court;

(b) must enquire into the circumstances of the case; and

(c) may deal with the youth in any manner in which the Magistrate's Court might have dealt with the youth if the youth had just been convicted by that court sitting as a Youth Court.
[Criminal Justice Ord. s.58 modified]

214. Committal for sentence: Supplementary provisions
(1) If under section 210 the Summary Court commits a person to the Magistrate's Court for sentence following a conviction by the Summary Court, the Clerk of the court must —

(a) give notice to the prosecutor and the Chief Police Officer of the date on which the case will be dealt with by the Magistrate's Court; and

(b) send to the Magistrate's Court a copy of the court record relating to the conviction, certified by the Clerk of the court.

(2) For purposes of the grant of legal aid committal for sentence may be regarded as an appeal against sentence.

CHAPTER 6 - TRIAL

PART 14 – DISCLOSURE OF MATERIAL
Preliminary

215. Application of Part
(1) This Part applies when —

(a) a person is sent for trial on indictment to the Supreme Court; or

(b) a person is charged with an imprisonable summary offence and pleads not guilty to the charge in court.

(2) This Part does not apply in relation to an alleged offence into which a criminal investigation began before the commencement of this Part, unless the suspect is charged after the commencement of this Part.

(3) If there is more than one defendant in any proceedings, this Part applies separately in relation to each defendant.

(4) Subsections (3) to (6) of section 216 and sections 237 and 238 (confidentiality) have effect subject to sections 229 to 234 (disclosure of protected material).
[Criminal Procedure & Investigations Ord. ss.2 and 3; UK Criminal Procedure & Investigations Act 1996 s.1]

Duty of disclosure

216. Initial duty of prosecutor to disclose
(1) The prosecutor must —

(a) disclose to the defendant any prosecution material which has not previously been disclosed to the defendant and which might reasonably be considered capable of undermining the case for the prosecution against the defendant or of assisting the case for the defendant; or

(b) give to the defendant a written statement that there is no material of a description mentioned in paragraph (a).

(2) For the purposes of this section prosecution material is material which —

(a) is in the prosecutor's possession, and came into his or her possession in connection with the case for the prosecution against the defendant; or

(b) in compliance with this Ordinance and any relevant code of practice the prosecutor has inspected in connection with the case for the prosecution against the defendant.

(3) If material consists of information which has been recorded in any form, the prosecutor discloses it for the purposes of this section —

(a) by ensuring that a copy is made of it and that the copy is given to the defendant; or

(b) if in the prosecutor's opinion that is not practicable or not desirable - by allowing the defendant to inspect it at a reasonable time and a reasonable place or by taking steps to ensure that the defendant is allowed to do so.

(4) A copy may be in such form as the prosecutor thinks fit and need not be in the same form as that in which the information has already been recorded.

(5) If material consists of information which has not been recorded, the prosecutor discloses it for the purposes of this section by ensuring that it is recorded in such form as the prosecutor thinks fit and —

(a) by securing that a copy is made of it and that the copy is given to the defendant; or

(b) if in the prosecutor's opinion that is not practicable or not desirable - by allowing the defendant to inspect it at a reasonable time and a reasonable place or by taking steps to ensure that he or she is allowed to do so.

(6) If material does not consist of information, the prosecutor discloses it for the purposes of this section by allowing the defendant to inspect it at a reasonable time and a reasonable place or by taking steps to ensure that the defendant is allowed to do so.

(7) Material must not be disclosed under this section to the extent that the court, on an application by the prosecutor, concludes that it is not in the public interest to disclose it and orders accordingly.
[Criminal Procedure & Investigations Ord. s.5; UK Criminal Procedure & Investigations Act 1996 s.3]

217. Initial duty to disclose: Further provisions
(1) The prosecutor must act under section 216 —

(a) as soon as is reasonably practicable after the defendant is sent to the Supreme Court for trial, in the case of an indictment-only offence, or of a linked offence included in an indictment, as provided by Part 12 (Sending for Trial);

(b) as soon as is reasonably practicable after the defendant pleads not guilty, in the case of an imprisonable summary offence.

(2) In determining what is reasonably practicable —

(a) the court may take account of the nature or volume of the material concerned; and

(b) the nature of material may be defined by reference to the prosecutor's belief that the question of non-disclosure on grounds of public interest may arise.

(3) If —

(a) the prosecutor acts under section 216; and

(b) before so doing he or she is given a document of a kind described in section 216(1),

the prosecutor must give the document to the defendant at the same time as the prosecutor acts under section 216.
[Criminal Procedure & Investigations Ord. s.6; UK Criminal Procedure & Investigations Act 1996 ss.4 and 13]

218. Compulsory disclosure by defendant
(1) If this Part applies by virtue of section 215(1)(a), this section does not apply unless the prosecutor has served on the defendant a copy of the indictment and a copy of the set of documents containing the evidence which is the basis of the indictment.

(2) If this Part applies by virtue of section 215(1)(b), this section does not apply unless the prosecutor has served on the defendant a copy of the set of documents containing the evidence which is the basis of the charge.

(3) If this section applies, and the prosecutor complies or purports to comply with section 216, the defendant must give a defence statement to the court and the prosecutor.

(4) If there are other defendants in the proceedings and the court so orders, the defendant must also give a defence statement to every other defendant specified by the court.

(5) The court may make an order under subsection (4) either on its own initiative or on the application of any party.

(6) A defence statement that has to be given to the court and the prosecutor under subsection (4) must be given during the period which, by virtue of section 228, is the relevant period for this section.

(7) A defence statement that has to be given to a co-defendant under subsection (6) must be given within the period the court specifies.
[Criminal Procedure & Investigations Ord. s.7; UK Criminal Procedure & Investigations Act 1996 s.5]

219. Contents of defence statement
(1) For the purposes of this Part a defence statement is a written statement —

(a) setting out the nature of the defendant's defence, including any particular defences on which the defendant intends to rely;

(b) indicating the matters of fact on which the defendant takes issue with the prosecution;

(c) setting out, in the case of each such matter, why the defendant takes issue with the prosecution;

(d) setting out particulars of the matters of fact on which the defendant intends to rely for the purpose of the defence; and

(e) indicating any point of law (including any point as to the admissibility of evidence or an abuse of process) which the defendant wishes to take, and any authority on which the defendant intends to rely for that purpose.

(2) A defence statement that discloses an alibi must give particulars of it, including —

(a) the name, address and date of birth of any witness the defendant believes is able to give evidence in support of the alibi, or as many of those details as are known to the defendant when the statement is given;

(b) any information in the defendant's possession which might be of material assistance in identifying or finding any such witness in whose case any of the details mentioned in paragraph (a) are not known to the defendant when the statement is given.

(3) For the purposes of this section, evidence in support of an alibi is evidence tending to show that by reason of the presence of the defendant at a particular place or in a particular locality at a particular time he or she was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission.

(4) Criminal procedure rules may make provision as to the matters that, by virtue of subsection (1), are to be included in defence statements.
[UK Criminal Procedure & Investigations Act 1996 s.6A ins. by CJ Act 2003 and amended]

220. Updated disclosure by defendant
(1) If the defendant has, before the beginning of the relevant period for this section, given a defence statement under section 218, the defendant must during that period give to the court and the prosecutor either —

(a) a defence statement under this section (an "updated defence statement"); or

(b) a statement of the kind mentioned in subsection (4).

(2) The relevant period for this section is decided under section 228.

(3) An updated defence statement must comply with the requirements imposed by or under section 219 by reference to the state of affairs at the time when the statement is given.

(4) Instead of an updated defence statement, the defendant may give a written statement stating that the defendant has no changes to make to the defence statement which was given under section 218.

(5) If there are other defendants in the proceedings and the court so orders, the defendant must also give either an updated defence statement or a statement of the kind mentioned in subsection (4), within a period specified by the court, to every other defendant so specified.

(6) The court may make an order under subsection (5) either on its own initiative or on the application of any party.
[UK Criminal Procedure & Investigations Act 1996 s.6B ins. by CJ Act 2003]

221. Notification of intention to call defence witnesses
(1) The defendant must give to the court and the prosecutor a notice indicating whether the defendant intends to call any persons (other than himself or herself, being an individual) as witnesses at the trial and, if so —

(a) giving the name, address and date of birth of each such proposed witness, or as many of those details as are known to the defendant when the notice is given;

(b) providing any information in the defendant's possession which might be of material assistance in identifying or finding any such proposed witness in whose case any of the details mentioned in paragraph (a) are not known to the defendant when the notice is given.

(2) Details do not have to be given under this section to the extent that they have already been given under section 219(2).

(3) The defendant must give a notice under this section during the period which, by virtue of section 228, is the relevant period for this section.

(4) If, following the giving of a notice under this section, the defendant —

(a) decides to call a person (other than himself or herself, being an individual) who is not included in the notice as a proposed witness, or decides not to call a person who is so included; or

(b) discovers any information which, under subsection (1), the defendant would have had to include in the notice if the defendant had been aware of it when giving the notice,

the defendant must give an appropriately amended notice to the court and the prosecutor.
[UK Criminal Procedure & Investigations Act 1996 s.6C ins. by CJ Act 2003]

222. Notification of names of experts instructed by defendant
(1) If the defendant instructs a person with a view to that person providing any expert opinion for possible use as evidence at the trial of the defendant, the defendant must give to the court and the prosecutor a notice specifying the person's name and address.

(2) A notice does not have to be given under this section specifying the name and address of a person whose name and address have already been given under section 221.

(3) A notice under this section must be given during the period which, by virtue of 228, is the relevant period for this section.
[UK Criminal Procedure & Investigations Act 1996 s.6D ins. by CJ Act 2003]

223. Disclosure by defendant: Further provisions

(1) If a defendant's legal practitioner purports to give on behalf of the defendant —

(a) a defence statement under section 218 or 220; or

(b) a statement of the kind mentioned in section 220(4),

the statement is, unless the contrary is proved, deemed to be given with the authority of the defendant.

(2) If it appears to the person presiding at a pre-trial hearing that a defendant has failed to comply fully with section 218, 220 or 221, so that there is a possibility of comment being made or inferences drawn under section 227(5), the person presiding must warn the defendant accordingly.

(3) The judge in a trial before a judge and jury —

(a) may direct that the jury be given a copy of any defence statement; and

(b) if he or she does so, may direct that it be edited so as not to include references to matters evidence of which would be inadmissible.

(4) A direction under subsection (3) —

(a) may be made either on the judge's own initiative or on the application of any party;

(b) may be made only if the judge is of the opinion that seeing a copy of the defence statement would help the jury to understand the case or to resolve any issue in the case.

(5) The reference in subsection (3) to a defence statement is a reference —

(a) if the defendant has given only an initial defence statement (that is, a defence statement given under section 218 - to that statement;

(b) if the defendant has given both an initial defence statement and an updated defence statement (that is, a defence statement given under section 220) - to the updated defence statement;

(c) if the defendant has given both an initial defence statement and a statement of the kind mentioned in section 220(4) - to the initial defence statement.

[UK Criminal Procedure & Investigations Act 1996 s.6E ins. by CJ Act 2003]

224. Continuing duty of prosecutor to disclose

(1) This section applies —

(a) after the prosecutor has complied or purported to comply with section 216; and

(b) before the defendant is acquitted or convicted or the prosecutor decides not to proceed with the case.

(2) The prosecutor must keep under review the question whether at any given time (and, in particular, following the giving of a defence statement) there is prosecution material which —

(a) might reasonably be considered capable of undermining the case for the prosecution against the defendant or of assisting the case for the defendant; and

(b) has not been disclosed to the defendant.

(3) If at any time there is any such material as is mentioned in subsection (2) the prosecutor must disclose it to the defendant as soon as is reasonably practicable (or within the period mentioned in subsection (5)(a), if that applies).

(4) In applying subsection (2) by reference to any given time, the state of affairs at that time (including the case for the prosecution as it stands at that time) must be taken into account.

(5) If the defendant has given a defence statement under section 218 or 220 —

(a) if as a result of that statement the prosecutor is required by this section to make any disclosure, or further disclosure, he or she must do so as soon as is reasonably practicable after the defendant gives the statement;

(b) if the prosecutor considers that he or she is not so required, the prosecutor must as soon as is reasonably practicable after the defendant gives the statement give the defendant a written statement to that effect.

(6) For the purposes of this section prosecution material is material —

(a) which is in the prosecutor's possession and came into his or her possession in connection with the case for the prosecution against the defendant; or

(b) which, in compliance with any relevant code of practice, the prosecutor has inspected in connection with the case for the prosecution against the defendant.

(7) Subsections (3) to (6) of section 216 apply for the purposes of this section as they apply for the purposes of that section.

(8) Material must not be disclosed under this section to the extent that the court, on an application by the prosecutor, concludes it is not in the public interest to disclose it and orders accordingly.

(9) Material must not be disclosed under this section to the extent that it is material the disclosure of which is prohibited by any other law.

(10) Section 217(2) applies for the purpose of determining whether action has been taken as soon as is reasonably practicable.
[UK Criminal Procedure & Investigations Act 1996 s.7A ins. by CJ Act 2003]

225. Application by defendant for disclosure

(1) This section applies if the defendant has given a defence statement under section 218 or 220 and the prosecutor has complied or purported to comply with section 224(5) or has failed to comply with it.

(2) If the defendant has at any time reasonable cause to believe that there is prosecution material which is required by section 224 to be disclosed to the defendant and has not been, the defendant may apply to the court for an order requiring the prosecutor to disclose it to the defendant.

(3) For the purposes of this section prosecution material is material which —

(a) is in the prosecutor's possession and came into his or her possession in connection with the case for the prosecution against the defendant;

(b) in compliance with any relevant code of practice the prosecutor has inspected in connection with the case for the prosecution against the defendant; or

(c) falls within subsection (4) or (5).

(4) Material falls within this subsection if, in compliance with any relevant code of practice, the prosecutor must, if he or she asks for the material, be given a copy of it or be allowed to inspect it in connection with the case for the prosecution against the defendant.

(5) Material falls within this subsection if it is material of a kind described in section 216(1)(a) which the defendant reasonably believes is held by any department of the Government.

(6) The defendant cannot apply to the court for an order for the disclosure of material as mentioned in subsection (4) unless —

(a) the defendant has asked the prosecutor in writing for a copy of specified information that the defendant reasonably believes is held by a department of the Government; and

(b) the prosecutor has in writing refused the request.

(7) Material must not be disclosed under this section to the extent that the court, on an application by the prosecutor, concludes it is not in the public interest to disclose it and orders accordingly.

(8) Material must not be disclosed under this section to the extent that it is material the disclosure of which is prohibited by any other law.
[Criminal Procedure & Investigations Ord. s.10; UK Criminal Procedure & Investigations Act 1996 s.8]

226. Prosecutor's failure to observe time limits

(1) This section applies if the prosecutor —

(a) purports to act under section 216 but fails to act as soon as is reasonably practicable, as required by section 217(1); or

(b) purports to act under section 224(5) but fails to act as soon as is reasonably practicable as required by that section.

(2) A failure by the prosecution to act as soon as is reasonably practicable —

(a) does not on its own constitute grounds for staying the proceedings for abuse of process; but

(b) does constitute such grounds if it involves such delay by the prosecutor that the defendant is denied a fair trial.

[Criminal Procedure & Investigations Ord. s.12; UK Criminal Procedure & Investigations Act 1996 s.10 adapted]

227. Faults in disclosure by defendant

(1) This section applies in the 3 cases set out in subsections (2), (3) and (4).

(2) The first case is where section 218 applies and the defendant —

(a) fails to give an initial defence statement;

(b) gives an initial defence statement but does so after the end of the period which, by virtue of section 228, is the relevant period for section 218;

(c) is required by section 210 to give either an updated defence statement or a statement of the kind mentioned in subsection (4) of that section but fails to do so;

(d) gives an updated defence statement or a statement of the kind mentioned in section 210(4) but does so after the end of the period which, by virtue of section 228, is the relevant period for section 220;

(e) sets out inconsistent defences in the defence statement; or

(f) at the trial —

(i) puts forward a defence which was not mentioned in the defence statement or is different from any defence set out in that statement;

(ii) relies on a matter which, in breach of the requirements imposed by or under section 219, was not mentioned in the defence statement;

(iii) adduces evidence in support of an alibi without having given particulars of the alibi in the defence statement; or

(iv) calls a witness to give evidence in support of an alibi without having complied with section 219(2)(a) or (b) as regards the witness in the defence statement.

(3) The second case is where section 219 applies, the defendant gives an initial defence statement, and the defendant —

(a) gives the initial defence statement after the end of the period which, by virtue of section 228, is the relevant period for section 208; or

(b) does any of the things mentioned in paragraphs (c) to (f) of subsection (2).

(4) The third case is where the defendant —

(a) gives a witness notice but does so after the end of the period which, by virtue of section 228, is the relevant period for section 221; or

(b) at the trial calls a witness (other than himself or herself, being an individual) not included, or not adequately identified, in a witness notice.

(5) If this section applies —

(a) the court or any other party may make any comment that appears appropriate;

(b) the court or jury may draw inferences that appear proper in deciding whether the defendant is guilty of the offence concerned.

(6) If —

(a) this section applies by virtue of subsection (2)(f)(ii)(including that provision as it applies by virtue of subsection (3)(b)); and

(b) the matter which was not mentioned is a point of law (including any point as to the admissibility of evidence or an abuse of process) or an authority,

comment by another party under subsection (5)(a) may be made only with the leave of the court.

(7) If this section applies by virtue of subsection (4), comment by another party under subsection (5)(a) may be made only with the leave of the court.

(8) If the defendant puts forward a defence which is different from any defence set out in the defence statement, in doing anything under subsection (5) or in deciding whether to do anything under it the court must have regard to —

(a) the extent of the differences in the defences; and

(b) whether there is any justification for it.

(9) If the defendant calls a witness whom the defendant has failed to include, or to identify adequately, in a witness notice, in doing anything under subsection (5) or in deciding whether to do anything under it the court must have regard to whether there is any justification for the failure.

(10) A person must not be convicted of an offence solely on an inference drawn under subsection (5).

(11) If the defendant has given a statement of the kind mentioned in section 221(4), then, for the purposes of subsection (2)(f)(ii) and (iv), the question as to whether there has been a breach of the requirements imposed by or under section 220 or a failure to comply with section 219(2)(a) or (b) is to be decided —

(a) by reference to the state of affairs at the time when that statement was given; and

(b) as if the defence statement was given at the same time as that statement.

(12) In this section —

(a) "initial defence statement" means a defence statement given under section 218;

"updated defence statement" means a defence statement given under section 220; and

"witness notice" means a notice given under section 221;

(b) a reference simply to a defendant's "defence statement" is a reference —

(i) if the defendant has given only an initial defence statement - to that statement;

(ii) if the defendant has given both an initial and an updated defence statement - to the updated defence statement;

(iii) if the defendant has given both an initial defence statement and a statement of the kind mentioned in section 220(4) - to the initial defence statement;

(c) a reference to evidence in support of an alibi is to be construed in accordance with section 219(3).

[Criminal Procedure & Investigations Ord. s.13; UK Criminal Procedure & Investigations Act 1996 s.11]

228. Time limit for defence disclosure

(1) This section has effect for the purpose of determining the relevant period for action to be taken by a defendant under section 218 or any of sections 220 to 222.

(2) Subject to this section, the relevant period is a period beginning with the day on which the prosecutor complies, or purports to comply, with section 216 and ending —

(a) in the case of summary proceedings - at the end of 14 days after that day;

(b) in the case of proceedings on indictment – at the end of 28 days after that day.

(3) The period referred to in subsection (2) may by order, upon an application made by the defendant before the expiration of that period, be extended by the court at its discretion.

(4) An application under subsection (3) must —

(a) state that the defendant believes, on reasonable grounds, that it is not possible for the defendant to take action as required by any of the sections mentioned in subsection (1) during the period referred to in subsection (2);

(b) specify the grounds for so believing; and

(c) specify the number of days by which the defendant wishes that period to be extended.

(5) The court must not make an order under subsection (3) unless it is satisfied that the defendant cannot reasonably give or, as the case may be, could not reasonably have taken the required action during the period referred to in subsection (2).

(6) The court by order may further extend the relevant period on further application made by the defendant before the expiry of the extended period and subsections (4) and (5) apply for the purposes of an order under this subsection as they apply for the purposes of an order under subsection (3).

(7) There is no limit on the number of applications that may be made under subsection (3) as applied by subsection (6) and on a second or subsequent application the court has the same powers as on the first application.

(8) In the application of this section, the relevant period means that period as extended or further extended by an order of the court under subsection (3) or (6).

(9) If the relevant period would, apart from this subsection, expire on a Saturday, Sunday or public holiday, the period is to be treated as expiring on the next day which is not one of those days.

[Criminal Procedure & Investigations Ord. s.14; UK Criminal Procedure & Investigations Act 1996 s.12 and Defence Disclosure Time Limits Regulations 1997 (S.I. 1997 No. 684) adapted]

Sexual offences: Protected material

229. Meaning of "protected material", etc.

(1) In this Part, "protected material", in relation to proceedings for a sexual offence, means a copy (in whatever form) of any of the following material, namely —

(a) a statement relating to that or any other sexual offence made by any victim of the offence (whether the statement is recorded in writing or in any other form);

(b) a photograph or pseudo-photograph of any such victim; or

(c) a report of a medical examination of the physical condition of any such victim,

which is a copy given by the prosecutor to any person under this Part.

(2) For the purposes of subsection (1) a person is, in relation to any proceedings for a sexual offence, a victim of that offence if —

(a) the charge, summons or indictment by which the proceedings are commenced names that person as a person in relation to whom that offence was committed; or

(b) that offence can, in the prosecutor's opinion, be reasonably regarded as having been committed in relation to that person,

and a person is, in relation to any such proceedings, a victim of any other sexual offence if that offence can, in the prosecutor's opinion, be reasonably regarded as having been committed in relation to that person.

(3) In this Part, where the context so permits, but subject to subsection (4) —

(a) references to protected material include references to any part of such material; and

(b) references to a copy of any protected material include references to any part of such a copy.

(4) Nothing in this Part —

(a) so far as it refers to a defendant making any copy of —

(i) any protected material; or

(ii) a copy of any such material,

applies to a manuscript copy which is not a word-for-word copy of the whole of that material or copy; or

(b) so far as it refers to a defendant having in his or her possession a copy of any protected material, applies to a manuscript copy made by the defendant which is not a verbatim copy of the whole of that material.

(5) In this Part —

"defendant", in relation to any proceedings for a sexual offence, means any person charged with that offence (whether or not the person has been convicted);

"inform" means inform in writing;

"photograph" means any process by means of which an image may be produced and includes —

(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;

"pseudo-photograph" means an image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph;

"relevant proceedings" in relation to the disclosure of protected material means the proceedings for the purposes of which material has been disclosed or any further proceedings for the sexual offence in question.
[UK Sexual Offences (Protected Material) Act 1997 ss.1 & 2 am. by Criminal Justice Act 2003]

230. Disclosures by prosecutor
(1) If, in connection with any proceedings for a sexual offence, any statement or other material falling within any of paragraphs (a) to (c) of section 229 (1) would (apart from this section) fall to be disclosed by the prosecutor to the defendant —

(a) the prosecutor must not disclose that material to the defendant; and

(b) it must instead be disclosed under this Part in accordance with whichever of subsections (2) and (3) below is applicable.

(2) If —

(a) the defendant has a legal practitioner; and

(b) the defendant's legal practitioner gives the prosecutor the undertaking required by section 231,

the prosecutor must disclose the material in question by giving a copy of it to the defendant's legal practitioner.

(3) If subsection (2) is not applicable, the prosecutor must disclose the material in question by giving a copy of it to the appropriate person for the purposes of section 232 in order for that person to show that copy to the defendant under that section.

(4) If under this Part a copy of any material falls to be given to any person by the prosecutor, the copy —

(a) may be in such form as the prosecutor thinks fit; and

(b) if the material consists of information which has been recorded in any form, need not be in the same form as that in which it has been recorded.

(5) Once a copy of any material is given to any person under this Part by the prosecutor, the copy is, in accordance with section 229(1), protected material for the purposes of this Part.
[UK Sexual Offences (Protected Material) Act 1997 s.3 am. by Criminal Justice Act 2003]

231. Disclosure to defendant's legal practitioner
(1) For the purposes of this Part, the undertaking which a defendant's legal practitioner is required to give in relation to any protected material given to him or her under this Part is an undertaking to discharge the obligations set out in subsections (2) to (7) of this section.

(2) The legal practitioner must take reasonable steps to ensure that —

(a) the protected material, or any copy of it, is only shown to the defendant in circumstances where it is possible to exercise adequate supervision to prevent the defendant retaining possession of the material or copy or making a copy of it; and

(b) the protected material is not shown and no copy of it is given, and its contents are not otherwise revealed, to any person other than the defendant, except so far as it appears to the legal practitioner necessary to show the material or give a copy of it to any such person —

(i) in connection with any relevant proceedings; or

(ii) for the purposes of any assessment or treatment of the defendant (whether before or after conviction).

(3) The legal practitioner must inform the defendant that —

(a) the protected material is such material for the purposes of this Part;

(b) the defendant can only inspect that material, or any copy of it, in the circumstances described in subsection (2)(a); and

(c) it would be an offence for the defendant —

(i) to have the material, or any copy of it, in his or her possession except when inspecting it or the copy in such circumstances; or

(ii) to give the material or any copy of it, or otherwise reveal its contents, to any other person.

(4) The legal practitioner must, if the protected material or a copy of it has been shown or given in accordance with subsection (2)(b)(i) or (ii) to a person ('A') other than the defendant, inform A that he or she must not give any copy of the material, or otherwise reveal its contents —

(a) to any other person other than the defendant; or

(b) to the defendant except in the circumstances described in subsection (2)(a),

and that it would be an offence for A to do so.

(5) The legal practitioner must, if he or she ceases to act as the defendant's legal practitioner at a time when any relevant proceedings are current or in contemplation —

(a) inform the prosecutor of that fact; and

(b) if the legal practitioner is informed by the prosecutor that the defendant has a new legal practitioner who has given the prosecutor the undertaking required by this section, give the protected material, and any copies of it in his or her possession, to the defendant's new legal practitioner.

(6) The legal practitioner must, at the time of giving the protected material to the new legal practitioner under subsection (5), inform the new legal practitioner —

(a) that the material is protected material for the purposes of this Part; and

(b) of the extent to which —

(i) the material has been shown by the original legal practitioner; and

(ii) any copies of it have been given by that legal practitioner to any other person (including the defendant).

(7) The legal practitioner must —

(a) keep a record of every occasion on which the protected material was shown, or a copy of it was given, as mentioned in subsection (2)(b); and

(b) provide a copy of the record to the prosecutor upon written request.

(8) At the end of the proceedings, or if the legal practitioner ceases to act for the defendant if that is sooner (unless subsection (5)(b) above applies), the defendant's legal practitioner must return the protected material to the prosecutor, or arrange for its destruction to the prosecutor's satisfaction.

(9) For the purpose of subsection (8), proceedings come to an end when there is no further right of appeal to the Judicial Committee of the Privy Council in respect of them.
[UK Sexual Offences (Protected Material) Act 1997 s.4 am. by Criminal Justice Act 2003 and modified]

232. Disclosure to unrepresented defendant
(1) This section applies if, in accordance with section 230(3), a copy of any material falls to be given by the prosecutor to the appropriate person for the purposes of this section in order for that person to show that copy to the defendant under this section.

(2) For the purpose of subsection (1), the "appropriate person" is —

(a) if the defendant is detained in prison - the Officer in Charge of the Prison.

(b) in other cases - a police officer of the rank of sergeant or above specifically authorised by the Chief Police Officer in each case to receive from the prosecutor a copy of the material.

(3) The appropriate person must take reasonable steps to ensure that —

(a) the copy of the protected material is only shown to the defendant in circumstances where it is possible to exercise adequate supervision to prevent the defendant retaining possession of the material or copy or making a copy of it;

(b) subject to paragraph (a), the defendant is given such access to that material, or a copy of it, as he or she reasonably requires in connection with any relevant proceedings; and

(c) the material is not shown and no copy of it is given, and its contents are not otherwise revealed, to any person other than the defendant.

(4) The prosecutor must, at the time of giving the protected material to the appropriate person, inform the person that —

(a) the material is protected material for the purposes of this Part; and

(b) the person must discharge the obligations set out in subsection (3) in relation to that material.

(5) The prosecutor must at that time also inform the defendant that —

(a) the material is protected material for the purposes of this Part;

(b) the defendant can only inspect the material, or any copy of it, in the circumstances described in subsection (3)(a); and

(c) it would be an offence for the defendant —

(i) to have that material, or any copy of it, in his or her possession except when inspecting it or the copy in such circumstances; or

(ii) to give the material or any copy of it, or otherwise reveal its contents, to any other person,

as well as informing the defendant of the effect of subsection (6).

(6) If the defendant requests the prosecutor in writing to give a further copy of the material mentioned in subsection (1) to some other person, and it appears to the prosecutor to be necessary to do so —

(a) in connection with any relevant proceedings; or

(b) for the purposes of any assessment or treatment of the defendant (whether before or after conviction),

the prosecutor must give such a copy to that other person.

(7) The prosecutor may give such a copy to some other person although no request has been made under subsection (6) if it appears to the prosecutor that in the interests of the defendant it is necessary to do so as mentioned in paragraph (b) of that subsection.

(8) The prosecutor must, when giving a copy to a person under subsection (6) or (7), inform the person that —

(a) the copy is protected material for the purposes of this Part;

(b) that the person must not give any copy of the protected material or otherwise reveal its contents —

(i) to any person other than the defendant; or

(ii) to the defendant except in the circumstances described in subsection (3)(a); and

(iii) it would be an offence for the person to do so.

(9) If the prosecutor —

(a) receives a request from the defendant under subsection (6) to give a further copy of the material in question to another person; but

(b) does not consider it to be necessary to do so as mentioned in paragraph (b) of that subsection and accordingly refuses the request,

the prosecutor must inform the defendant of the refusal.
[UK Sexual Offences (Protected Material) Act 1997 s.5 am. by Criminal Justice Act 2003 and modified]

233. Further disclosures by prosecutor
(1) If —

(a) any material has been disclosed in accordance with section 230(2) to the defendant's legal practitioner; and

(b) at a time when any relevant proceedings are current or in contemplation the legal practitioner either —

(i) ceases to act as the defendant's legal practitioner in circumstances where section 231(5)(b) does not apply; or

(ii) dies or becomes incapacitated,

the material must be further disclosed under this Part in accordance with whichever of section 230(2) or (3) is for the time being applicable.

(2) If —

(a) any material has been disclosed in accordance with section 231(3); and

(b) at a time when any relevant proceedings are current or in contemplation the defendant acquires a legal practitioner who gives the prosecutor the undertaking required by section 231,

the material must be further disclosed under this Part, in accordance with section 231(2), to the defendant's legal practitioner.
[UK Sexual Offences (Protected Material) Act 1997 s.6 am. by Criminal Justice Act 2003]

234. Offences
(1) If any material has been disclosed under this Part in connection with any proceedings for a sexual offence, it is an offence for the defendant —

(a) to have the protected material, or any copy of it, in his or her possession except when inspecting it or the copy in the circumstances described in section 231[2)(a) or 232(3)(a); or

(b) to give the material or any copy of it, or otherwise reveal its contents, to any other person.

(2) If any protected material, or any copy of any such material, has been shown or given to any person in accordance with section 231(2)(b)(i) or (ii) or section 232(6) or (7), it is an offence for the person to give any copy of the material or otherwise reveal its contents —

(a) to any person other than the defendant; or

(b) to the defendant except in the circumstances described in section 231(2)(a) or 232(3)(a).

(3) Subsections (1) and (2) apply whether or not any relevant proceedings are current or in contemplation (and references to the defendant are to be construed accordingly).

(4) A person who commits an offence under this section is liable on conviction to imprisonment for 2 years or the statutory maximum fine, or both.

(5) If a person is charged with an offence under this section relating to any protected material or copy of any such material, it is a defence to prove that, at the time of the alleged offence, the person was not aware, and neither suspected nor had reason to suspect, that the material or copy in question was protected material or (as the case may be) a copy of any such material.

(6) The court before which a person is tried for an offence under this section may (whether or not the person is convicted of the offence) make an order requiring the person to return to the prosecutor any protected material, or any copy of any such material, in the person's possession.

(7) Nothing in subsection (1) or (2) applies to —

(a) a disclosure made in the course of any proceedings before a court or in any report of any such proceedings; or

(b) any disclosure made or copy given by a person when returning any protected material, or a copy of any such material, to the prosecutor or the defendant's legal practitioner,

and accordingly neither section 231 nor section 232 precludes the making of a disclosure or the giving of a copy in circumstances falling within paragraph (a) or (b) of this subsection.
[UK Sexual Offences (Protected Material) Act 1997 s.8 am. by Criminal Justice Act 2003]

Public interest review of disclosure decisions

235. Public interest review: Summary trials
(1) If this Part applies by virtue of section 215(1)(b), then at any time —

(a) after a court makes an order under section 216(7), 224(8) or 225(2); and

(b) before the defendant is acquitted or convicted or the prosecutor decides not to proceed with the case concerned,

the defendant may apply to the court for a review of the question whether it is still not in the public interest to disclose material affected by its order.

(2) In such a case the court must review that question, and if it concludes that it is in the public interest to disclose material to any extent the court must —

(a) so order; and

(b) take reasonable steps to inform the prosecutor of its order.

(3) If the prosecutor is informed of an order made under subsection (2) he or she must act accordingly, having regard to the provisions of this Part (unless the prosecutor decides not to proceed with the case concerned).
[Criminal Procedure & Investigations Ord. s.16; UK Criminal Procedure & Investigations Act 1996 s.14]

236. Public interest review: Trials on indictment
(1) If this Part applies by virtue of section 215(1)(a), the court must keep under review the question whether at any given time it is still not in the public interest to disclose material affected by its order.

(2) The question mentioned in subsection (1) must be kept under review at all times —

(a) after a court makes an order under section 216(7), 224(8) or 225(2); and

(b) before the defendant is acquitted or convicted or the prosecutor decides not to proceed with the case concerned.

(3) The court must keep the question mentioned in subsection (1) under review without the need for an application; but the defendant may apply to the court for a review of that question.

(4) If the court at any time concludes that it is in the public interest to disclose material to any extent it must so order, and must take reasonable steps to inform the prosecutor of its order.

(5) If the prosecutor is informed of an order made under subsection (4) he or she must act accordingly having regard to the provisions of this Part (unless the prosecutor decides not to proceed with the case concerned).
[Criminal Procedure & Investigations Ord. s.17; UK Criminal Procedure & Investigations Act 1996 s.15]

Confidentiality of disclosed information

237. Confidentiality of disclosed information
(1) If the defendant is given or allowed to inspect a document or other object under this Part, then, subject to subsections (2) to (4), the defendant must not use or disclose it or any information recorded in it.

(2) The defendant may use or disclose the object or information —

(a) in connection with the proceedings for the purpose of which the defendant was given the object or allowed to inspect it;

(b) with a view to the taking of further criminal proceedings, such as by way of appeal, with regard to the matter giving rise to those proceedings; or

(c) in connection with any such further criminal proceedings, if they are taken.

(3) The defendant may use or disclose —

(a) the object to the extent that it has been displayed to the public in open court; or

(b) the information to the extent that it has been communicated to the public in open court;

but the preceding provisions of this subsection do not apply if the object is displayed or the information is communicated in proceedings to deal with a contravention under section 238.

(4) If —

(a) the defendant applies to the court for an order granting permission to use or disclose the object or information; and

(b) the court makes such an order,

the defendant may use or disclose the object or information for the purpose and to the extent specified by the court.

(5) An application under subsection (4) may be made and dealt with at any time, and in particular after the defendant has been acquitted or convicted or the prosecutor has decided not to proceed with the case concerned.

(6) If —

(a) an application is made under subsection (4); and

(b) the prosecutor or a person claiming to have an interest in the object or information applies to be heard by the court,

the court must not make an order granting permission unless the person applying under paragraph (b) has been given an opportunity to be heard.

(7) Nothing in this section affects any other restriction or prohibition on the use or disclosure of an object or information, whether the restriction or prohibition arises under an enactment (whenever passed) or otherwise.

[Criminal Procedure & Investigations Ord. s.19; UK Criminal Procedure & Investigations Act 1996 s.17]

238. Confidentiality: Contravention

(1) A person who knowingly uses or discloses an object or information recorded in it in contravention of section 237 commits an offence.
Penalty: Imprisonment for 2 years, or the statutory maximum fine, or both.

(2) If —

(a) a person is convicted of an offence under this section; and

(b) the object concerned is in the person's possession,

the court may order that the object be forfeited and dealt with as the court orders.

(3) The power of the court under subsection (2) includes power to order the object to be destroyed or given to the prosecutor or placed in his or her custody for a specified period.

(4) If —

(a) the court proposes to make an order under subsection (2); and

(b) the convicted person, or any other person claiming to have an interest in the object, applies to be heard by the court,

the court must not make the order unless the applicant has been given an opportunity to be heard.

(5) If —

(a) a person is convicted of an offence under this section; and

(b) a copy of the object concerned is in the person's possession,

the court may order that the copy be forfeited and dealt with as the court orders.

(6) Subsections (3) and (4) apply for the purposes of subsection (5) as they apply for the purposes of subsection (2), but as if references to the object were references to the copy.

(7) An object or information is inadmissible as evidence in civil proceedings if to adduce it would in the opinion of the court be likely to constitute an offence under this section; and for this purpose "the court" means the court before which the civil proceedings are being taken.

(8) The Supreme Court may act under this section on its own initiative.

(9) The Magistrate's Court and the Summary Court may each act under this section either on its own initiative or by order on a complaint.
[Criminal Procedure & Investigations Ord. s.20; UK Criminal Procedure & Investigations Act 1996 s.18]

Supplementary

239. Procedure on applications – Schedule 4
(1) If —

(a) an application is made under section 216(7), 224(8), 225(2), 235(1) or 236(3) in respect of any material;

(b) a person claiming to have an interest in the material applies to be heard by the court; and

(c) the person shows that he or she was involved (whether alone or with others and whether directly or indirectly) in the prosecutor's attention being brought to the material,

the court must not make an order on the application mentioned in paragraph (a) unless the person applying under paragraph (b) has been given an opportunity to be heard.

(2) Schedule 4 regulates the procedure for making applications under this Part and the other matters mentioned in the Schedule.
[Criminal Procedure & Investigations Ord. s.18; UK Criminal Procedure & Investigations Act 1996 s.16 modified]

240. Criminal procedure rules
(1) The Chief Justice may by criminal procedure rules provide for the practice and procedure to be followed in relation to —

(a) an application under any provision of this Part;

(b) the making of an order under any provision of this Part,

in addition to the provisions on those matters contained in Schedule 4.

(2) The power to make criminal procedure rules includes power to make, with regard to any proceedings before a court which relate to an alleged offence, provision for —

(a) requiring any party to the proceedings to disclose to the other party or parties any expert evidence which the party proposes to adduce in the proceedings;

(b) prohibiting a party who fails to comply in respect of any evidence with any requirement imposed by virtue of paragraph (a) from adducing that evidence without the leave of the court.

(3) Rules made by virtue of subsection (2) may —

(a) specify the kinds of expert evidence to which they apply;

(b) exempt facts or matters of any description specified in the rules.

(4) Rules made by virtue of this section may make different provision for different cases or classes of case.
[Criminal Procedure & Investigations Ord. s.21; UK Criminal Procedure & Investigations Act 1996 s.19 adapted]

241. Saving for other duties of disclosure
(1) A duty of disclosure under any provision of this Part does not affect and is not affected by any duty arising under any other enactment with regard to material to be provided to or by the defendant or a person representing the defendant.

(2) If this Part applies as regards things falling to be done after the commencement of this Part in relation to an alleged offence, the rules of common law which —

(a) were effective immediately before the commencement of this Part; and

(b) relate to the disclosure of material by the prosecutor,

do not apply as regards things falling to be done after that time in relation to the alleged offence, except as provided in subsection (3).

(3) Subsection (2) does not affect the rules of common law as to —

(a) the continuing duty of disclosure between a person being arrested or charged and being sent for trial on indictment or pleading not guilty on summary trial; or

(b) whether disclosure is in the public interest.
[Criminal Procedure & Investigations Ord. s.22; UK Criminal Procedure & Investigations Act 1996 ss.20 and 21 and Sexual Offences (Protected Material) Act 1997 s.9]

242. Code of practice
(1) Section 120, requiring there to be a code of practice on the recording, retention and disclosure of material obtained in a criminal investigation, applies to the duty of disclosure under this Part as if it were here set out in full.

(2) The Code of Practice on the recording, retention and disclosure of material obtained in a criminal investigation ('Disclosure Code') set out in Schedule 3 is the code of practice required by section 120 as applied by subsection (1).

(3) The Disclosure Code sets out the manner in which police officers are to record, retain and reveal to the prosecutor material obtained in a criminal investigation and which may be relevant to the investigation, and related matters.

PART 15 – PRELIMINARY HEARINGS

243. Application and interpretation of Part

(1) This Part applies —

(a) in relation to an indictment-only offence if the defendant is sent for trial for the offence concerned;

(b) in relation to an imprisonable offence if the defendant enters a plea of not guilty of the offence concerned;

(c) in relation to a linked offence which is sent for trial to the Supreme Court.

(2) In this Part, unless otherwise expressly provided, "judge" or "trial judge" means —

(a) in relation to proceedings on indictment - a judge of the Supreme Court;

(b) in relation to an imprisonable offence —

(i) if proceedings are in the Magistrate's Court - the Senior Magistrate;

(ii) if proceedings are in the Summary Court - the justices of the peace comprising the court at the relevant time, deciding by a majority of them.

(3) Reference in this section to a judge trying a case without a jury include a reference to the Senior Magistrate trying a case in the Magistrate's Court or to justices of the peace trying a case in the Summary Court, as the case may be.

(4) In this Part —

"preliminary hearing" means a hearing ordered by a judge pursuant to section 244;

"publish", in relation to a report, means publish the report, either by itself or as part of a newspaper or periodical, for distribution to the public, and cognate expressions are to be construed accordingly;

"programme" means a programme included in a programme service intended for public reception in the Falkland Islands.

(5) For the purposes of this Part, the start of a summary trial is when a plea of guilty is accepted, or if there is no such plea, when the prosecution opens the case for the prosecution.

(6) Nothing in this Part affects any prohibition or restriction imposed by virtue of any other enactment on a publication or on matter included in a programme.
[Criminal Procedure & Investigations Ord. ss.2, 30, 37, 38, 40 (definitions); UK CPI Act 1996 ss.28 and 37, 38, 39 (definitions)]; Prosecution of Offences Act 1985 s.11B am.]

Preliminary hearings

244. Power to order preliminary hearing
(1) If the judge in a case in which a person is charged with an indictment-only offence considers it desirable that there should be a hearing —

(a) before the jury are sworn; and

(b) for any of the purposes mentioned in subsection (3),

the judge may order such a hearing to be held.

(2) If the judge in a case in which a person is charged with an imprisonable offence considers it desirable that there should be a preliminary hearing for any of the purposes mentioned in subsection (3), the judge may order such a hearing to be held.

(3) The purposes are those of —

(a) identifying issues which are likely to be material to the verdict of the jury or, in the case of a trial before a judge sitting without a jury, the decision of the court;

(b) assisting the comprehension of the jury or the court of such issues;

(c) expediting the proceedings before the jury or the court;

(d) assisting the judge's management of the trial.

(4) A judge may make an order under subsection (1) or (2) —

(a) on the application of the prosecutor;

(b) on the application of the defendant, or, if there is more than one, any of them; or

(c) on the judge's own initiative.
[Criminal Procedure & Investigations Ord. s.31; UK CPI Act 1996 s.29]

245. Timing, etc. of preliminary hearing
(1) A preliminary hearing may be held —

(a) in relation to an indictment-only offence - at any time after the defendant is sent for trial at the Supreme Court but before the jury are sworn;

(b) in relation to an imprisonable offence - at any time after the defendant has pleaded not guilty but before the start of the trial.

(2) A preliminary hearing may be ordered and conducted by a judge other than the trial judge.

(3) More than one preliminary hearing may be ordered and conducted in relation to the same offence.
[Criminal Procedure & Investigations Ord. s.32; UK CPI Act 1996 s.30]

246. Preliminary hearing orders
(1) At the preliminary hearing, the judge may exercise any of the powers specified in this section and section 247.

(2) The judge may adjourn a preliminary hearing from time to time, and if it does so —

(a) section 313 applies in the case of the Supreme Court; or

(b) section 264 applies in the case of the Magistrate's Court or the Summary Court.

(3) The judge may order the prosecutor —

(a) to give the court and the defendant or, if there is more than one defendant, each of them, a written statement (a case statement) of the matters falling within subsection (4);

(b) to prepare the prosecution evidence and any explanatory material in such a form as appears to the judge to be likely to aid comprehension by the jury (if any);

(c) to give the court and the defendant or, if there is more than one, each of them, written notice of documents the truth of which ought in the prosecutor's view to be admitted and of any other matters which ought in the prosecutor's view to be agreed;

(d) to make any amendment of any case statement given pursuant to an order under paragraph (a) that appears to the judge to be appropriate, having regard to objections made by the defendant or, if there is more than one, by any of them.

(4) The matters referred to in subsection (3)(a) are —

(a) the principal facts of the case for the prosecution;

(b) the witnesses who will speak to those facts;

(c) any exhibits relevant to those facts;

(d) any propositions of law on which the prosecutor proposes to rely;

(e) the consequences in relation to any of the counts in the indictment that appear to the prosecutor to flow from the matters falling within paragraphs (a) to (d).

(5) If a judge has ordered the prosecutor to give a case statement and the prosecutor has complied with the order, the judge may order the defendant or, if there is more than one, each of them —

(a) to give to the court and to the prosecutor a written statement setting out in general terms the nature of the defence and indicating the principal matters on which the defendant takes issue with the prosecution;

(b) to give to the court and to the prosecutor written notice of any objections that the defendant has to the case statement;

(c) to give to the court and the prosecutor written notice of any point of law (including any point as to the admissibility of evidence) which the defendant wishes to take, and any authority on which the defendant intends to rely for that purpose.

(6) If a judge has ordered the prosecutor to give notice under subsection (3)(c) and the prosecutor has complied with the order, the judge may order the defendant or, if there is more than one, each of them, to give the court and the prosecutor a written notice stating —

(a) the extent to which the defendant agrees with the prosecutor as to documents and other matters to which the notice under subsection (3)(c) relates; and

(b) the reason for any disagreement.

(7) A judge making an order under subsection (5) or (6) must warn the defendant or, if there is more than one, each of them, of the possible consequence under section 247 of not complying with it.

(8) If it appears to a judge that reasons given pursuant to subsection (6) are inadequate, the judge must so inform the person giving them and may require the person to give further or better reasons.
[Criminal Procedure & Investigations Ord. s.33 (part); UK CPI Act 1996 s.31]

247. Preliminary hearing orders: Supplementary
(1) An order under section 246 may specify the time within which any specified requirement contained in it is to be complied with.

(2) If a case is transferred from the Summary Court to the Magistrate's Court or from the Magistrate's Court to the Summary Court, as provided by section 186, any ruling made by the transferring court under this Part binds the receiving court, unless the powers in subsection (3) are exercised in relation to it.

(3) An order under section 246 or 249 has effect throughout the trial, unless it appears to the judge making the order or to the trial judge, on application made to either of them, that the interests of justice require that judge to vary or discharge the order.

(4) Unless otherwise provided by criminal procedure rules, anything required to be given by a defendant pursuant to an order under section 246 need not disclose the identity of the person or persons who will give evidence.

(5) Criminal procedure rules may prescribe the extent to which such disclosure is required in relation to expert evidence and such rules may vary any other provision in a written law of the Falkland Islands or of rules having effect in the Falkland Islands.

(6) Criminal procedure rules may make provision as to the minimum or maximum time that may be specified under subsection (1).

(7) Criminal procedure rules may prescribe the way in which the requirement of disclosure under Part 14 (Disclosure of Material) relates to the requirements of section 246.
[Criminal Procedure & Investigations Ord. ss.33 (part) and 34; UK CPI Act 1996 s.33 adapted]

248. Later stages of trial
(1) Any party may depart from the case the party disclosed pursuant to a requirement imposed under section 246.

(2) If a party —

(a) departs from the case the party disclosed pursuant to a requirement imposed under section 246; or

(b) fails to comply with such a requirement,

the judge or, with the leave of the judge, any other party, may make any comment that appears to the judge or the other party (as the case may be) to be appropriate and the jury (or the judge, in the case of a trial before a judge sitting without a jury) may draw any inference that appears proper.

(3) In deciding whether to give leave (or, as the case may be, to draw an inference) the judge must have regard to —

(a) the extent of the departure or failure; and

(b) whether there is any justification for it.

(4) Except as provided by this section, no part of —

(a) a statement given under section 246(5)(a); or

(b) any other information relating to the case for the defendant or, if there is more than one, the case for any of them, pursuant to a requirement imposed under section 246 or any criminal procedure rules made under section 247,

may be disclosed at a stage in the trial after the jury have been sworn, except with the consent of the defendant concerned.
[Criminal Procedure & Investigations Ord. s.35; UK CPI Act 1996 s.34]

Rulings on evidence and law

249. Rulings on evidence and law
(1) In any court the judge may at a preliminary hearing make a ruling on —

(a) any question as to the admissibility of evidence;

(b) any other question of law relating to the case.

(2) A ruling may be made under subsection (1) —

(a) on an application by a party to the case; or

(b) on the judge's own initiative.

(3) Subject to subsection (4), a ruling made under this section has binding effect from the time it is made until the case against the defendant or, if there is more than one, against each of them, is concluded, as defined in subsection (4).

(4) The case against a defendant is concluded if —

(a) the defendant is acquitted or convicted; or

(b) the prosecutor decides not to proceed with the case against the defendant.

(5) A judge (including a justice of the peace sitting as a Summary Court) may discharge (or further vary) a ruling made under this section if it appears to the judge that it is in the interests of justice to do so, on an application by a party to the case or on the judge's own initiative.

(6) No application may be made under subsection (5) unless there has been a substantial change of circumstances since the ruling was made or, if a previous application has been made, since the application (or last application) was made.

(7) The judge referred to in subsection (5) need not be the judge who made the ruling or, if it has been varied, the judge (or any of the judges) who varied it.
[Criminal Procedure & Investigations Ord. s.41; UK CPI Act 1996 s.40]

250. Appeals against rulings

(1) A person may appeal —

(a) to the Court of Appeal from any ruling of a judge under section 249(1) in relation to a case proceeding in the Supreme Court, but only with the leave of the judge or of the Court of Appeal;

(b) to the Supreme Court from any ruling of a judge under section 249(1) in relation to a case proceeding in the Magistrate's Court, but only with the leave of the judge or the Supreme Court;

(c) to the Magistrate's Court from any ruling of a judge under section 249(1) in relation to a case proceeding in the Summary Court, but only with the leave of the judge or the Magistrate's Court.

(2) The judge may continue a preliminary hearing even if leave to appeal has been granted under subsection (1), but until the appeal has been determined or abandoned —

(a) no jury is to be sworn; and

(b) if —

(i) the defendant has elected to be tried before a judge sitting alone; or

(ii) the offence is an imprisonable offence,

the judge must not proceed to try the case.

(3) If there is no judge present in the Falkland Islands when an appeal under this section falls to be made —

(a) the appeal may be made in writing by or on behalf of the party appealing, with a copy to every other party;

(b) the decision may be made by a judge on a reading of the relevant documents, including any written submission by or on behalf of the Attorney General and by or on behalf of the defendant;

(c) the decision must be communicated in writing to the parties and to the Registrar or to the Clerk of the respective court, as the case may be.

(4) On the termination of the hearing of an appeal, the Court of Appeal or Supreme Court or Magistrate's Court (as the case may be) may confirm, reverse or vary the decision appealed against.

(5) In this section, "judge" means one or more judges of the Court of Appeal, a Supreme Court judge or the Senior Magistrate, as the case may be, and "in writing" includes by electronic means.
[Criminal Procedure & Investigations Ord. s.36; UK CPI Act 1996 s.35]

Restrictions on reporting

251. Restrictions on reporting
(1) Except as provided by this section —

(a) no written report of proceedings falling within subsection (2) may be published in the Falkland Islands;

(b) no report of proceedings falling within subsection (2) may be included in a programme.

(2) The following proceedings fall within this subsection —

(a) a preliminary hearing;

(b) any order made during a preliminary hearing;

(c) proceedings on an application for a ruling to be made under section 249;

(d) a ruling made under section 249;

(e) an application for a ruling under section 249 to be discharged or varied or further varied;

(f) an order that a ruling under section 249 be discharged or varied or further varied;

(g) an application for leave to appeal against a ruling;

(h) an appeal under section 250.

(3) The judge dealing with any matter falling within subsection (2), other than an appeal to the Court of Appeal under section 250 or an application to that court for leave to appeal under that section, may order that subsection (1) does not apply, or applies only to a specified extent, to a report of the matter, if satisfied that it is in the interests of justice to do so.

(4) The Court of Appeal may order that subsection (1) does not apply, or applies only to a specified extent, to a report of —

(a) an appeal under section 250 in relation to a ruling at a preliminary hearing; or

(b) an application to that court for leave to appeal under section 250,

if satisfied that it is in the interests of justice to do so.

[Criminal Procedure & Investigations Ord. s.37; UK CPI Act 1996 s.37]

252. Reporting restrictions: Exceptions

(1) In the circumstances mentioned in subsection (2), section 251(1) does not apply to —

(a) the publication of a report of a preliminary hearing;

(b) the publication of a report of an appeal against a ruling in a preliminary hearing or of an application for leave to appeal against such a ruling;

(c) the inclusion in a programme of a kind referred to in subsection (1)(b) of a report of a preliminary hearing; or

(d) the inclusion in such a programme of a report of an appeal against a ruling in a preliminary hearing or of an application for leave to appeal against such a ruling.

(2) The circumstances referred to in subsection (1) are that —

(a) the defendant has elected under section 298 to be tried before a judge sitting without a jury;

(b) the trial of the defendant or the last of the defendants to be tried has concluded; or

(c) the defendant is charged with a serious summary offence.

(3) Section 251(1) does not apply to a report which contains only one or more of the following matters —

(a) the identity of the court and the name of the judge;

(b) the names, ages, home addresses and occupations of the defendant or defendants and witnesses;

(c) the offence or offences, or a summary of them, with which the defendant is or the defendants are charged;

(d) the names of legal practitioners in the proceedings;

(e) if the proceedings are adjourned - the date and place to which they are adjourned;

(f) any arrangements as to bail;

(g) whether legal aid was granted to the defendant or (if there is more than one defendant) to any of them.

(4) The addresses that may under subsection (3) be published or included in a programme of a kind referred to in subsection (1)(b) are addresses —

(a) at any relevant time; and

(b) at the time of their publication or inclusion in such a programme,

and "relevant time" here means a time when events giving rise to the charges to which the proceedings relate occurred.

(5) Section 251(1) does not apply to the publication of a report or the inclusion in a programme of a report of matters which otherwise must not be reported, at the conclusion of the trial of the defendant or of the last of the defendants to be tried, as defined in section 249(4).

(6) The reporting restrictions in this section are in addition to and do not affect the reporting restrictions in Part 12 (Sending for Trial) relating to proceedings for sending a defendant for trial.
[Criminal Procedure & Investigations Ord. s.42; UK CPI Act 1996 s.41]

253. Offences in connection with reporting

(1) If a report is published or included in a programme in contravention of section 251, each of the following persons commits an offence —

(a) in the case of a publication of a written report as part of a newspaper or periodical – any proprietor, editor or publisher of the newspaper or periodical;

(b) in the case of a publication of a written report otherwise than as part of a newspaper or periodical - the person who publishes it;

(c) in the case of the inclusion of a report in a programme —

(i) any corporate body which is engaged in providing the service in which the programme is included; and

(ii) any person having functions in relation to the programme corresponding to those of an editor of a newspaper.

Penalty: A fine at level 5 on the standard scale.

(2) Proceedings for an offence under this section must not be commenced except by, or with the consent of, the Attorney General.
[Criminal Procedure & Investigations Ord. ss.38 and 43; UK CPI Act 1996 ss.38 and 43]

PART 16 – SUMMARY PROCEDURE
Preliminary

254. Application and interpretation of Part
(1) This Part applies to all criminal proceedings in the Magistrate's Court and in the Summary Court, unless otherwise expressly stated or the context or some other provision of this Ordinance otherwise requires.

(2) In this Part —

(a) a reference to "the Magistrate's Court" is to the Senior Magistrate sitting alone;

(b) a reference to "the Summary Court" is to justices of the peace sitting to hear a particular matter either individually (where the law so permits) or collectively;

(c) a reference to "the Clerk of the court" is to the person performing the duties of Clerk of the Magistrate's Court or Clerk of the Summary Court, or both, as appropriate;

(d) a reference to a summary trial is to a trial in the Magistrate's Court or the Summary Court;

(e) a reference to a Form is to a form of that number set out in Schedule 5.

255. Composition of the courts
(1) For the purpose of criminal proceedings —

(a) the Magistrate's Court consists of the Senior Magistrate sitting alone;

(b) the Summary Court is composed of at least 2 justices of the peace, unless the hearing is one that by virtue of any enactment may take place before a single justice.

(2) The choice of justices for each case is a matter for the Head of Courts, subject to any criminal procedure rules in that regard.

(3) The justices sitting in any criminal proceedings that require more than one justice must appoint one of their number to be Chair of the justices for the duration of those proceedings, up to dismissal of the information or a conviction of the defendant and the passing of sentence in the case of a conviction.

(4) Subject to subsections (5) and (6), the justices of the peace composing a court before which any criminal proceedings take place must be present during the whole of the proceedings.

(5) If during the course of the proceedings any justice absents himself or herself, he or she must not act further in the proceedings and, if the remaining justices are enough to satisfy the requirements of this Ordinance, the proceedings may continue before a court composed of those justices.

(6) If the trial of an information is adjourned after the defendant has been convicted and before the defendant is sentenced or otherwise dealt with —

(a) the court which sentences or deals with the defendant need not be composed of the same justices as that which convicted the defendant; but

(b) if among the justices composing the court which sentences or deals with a defendant there are any who were not sitting when the defendant was convicted, the court which sentences or deals with the defendant must before doing so make such inquiry into the facts and circumstances of the case as will enable the justices who were not sitting when the defendant was convicted to be fully acquainted with those facts and circumstances.

[Administration of Justice Ord. ss.2 and 3 modified; UK Magistrates Courts Act 1980 s.121 (part) adapted]

256. Sittings of the courts

(1) For the purpose of criminal proceedings —

(a) the Magistrate's Court and the Summary Court must sit at such places in the Falkland Islands as the Chief Justice directs;

(b) subject to any directions of the Chief Justice and to subsections (2) and (3), the Magistrate's Court and the Summary Court must sit at times that the Head of Courts directs in writing as being most expedient for the despatch of the business of the courts;

(c) unless expressly otherwise directed or empowered by or under a written law, the Magistrate's Court and the Summary Court must sit in open court.

(2) The sittings of a court under subsection (1)(b) must be timed to enable the court —

(a) to comply with any time limits under Part 10 (Control of Prosecutions) relating to persons in custody; and

(b) to deal as soon as reasonably practicable with a defendant who is on bail.

(3) The Clerk of the Summary Court, or a public officer to whom the Head of Courts has assigned the respective functions —

(a) must attend all sittings of the Summary Court in criminal matters as adviser to the justices of the peace comprising the court;

(b) must so far as practicable in the circumstances of the Falkland Islands be a person who is qualified to be, or is training to become, a legal practitioner.

(4) Subsection (1) does not affect section 183 as to the exercise of the powers of the Senior Magistrate while outside the Falkland Islands.

[UK Magistrates Courts Act 1980 s.121 (part) adapted]

Institution of proceedings

257. Manner of commencing proceedings

(1) All criminal proceedings must commence in the Summary Court and must be commenced by an information, resulting from —

(a) laying an information before a justice of the peace;

(b) bringing before the court a person who is in custody after having been arrested without a warrant; or

(c) requiring a person who has been arrested without a warrant and released on bail to attend before the court.

(2) Any person who believes from reasonable and probable cause that an offence has been committed by any person may lay an information of it before a justice of the peace.

(3) This section has effect despite any other provision in the laws of the Falkland Islands about the institution of criminal proceedings, other than —

(a) section 290(2) as regards bills of indictment;

(b) any power to commence criminal proceedings by complaint; and

(c) any later provision which expressly displaces this section.

[Common law]

258. Issue of summons or warrant for arrest

(1) Upon an information being laid before a justice of the peace that any person has, or is suspected of having, committed an offence, the justice may, in any of the events mentioned in subsection (3) —

(a) issue a summons directed to that person requiring the person to appear before the Summary Court to answer to the information; or

(b) issue a warrant to arrest that person and bring the person before the Summary Court.

(2) A justice must not issue a warrant of arrest unless the information is in writing.

(3) A justice may issue a summons or warrant under this section —

(a) if the offence was committed or is suspected to have been committed in the Falkland Islands;

(b) if under any law a court of the Falkland Islands has jurisdiction to try the offence although it was committed outside the Falkland Islands.

(4) If the offence charged is an indictment-only offence, a warrant under this section may be issued at any time even if a summons has previously been issued.

(5) No warrant may be issued under this section for the arrest of any person who has attained the age of 18 years unless —

(a) the offence is an imprisonable offence; or

(b) the person's address is not sufficiently established for a summons to be served on the person.

(6) A justice of the peace may issue a summons or warrant under this section upon an information being laid before the justice despite any law requiring the information to be laid before 2 or more justices.
[UK Magistrates Courts Act 1980 s.1 (part); Criminal Justice Act 2003 ss.29, 30]

259. Proceedings invalid if defendant did not know of them
(1) If a summons has been issued under section 258 and the Magistrate's Court or the Summary Court has begun to try the information to which it relates, then if —

(a) the defendant, at any time during or after the trial, makes a statutory declaration that the defendant did not know of the summons or the proceedings until a date specified in the declaration, being a date after the court has begun to try the information; and

(b) within 21 days of that date the declaration is served on the Clerk of the court,

without affecting the validity of the information, the summons and all subsequent proceedings are void.

(2) For the purposes of subsection (1) a statutory declaration is duly served on the Clerk of the court if it is delivered to the clerk, or left at the clerk's office, or is sent in a registered letter or by the recorded delivery service addressed to the clerk at the clerk's office.

(3) If on the application of the defendant it appears to the Magistrate's Court or the Summary Court (which for this purpose may be composed of a single justice of the peace) that it was not reasonable to expect the defendant to serve a statutory declaration as mentioned in subsection (1) within the period allowed by that subsection —

(a) the court may accept service of such a declaration by the defendant after that period has expired; and

(b) a statutory declaration accepted under this subsection is deemed to have been served as required by that subsection.

(4) If any proceedings have become void by virtue of subsection (1), the information must not be tried again by any of the same justices.

[UK Magistrates Courts Act 1980 s.14]

260. Defect in process

(1) No objection will be allowed to any information, or to any summons or warrant to procure the presence of the defendant, for any defect in it in substance or in form, or for any variance between it and the evidence adduced on behalf of the prosecutor at the hearing of the information.

(2) If it appears to the Magistrate's Court or the Summary Court that any variance between a summons or warrant and the evidence adduced on behalf of the prosecutor is such that the defendant has been misled by the variance, the court must, on the application of the defendant, adjourn the hearing.

[UK Magistrates Courts Act 1980 s.123]

261. Remaining in force of process

(1) A warrant or summons issued by a justice of the peace does not cease to have effect by reason of the death of the justice or the justice ceasing to be a justice.

(2) A warrant of arrest issued by a justice remains in force until it is executed or withdrawn or it ceases to have effect in accordance with this Ordinance.

[UK Magistrates Courts Act 1980 ss.124, 125]

262. Construction of references to "complaints"

In any law conferring power on the Magistrate's Court or the Summary Court —

(a) to deal with an offence; or

(b) to issue a summons or warrant against a person suspected of an offence, on the complaint of any person,

references to a complaint are to be read as references to an information.

[UK Magistrates Courts Act 1980 s.50]

263. Decision as to venue

(1) On the first appearance of a defendant in the Summary Court, whether in response to a summons or warrant or after arrest (other than on an application for an adjournment or remand) the Summary Court must, after hearing representations from the prosecution and the defence, decide the most appropriate venue for the trial.

(2) If the information or charge relates to an indictment-only offence the case must proceed as a sending for trial of that offence and any linked offence to the Supreme Court in accordance with Part 12 (Sending for Trial).

(3) If the information or charge relates to a summary offence, the court must decide whether a case is more suitable for trial in the Summary Court or in the Magistrate's Court, on the basis of the criteria set out in subsection (6).

(4) Before the court makes a decision as required by subsection (3), the person presiding, or the Clerk of the court, must read the allegation of the offence to the defendant and explain, in terms the defendant can understand (with help, if necessary) —

(a) the allegation, unless it is self-explanatory;

(b) that the offence is one which can be tried either in the Summary Court or in the Magistrate's Court;

(c) that the court is about to ask whether the defendant intends to plead guilty;

(d) that if the answer is 'yes', then the court must treat that as a guilty plea and must sentence the defendant, or commit the defendant to the Magistrate's Court for sentence;

(e) that if the defendant does not answer, or the answer is 'no', the court will decide whether to allocate the case to the Summary Court or to the Magistrate's Court for trial, applying the criteria set out in subsection (5).

(5) If the information or charge relates to an offence within the jurisdiction of the Summary Court, the case can nonetheless be sent to the Magistrate's Court for trial if the Summary Court considers that there are circumstances that justify that course, including, but not limited to —

(a) whether the defendant is already awaiting trial on other matters before the Magistrate's Court;

(b) whether a co-accused charged with the same offence is already awaiting trial before the Magistrate's Court;

(c) the value of any damage caused or compensation likely to be sought;

(d) whether complex points of evidence or law are likely to arise in the course of the trial;

(e) whether a sentence in excess of that which the Summary Court can impose is likely to be justified if the defendant is convicted;

(f) the extent to which a case concerns matters of public interest;

(g) any other consideration required by the interests of justice.

(6) If the defendant is sent for trial, a plea of not guilty indicated under subsection (4)(e) is not binding on the defendant at the trial.

(7) This section is in addition to and does not affect the provisions of —

(a) Part 11 (Criminal Jurisdiction) as to transfer of cases between the Summary Court and the Magistrate's Court;

(b) Part 13 (Committal for Sentence) as to committal for sentence to the Magistrate's Court.

(8) If the Summary Court cannot be convened to deal with a person who has been arrested and is in custody, within the time prescribed by this Ordinance, the Clerk of the court may perform the functions of the Summary Court under this section, with necessary modifications.
[UK Criminal Procedure Rules adapted]

264. Preliminary hearings: Adjournment
(1) The Magistrate's Court or the Summary Court when proceeding under section 144 (Power to order preliminary hearing) or the Magistrate's Court when proceeding under section 249 (Rulings on evidence and law) may adjourn the proceedings at any time, and on doing so on any occasion when the defendant is present may remand the defendant, and must remand the defendant if —

(a) on the occasion on which the defendant first appeared, or was brought, before the court to answer to the information the defendant was in custody or, having been released on bail, surrendered to the custody of the court; or

(b) the defendant has been remanded at any time in the course of proceedings on the information.

(2) If the court remands the defendant, the time fixed for the resumption of proceedings must be that at which the defendant is required to appear or be brought before the court pursuant to the remand.

(3) A remand under this section may be either in custody or on bail, in accordance with Part 9 (Bail in Criminal Proceedings).

(4) This section is in addition to and does not affect the provisions of Part 11 (Criminal Jurisdiction) as to transfer of cases from the Summary Court to the Magistrate's Court.
[UK Magistrates Courts Act 1980 ss.17C and 18 adapted]

Summary trial

265. Procedure at trial
(1) On the summary trial of an information, the court must, if the defendant appears, state to the defendant the substance of the information and ask the defendant whether the defendant pleads guilty or not guilty.

(2) The court, after hearing the evidence and the parties, must either convict the defendant or dismiss the information.

(3) If the defendant pleads guilty, the court may convict the defendant without hearing evidence.
[UK Magistrates Courts Act 1980 s.9]

266. Adjournment of trial

(1) The Magistrate's Court or the Summary Court may adjourn a summary trial at any time, whether before or after beginning to try an information.

(2) The Summary Court may adjourn a summary when composed of a single justice of the peace.

(3) When adjourning a case the court may —

(a) fix the time and place at which the trial is to be resumed; or

(b) unless it remands the defendant, leave the time and place to be decided later by the court;

but the trial must not be resumed at that time and place unless the court is satisfied that the parties have had adequate notice of the time and place.

(4) The Magistrate's Court or the Summary Court may, for the purpose of enabling inquiries to be made for determining the most suitable method of dealing with the case, exercise its power to adjourn after convicting the defendant and before sentencing or otherwise dealing with the defendant.

(5) On adjourning the trial of an information the court may remand the defendant in custody or on bail and, if the defendant is an adult, must do so if the offence is an imprisonable offence and—

(a) when the defendant first appeared, or was brought, before the court to answer to the information he or she was in custody or, having been released on bail, surrendered to the custody of the court; or

(b) the defendant has been remanded at any time in the course of proceedings on the information.

(6) An adjournment under subsection (3) —

(a) may be for 4 weeks at a time; but

(b) if the defendant is remanded in custody, can only be for 3 weeks at a time.

(7) If the court remands the defendant, the time fixed for the resumption of the trial must be that at which he or she is required to appear or be brought before the court pursuant to the remand.

(8) A Youth Court is not required to adjourn any proceedings for an offence at any stage by reason only of the fact that —

(a) the court sends the defendant for trial for another offence; or

(b) the defendant is charged with another offence.

[UK Magistrates Courts Act 1980 s.10]

267. Non-appearance of prosecutor

(1) If at the time and place appointed for the trial or adjourned trial of an information the defendant appears or is brought before the court and the prosecutor does not appear, the court may —

(a) dismiss the information; or

(b) if evidence has been received on a previous occasion - proceed in the absence of the prosecutor.

(2) If, instead of dismissing the information or proceeding in the absence of the prosecutor, the court adjourns the trial, it must not remand the defendant in custody unless he or she —

(a) has been brought from custody; or

(b) cannot be remanded on bail by reason of his or her failure to enter into a recognisance or to find sureties.

[UK Magistrates Courts Act 1980 s.15]

268. Non-appearance of defendant: General provisions

(1) If at the time and place appointed for the trial or adjourned trial of an information the prosecutor appears but the defendant does not, the court may, subject to this section proceed in the defendant's absence unless it appears to the court to be contrary to the interests of justice to do so.

(2) The court must not proceed in the absence of the defendant if it considers that there is an acceptable reason for the defendant's failure to appear.

(3) In proceedings commenced by an information, if a summons has been issued, the court must not begin to try the information in the absence of the defendant unless —

(a) it is proved to the satisfaction of the court, on oath that the summons was served on the defendant within what appears to the court to be a reasonable time before the trial or adjourned trial; or

(b) the defendant has appeared on a previous occasion to answer to the information.

(4) In such proceedings, the court must not in a person's absence —

(a) sentence the person to imprisonment or any other form of detention;

(b) order that a suspended sentence passed on the person is to take effect; or

(c) impose any disqualification on the person.

(5) Nothing in this section requires the court to enquire into the reasons for the defendant's failure to appear before deciding whether to proceed in the defendant's absence.

(6) The court must —

(a) state in open court its reasons for not proceeding under this section in the absence of an adult defendant; and

(b) enter the reasons in the register.

[UK Magistrates Courts Act 1980 s.11 as am. by Criminal Justice & Immigration Act 2008 s.54]

269. Non-appearance of defendant: Issue of warrant

(1) Subject to this section, if the court, instead of proceeding in the absence of the defendant, adjourns or further adjourns the trial, the court may issue a warrant for the defendant's arrest.

(2) If a summons has been issued, the court must not issue a warrant under this section unless the condition in either subsection (3) or (4) is fulfilled.

(3) The condition in this subsection is that it is proved to the satisfaction of the court, on oath that the summons was served on the defendant within what appears to the court to be a reasonable time before the trial or adjourned trial.

(4) The condition in this subsection is that —

(a) the adjournment now being made is a second or subsequent adjournment of the trial;

(b) the defendant was present on the last (or only) occasion when the trial was adjourned; and

(c) on that occasion the court fixed the time for the hearing at which the adjournment is now being made.

(5) A warrant for the arrest of an adult must not be issued under this section unless —

(a) the offence to which the warrant relates is an imprisonable offence; or

(b) the court, having convicted the defendant, proposes to impose a disqualification on the defendant.

(6) A warrant for the arrest of a youth must not be issued under this section unless the court, having convicted the defendant, proposes to impose a disqualification on the youth.

(7) This section does not apply to an adjournment on the occasion of the defendant's conviction in his or her absence under section 271 or to an adjournment required by subsection (3) of that section.

[UK Magistrates Courts Act 1980 s.13 as am. by Criminal Justice Act 2003]

270. Non-appearance of both parties

(1) If at the time and place appointed for the trial or adjourned trial of an information neither the prosecutor nor the defendant appears, the court may —

(a) dismiss the information; or

(b) if evidence has been received on a previous occasion - proceed in their absence.

(2) This section is subject to the provisions of section 268.

[UK Magistrates Courts Act 1980 s.16]

271. Plea of guilty in absence of defendant – Schedule 5

(1) This section applies if a summons has been issued requiring a person to appear before the Magistrate's Court or the Summary Court to answer an information as described in subsection (2) and the Clerk of the respective court is satisfied that —

(a) a notification substantially in Form 1 containing a statement of the effect of this section; and

(b) a concise statement of the facts relating to the charge that will be placed before the court by or on behalf of the prosecutor if the defendant pleads guilty without appearing before the court,

have been served upon the defendant with the summons.

(2) The information must be for an offence for which the maximum sentence is imprisonment for not more than 3 months or a fine at level 3 on the standard scale, or both.

(3) If the Clerk of the Magistrate's Court or of the Summary Court, as the case may be, receives within 28 days of the sending of Form 1 a written notice in Form 2 from the defendant or a legal practitioner acting for the defendant that the defendant wishes to plead guilty without appearing before the court —

(a) the clerk must inform the prosecutor of the receipt of the notice; and

(b) if at the time and place appointed for the trial or adjourned trial of the information the defendant does not appear and it is proved to the satisfaction of the court, on oath , that the notification and statement of facts referred to in subsection (1) have been served upon the defendant with the summons —

(i) the court may proceed to hear and dispose of the case in the absence of the defendant, whether or not the prosecutor is also absent, as if both parties had appeared and the defendant had pleaded guilty; or

(ii) if the court decides not to proceed as in paragraph (i), the court must adjourn or further adjourn the trial for the purpose of dealing with the information as if the notification had not been given.

(4) The defendant may when sending Form 2 under subsection (3) also send a written submission in Form 3 with a view to mitigation of sentence.

(5) Before accepting the plea of guilty and convicting the defendant in the defendant's absence under this section, the court must cause to be read out before the court —

(a) the statement of facts; and

(b) any submission received in Form 3.

(6) In deciding on sentence, the court must take into account any mitigating circumstances set out in Form 3 and any statement of means provided by the defendant in Form 5 (or, in the case of a corporation, the tax accounts for the previous 3 years as provided by the corporation.)

(7) If the court proceeds under this section to hear and dispose of the case in the absence of the defendant, the court —

(a) must not permit any statement to be made by or on behalf of the prosecutor with respect to any facts relating to the offence charged other than the statement of facts mentioned in subsection (1) except on a resumption of the trial after an adjournment under subsection (3); and

(b) must not without adjourning under subsection (3) sentence the defendant to any term of imprisonment or to any other form of detention, or order the defendant to be subject to any disqualification.

(8) If the offence to which a person pleads guilty in absence under this section is one for which under the Road Traffic Ordinance a driving licence must be endorsed and a person can be disqualified from driving, court must endorse any driving licence held by the person and, if appropriate, may disqualify the person from driving. For that purpose, the driving licence must be produced to the court and if it is not, the driving licence must be suspended until the licence is produced, unless the court is satisfied that there are good reasons for its not being produced, as shown on Form 4.

(9) If at any time before the hearing the Clerk of the Magistrate's Court or of the Summary Court, as the case may be, receives a written notice by or on behalf of the defendant that the defendant wishes to withdraw the plea of guilty, the clerk must inform the prosecutor and the court must deal with the information as if this section were not in force.

(10) Section 266(4) does not apply to an adjournment pursuant to subsection (3)(b) of this section or to an adjournment when the defendant is convicted in the defendant's absence under

subsection (3), but, in relation to such an adjournment, the notice required by section 266(2) must include notice of the reason for the adjournment.

(11) The decision whether to use the procedure provided in this in section any particular case is for the Attorney General, but may be delegated in writing to the Clerk of the Magistrate's Court or of the Summary Court, as the case may be, for any case or class of cases, with or without directions as to how the discretion is to be exercised.

(12) The procedure provided in this section —

(a) may not be used if the defendant is not likely to remain in the Falkland Islands for at least 28 days after issue of the Form 1; but

(b) may be used with appropriate modifications when the defendant is a corporation.

(13) If a written plea of guilty is tendered under this section, the court may in addition to ordering the payment of a fine order the defendant to pay the costs of the prosecution in accordance with the relevant provisions of Part 30 (Costs in Criminal Cases). The amount requested must be shown on Form 1 and the defendant may make a statement about the costs in Form 3.

(14) This section does not apply to proceedings in the Youth Court.
[UK Magistrates Courts Act 1980 s.12 as am. by Criminal Justice Act 2003]

272. Application of section 271 if defendant appears
(1) If the Clerk of the Magistrate's Court or of the Summary Court, as the case may be, has received a written notice as mentioned in section 271(3) but the defendant nonetheless appears before the court at the time and place appointed for the trial or adjourned trial, the court may, if the defendant consents, proceed under that section as if he or she were absent.

(2) If the Clerk of the court has not received such a written notice and the defendant appears before the court at that time and place and informs the court that the defendant desires to plead guilty, the court may, if the defendant consents, proceed under section 271 as if the defendant were absent and the clerk had received such a notice.

(3) For the purposes of subsections (1) and (2) of this section, section 271 applies with the following modifications —

(a) before accepting the plea of guilty and convicting the defendant, the court must give the defendant an opportunity to make an oral submission with a view to mitigation of sentence; and

(b) if the defendant makes such a submission, subsection (7)(b) of that section does not apply.

(4) The further modifications for the purposes of subsection (2) of this section are that —

(a) section 271 applies as if any reference to the notification under subsection (1) of that section were a reference to the consent under subsection (2) of this section; and

(b) before accepting the plea of guilty and convicting the defendant under section 271, the court must give the defendant an opportunity to make an oral submission with a view to mitigation of sentence.

[UK Magistrates Courts Act 1980 s.12A inserted by Criminal Justice & Public Order Act 1994]

Remands by the Magistrate's Court or the Summary Court

273. Remand: General principles

(1) If the Magistrate's Court or the Summary Court has power to remand any person, then, subject to Part 9 (Bail in Criminal Proceedings) and to any other enactment modifying that power, the court may —

(a) remand the person in custody, as provided by section 274, to be brought before the court at the end of the period of remand or at any earlier time the court requires;

(b) if it is conducting a preliminary hearing about or trying an offence alleged to have been committed by that person or has convicted the person of an offence —

(i) remand the person on bail in accordance with Part 9, by directing the person to appear as provided in section 275; or

(ii) remand the person on bail by taking from the person a recognisance (with or without sureties) conditioned as provided in that section.

(2) In a case falling within subsection (1)(b)(ii), the court may, instead of taking recognisances in accordance with that paragraph, fix the amount of the recognisances with a view to their being taken subsequently.

(3) Subject to the following sections, the Magistrate's Court or the Summary Court must not remand a person for a period exceeding 8 clear days, except that —

(a) if the court remands a person on bail, it may remand the person for a longer period if the person and the prosecutor consent;

(b) if the court adjourns a trial under this Part the court may remand the person for the period of the adjournment.

(4) If the court fixes the amount of a recognisance with a view to its being taken subsequently, the court must in the meantime commit the person so remanded to custody in accordance with subsection (1)(a).

(5) If a person is brought before the court after remand, the court may further remand the person.

(6) The provisions of this Part as to remand are in addition to and do not affect —

(a) section 493 as to remand for a pre-sentence report;

(b) the provisions in Part 34 (Mentally Disordered Offenders) as to remand of mentally disordered offenders;

(c) any other provision of this Ordinance or any other written law expressly empowering a court to remand a defendant in custody or on bail.

[UK Magistrate's Court 1980 s.128 as amended (part)]

274. Remand in custody

(1) A defendant may not be remanded in custody for more than 8 clear days, except as provided by this section and section 277.

(2) The Magistrate's Court or the Summary Court may remand a defendant in custody for a period exceeding 8 clear days if —

(a) it has previously remanded the defendant in custody for the same offence; and

(b) the defendant is before the court,

but only if, after affording the parties an opportunity to make representations, the court has set a date on which it expects that it will be possible for the next stage in the proceedings, other than a hearing relating to a further remand in custody or on bail, to take place, and only —

(i) for a period ending not later than that date; or

(ii) for a period of 28 days,

whichever is the less.

(3) Subject to subsection (4), if a defendant is remanded for a period exceeding 8 clear days, the Magistrate's Court or the Summary Court may further remand the person on an adjournment under this Part without the person being brought before it if it is satisfied —

(a) that the person gave his or her consent to the hearing and decision in the person's absence of any application for his or her remand on an adjournment of the case under this Part;

(b) that the person has not by virtue of this subsection been remanded without being brought before the court on more than 2 such applications immediately preceding the application which the court is hearing; and

(c) that the person has not withdrawn his or her consent to the applications being so heard and decided.

(4) The court may not exercise the power conferred by subsection (3) if it appears to the court, on an application for a further remand being made to it, that the defendant has no legal practitioner in the case.

(5) If on adjourning a case under this Part the court proposes to remand or further remand a person in custody, the court must —

(a) explain the effect of subsections (3) and (4) to the person in ordinary language; and

(b) inform the person in ordinary language that, despite the procedure for a remand without the person being brought before the court, he or she will be brought before the court for the hearing and decision of at least every fourth application for remand, and of every application for remand if it appears to the court that the person has no legal practitioner acting for the person in the case.

(6) After explaining to the person as provided by subsection (5) the court must ask the person whether he or she consents to the hearing and decision of such applications in his or her absence.

(7) If —

(a) a person has been remanded in custody on an adjournment of a case under this Part;

(b) an application is subsequently made for the person's further remand on such an adjournment; and

(c) the court is not satisfied as mentioned in subsection (3),

the court must adjourn the case and remand the person in custody for the period for which it stands adjourned.

(8) An adjournment under subsection (7) must be for the shortest period that appears to the court to make it possible for the defendant to be brought before it.

(9) If —

(a) on an adjournment of a case under this Part a person has been remanded in custody without being brought before the court; and

(b) it subsequently appears to the court that the person ought not to have been remanded in custody in his or her absence,

the court must require the person to be brought before it at the earliest time that appears to the court to be possible.

(10) A defendant may be remanded for up to 3 clear days to a police station or other place of lawful detention, but only if there is a need for the person to be so detained for the purposes of inquiries into other offences.

(11) A person remanded under subsection (10) —

(a) must be brought back before the court which remanded the person as soon as that need ceases;

(b) must be treated as a person in police detention to whom the duties under section 66 (Responsibilities in relation to persons detained) relate;

(c) the detention is subject to periodic review as provided by section 67 (Review of police detention).

(12) Nothing in this section affects the right of the defendant to apply for bail during the period of the remand, other than a remand under subsection (10).
[UK Magistrate's Courts Act 1980 s.128 as amended (part] and s.128A]

275. Remand on bail
(1) If a person is remanded on bail under section 273(1) the Magistrate's Court or the Summary Court, as the case may be, may direct the person to appear, or direct that the person's recognisance be conditioned for his or her appearance —

(a) before the court at the end of the period of remand; or

(b) at every time and place to which during the course of the proceedings the hearing may be from time to time adjourned.

(2) If the court remands a person on bail conditionally on the person providing a surety during the trial of an offence alleged to have been committed by the person, it may direct that the recognisance of the surety be conditioned to ensure that the person so bailed appears —

(a) at every time to which during the course of the proceedings the hearing is from time to time adjourned; and

(b) before the Supreme Court if the person is sent for trial there.

(3) If a person is directed to appear or a recognisance is conditioned for a person's appearance in accordance with subsection (1) or (2), the fixing of the time for the person next to appear is a remand; but nothing in this subsection or those subsections deprives the court of power at any subsequent hearing to remand the person afresh.
[UK Magistrate's Courts Act 1980 s.128 as amended (part)]

276. Further remand

(1) If the Magistrate's Court or the Summary Court is satisfied that a person who has been remanded is unable by reason of illness or accident to appear or be brought before the court at the expiration of the period for which the person was remanded, the court must make a decision in the person's absence in accordance with section 273(1) and (2).

(2) If the person is remanded in custody, section 274 applies, and if the person is remanded on bail, section 275 applies.

(3) If a person remanded on bail is bound to appear before a court at any time but fails to do so, and if subsection (1) does not apply, the court may in the person's absence appoint a later time as the time at which the person is to appear and may enlarge the recognisances of any sureties for the person to that time.

(4) If the Magistrate's Court or the Summary Court sends a person for trial on bail and the recognisance of any surety for the person has been conditioned in accordance with section 275(2)(a), the court may, in the absence of the surety, enlarge the surety's recognisance so that he or she is bound to ensure that the person so sent for trial appears also before the Supreme Court.

[UK Magistrate's Courts Act 1980 s.129]

277. Remand of defendant already in custody

(1) If the Magistrate's Court or the Summary Court remands a defendant in custody and the defendant is already detained under a custodial sentence, the period for which the person is remanded may be up to 28 clear days, subject to subsection (2).

(2) If the Magistrate's Court or the Summary Court is considering remanding a person pursuant to subsection (1) —

(a) it must inquire as to the expected date of the persons release from the current detention; and

(b) if it appears that it will be before 28 clear days have expired, the court must not remand the person in custody for more than 8 clear days or (if longer) a period ending with that date

[UK Magistrate's Courts Act 1980 s.131]

Powers in relation to witnesses

278. Power of Magistrate's Court or Summary Court to call witnesses

(1) The Magistrate's Court or the Summary Court may, at any stage of any proceedings under this Ordinance, summon or call any person as a witness, or examine any person in attendance though not summoned as a witness, or recall and re-examine any person already examined.

(2) If the evidence of a person mentioned in subsection (1) appears to the court to be essential to the just decision of a case, the court must summon and examine or recall and re-examine the person.

(3) Upon the examination of a person under subsection (1) or (2), the prosecutor and the defendant, or the legal practitioner for the defendant, each has the right to cross-examine the person, and the court must adjourn the case if it is necessary to enable such cross- examination to be adequately prepared if, in the court's opinion, either party may be prejudiced by the calling of the person as a witness.
[Common law; UK Criminal Proc. Rules r.28]

279. Power of justice of the peace to summon witnesses
(1) If a justice of the peace is satisfied that —

(a) any person in the Falkland Islands is likely to be able to give material evidence, or produce any document or thing likely to be material evidence, at the summary trial of an information or hearing of a complaint by the Magistrate's Court or the Summary Court; and

(b) that person will not voluntarily attend as a witness or will not voluntarily produce the document or thing,

the justice of the peace must issue a summons directed to that person requiring him or her to attend before the court at the time and place appointed in the summons to give evidence or to produce the document or thing.

(2) If a justice of the peace is satisfied by evidence on oath of the matters mentioned in subsection (1), and also that it is probable that a summons under that subsection would not procure the attendance of the person in question, the justice of the peace may instead of issuing a summons issue a warrant to arrest that person and bring him or her before the Magistrate's Court or the Summary Court at a time specified in the warrant.

(3) A summons may also be issued under subsection (1) if the justice of the peace is satisfied that the person in question is outside the Falkland Islands, but no warrant may be issued under subsection (2) unless the justice of the peace is satisfied by evidence on oath that the person in question is in the Falkland Islands.

(4) A justice of the peace may refuse to issue a summons under subsection (1) in relation to the summary trial of an information if he or she is not satisfied that an application for the summons was made by a party to the case as soon as reasonably practicable after the defendant pleaded not guilty.

(5) In relation to the summary trial of an information, subsection (2) has effect as if the reference to the matters mentioned in subsection (1) included a reference to the matter mentioned in subsection (4).

(6) On the failure of any person to attend before the Magistrate's Court or the Summary Court in answer to a summons under this section, if —

(a) the court is satisfied by evidence on oath that the person is likely to be able to give material evidence or produce any document or thing likely to be material evidence in the proceedings;

(b) it is proved on oath, or in some other prescribed manner, that the person has been duly served with the summons, and that a sum calculated in accordance with criminal procedure rules has been paid or tendered to the person for costs and expenses;

(c) the witness has been provided with conduct money for travel to the court in accordance with criminal procedure rules in that regard; and

(d) it appears to the court that there is no just excuse for the failure,

the court may issue a warrant to arrest the person and bring him or her before the court at a time and place specified in the warrant.

(7) If any person attending or brought before the Magistrate's Court or the Summary Court refuses without just excuse to be sworn or give evidence, or to produce any document or thing, the court may —

(a) commit the person to custody for up to 28 days or until he or she sooner gives evidence or produces the document or thing;

(b) impose on the person a fine at level 4 on the standard scale; or

(c) commit the person to custody under paragraph (a) and fine him or her under paragraph (b).

(8) A fine imposed under subsection (7) is, for the purposes of any enactment, a sum adjudged to be paid on a conviction.
[UK Magistrates Courts Act s.97 am. by Serious Organised Crime and Police Act 2005]

Recognisances for good behaviour

280. Binding over
(1) Nothing in this Ordinance prevents any person from laying a complaint in the Summary Court for any adult to show cause why he or she should not be bound over to keep the peace.

(2) Upon such a complaint, and after hearing evidence and submissions from both parties, the Magistrate's Court or the Summary Court may order either party to enter into a recognisance, with or without sureties, to keep the peace or to be of good behaviour towards the other party.

(3) If a person ordered by the Magistrate's Court or the Summary Court under subsection (1) to enter into a recognisance, with or without sureties, to keep the peace or to be of good behaviour fails to comply with the order, the court may commit the person to custody for up to 6 months or until the person sooner complies with the order.

(4) If the Magistrate's Court or the Summary Court has committed a person to custody under this section in default of finding sureties , the court may, on application by or on behalf of the person committed, and after hearing fresh evidence —

(a) reduce the amount in which it is proposed that any surety should be bound; or

(b) dispense with any of the sureties or otherwise deal with the case as it thinks just.
[UK Magistrates Courts Act 1980 ss.115 and 118]

281. Discharge of recognisance on complaint of surety
(1) On complaint being made to a justice of the peace by a surety to a recognisance to keep the peace or to be of good behaviour entered into before the Magistrate's Court or the Summary Court that the person bound by the recognisance as principal has been, or is about to be, guilty of conduct constituting a breach of the conditions of the recognisance, the justice may issue —

(a) a warrant to arrest the principal and bring him or her before the court which took the recognisance; or

(b) a summons requiring the principal to appear before that court.

(2) A justice of the peace must not issue a warrant under subsection (1) unless the complaint is in writing and substantiated on oath.

(3) When the principal appears or is brought before the Magistrate's Court or the Summary Court, as the case may be, pursuant to a summons or warrant under subsection (1), the court may, unless it orders the recognisance to be forfeited, order the recognisance to be discharged and order the principal to enter into a new recognisance, with or without sureties, to keep the peace or to be of good behaviour.
[UK Magistrates Courts Act 1980 s.116]

Recognisances: General provisions

282. Postponement of taking recognisance
(1) If the Magistrate's Court or the Summary Court has power to take any recognisance, the court may, instead of taking it, fix the amount in which the principal and his or her sureties, if any, are to be bound, after which the recognisance may be taken by any person prescribed.

(2) This section does not enable the Magistrate's Court or the Summary Court to alter the amount of a recognisance fixed by the Supreme Court.
[UK Magistrates Courts Act 1980 s.119]

283. Forfeiture of recognisance
(1) If —

(a) a recognisance to keep the peace or to be of good behaviour has been entered into before the Magistrate's Court or the Summary Court; or

(b) any recognisance is conditioned for the appearance of a person before the Magistrate's Court or the Summary Court or for the person doing any other thing connected with a proceeding before the Magistrate's Court or the Summary Court; and

(c) the recognisance appears to the court to be forfeited,

the court may, subject to subsection (2), declare the recognisance to be forfeited and order the persons bound by it, whether as principal or sureties, or any of them, to pay the sum in which they are respectively bound.

(2) If a recognisance is conditioned to keep the peace or to be of good behaviour, the court must not declare it forfeited except by order made on complaint.

(3) The court which declares the recognisance to be forfeited may, instead of ordering a person to pay the whole sum in which he or she is bound —

(a) order the person to pay part only of the sum; or

(b) remit the sum.

(4) Subject to subsection (5), payment of any sum ordered to be paid under this section, including any costs awarded against the defendant, may be enforced, and any such sum must be applied, as if it were a fine and as if the adjudication were a summary conviction.

(5) At any time before —

(a) the issue of a warrant of commitment to enforce payment of the sum under subsection (4); or

(b) the sale of goods under a warrant of distress to satisfy the sum,

the court may reduce or remit the sum absolutely or on conditions the court thinks just.
[UK Magistrates Courts Act 1980 s.120 adapted]

Proceedings against corporations

284. Representatives of corporations
(1) On the trial by the Magistrate's Court or the Summary Court of an information against a corporation, a legal practitioner may on behalf of the corporation enter a plea of guilty or not guilty.

(2) A notice for the purposes of section 271 (plea of guilty in absence) may be given on behalf of the corporation by a director or the secretary of the corporation, and that subsection applies in relation to a notice so given as it applies to a notice given by an individual defendant.

(3) A legal practitioner may on behalf of a corporation enter a plea of guilty or not guilty on the trial by the Magistrate's Court or the Summary Court of an information.

(4) If a legal practitioner appears, any requirement of this Ordinance that anything must be done in the presence of the defendant, or be read or said to the defendant, is to be construed as a requirement that that thing is to be done in the presence of the legal practitioner or read or said to the legal practitioner.

(5) If a legal practitioner does not appear, any requirement referred to in subsection (4) and any requirement that the consent of the defendant must be obtained for summary trial, does not apply.
[UK Magistrates Courts Act 1980 s.46 and Sched.3 (part)]

285. Sending for trial of a corporation
(1) The Magistrate's Court or the Summary Court may send a corporation for trial by an order in writing empowering the prosecutor to prefer a bill of indictment in respect of the offence named in the order.

(2) An order under subsection (1) does not prohibit the inclusion in the indictment of counts that under this Ordinance may be included in the indictment in substitution for or in addition to counts charging the offence named in the order.

(3) The provisions of this Ordinance relating to committal to the Supreme Court for sentence do not apply to a corporation.

(4) Subject to the preceding subsections, the provisions of this Ordinance relating to the trial of offences apply to a corporation as they apply to an adult.

(5) Section 284 as to the powers of and appearance by a legal practitioner applies to a legal practitioner for the purposes of this section as it applies to a legal practitioner for the purposes of that section.

(6) This section does not affect the provisions of Part 12 (Sending for Trial) so far as they relate to the sending for trial of a corporation.
[UK Magistrates Courts Act 1980 s.46 and Sched.3 (part)]

Miscellaneous provisions

286. Power of the court to re-open cases to rectify mistakes, etc.
(1) The Magistrate's Court or the Summary Court may vary or rescind a sentence or other order imposed or made by it when dealing with an offender if it appears to the court to be in the interests of justice to do so, including replacing a sentence or order which for any reason appears to be invalid by another which the court has power to impose or make.

(2) The power conferred on the Magistrate's Court or the Summary Court by subsection (1) is not exercisable in relation to any sentence or order imposed or made by it when dealing with an offender if the Supreme Court has decided an appeal against —

(a) that sentence or order;

(b) the conviction in respect of which that sentence or order was imposed or made; or

(c) any other sentence or order imposed or made by the Magistrates' Court when dealing with the offender in respect of that conviction (including a sentence or order replaced by that sentence or order).

(3) If a person is convicted by the Magistrate's Court or the Summary Court and it subsequently appears to the court that it would be in the interests of justice that the case should be heard again by different justices, the court may so direct.

(4) The power conferred on the Magistrate's Court or the Summary Court by subsection (3) is not exercisable in relation to a conviction if the Supreme Court has decided an appeal against —

(a) the conviction; or

(b) any sentence or order imposed or made by the Magistrate's Court or the Summary Court when dealing with the offender in respect of the conviction.

(5) If a court gives a direction under subsection (3) —

(a) the conviction and any sentence or other order imposed or made in consequence of it is of no effect; and

(b) section 266 (Adjournment of trial) applies as if the trial of the person in question had been adjourned.

(6) If a sentence or order is varied under subsection (1), the sentence or other order, as so varied, takes effect from the beginning of the day on which it was originally imposed or made, unless the court otherwise directs.
[UK Magistrates Courts Act 1980 s.142 as amended]

287. Criminal procedure rules
(1) The Chief Justice may, by criminal procedure rules, make provision to implement this Part, including, but not limited to, provision —

(a) relating to pleas of guilty in the absence of the defendant under section 271;

(b) prescribing rates of conduct money to be paid to witnesses who attend court pursuant to section 279;

(c) prescribing the form of an information or charge;

(d) relating to the functions of the Clerks to the courts, and the delegation of functions by them to assistant clerks or other public officers;

(e) generally governing the procedure in the Magistrate's Court and the Summary Court.

(2) Rules made under subsection (1) must be consistent with the other provisions of this Ordinance, but may displace any directions given by the Chief Justice under section 785.

PART 17 – SUPREME COURT PROCEDURE
Manner of trial

288. Trials to be with jury or by judge alone

(1) Subject to the following subsections, every criminal case before the Supreme Court is to be tried with a jury in the manner provided by Part 18 (Jury Trial).

(2) Subsection (1) is subject to the right of the defendant to elect trial by judge alone under sections 298 and 299.

(3) If there is more than one defendant, section 298(3) applies.

(4) If a defendant appearing on an indictment pleads not guilty and the prosecutor proposes to offer no evidence against the defendant, the court may, if it thinks fit, order that a verdict of not guilty be recorded without the defendant being given in charge to a jury, and the verdict has the same effect as if the defendant had been tried and acquitted on the verdict of a jury.

(5) A jury does not need to be empanelled for a trial if the defendant (or all of them, if more than one) pleads or plead guilty to the offence at the start of the trial.
[Common law; UK Criminal Justice Act 1967 s.17]

289. Place and date of sessions of Supreme Court

(1) For the exercise of its original and appellate criminal jurisdiction the Supreme Court must sit in the Falkland Islands, except as provided by or under this Ordinance in relation to any matter which may be dealt with by a judge while outside the Falkland Islands.

(2) When sitting in the Falkland Islands, the Supreme Court must sit in Stanley at places and on days that the judge directs.

(3) The Registrar must give public notice beforehand of all sittings of the Supreme Court.

(4) Subsection (1) does not affect —

(a) section 183 as to the exercise of the powers of a judge while outside the Falkland Islands; or

(b) any other provision of this Ordinance as to decisions that can be taken, or powers that can be exercised, by a judge outside the Falkland Islands.

[SH Criminal Procedure Ord. s.46 adapted]

Indictments

290. Bills of indictment

(1) Subject to subsection (2), a bill of indictment charging any person with an indictment-only offence before the Supreme Court may be preferred only by the Attorney General and only after the person charged has been sent for trial for the offence under Part 12 (Sending for Trial).

(2) A bill of indictment charging any person with an indictment-only offence may be preferred—

(a) by the direction of the Court of Appeal a judge of the Supreme Court; or

(b) by an individual by the with the consent of a judge of the Supreme Court.

and it thereupon becomes an indictment and must be proceeded with accordingly.

(3) If the person charged has been sent for trial, the bill of indictment against the person may include, either in substitution for or in addition to counts charging the offence on which the person was committed, any counts founded on evidence admissible under section 195(4), being counts which may lawfully be joined in the same indictment.

(4) In a case to which subsection (2)(a) applies, the bill of indictment may include, either in substitution for or in addition to any count charging an offence specified in the sending notice, any counts founded on material that accompanied the copy of the sending notice which, pursuant to Part 12 (Sending for Trial), was given to the person charged, being counts which may lawfully be joined in the same indictment.

(5) In a case to which subsection (2)(b) applies, the bill of indictment may include, either in substitution for or in addition to any count charging an offence specified in the sending notice under Part 12 (Sending for Trial), any counts founded on material which, pursuant to that Part, or any relevant criminal procedure rules, was served on the person charged, being counts which may be lawfully joined in the same indictment.

(6) If a bill of indictment has been preferred otherwise than in accordance with subsections (2) to (5), the indictment is liable to be quashed, except that —

(a) if the bill contains several counts, and those subsections have been complied with as respects one or more of them, only those counts that were wrongly included are to be quashed under this subsection; and

(b) if a person who has been sent for trial is convicted on any indictment or any count of an indictment, that indictment or count must not be quashed under this subsection in any proceedings on appeal, unless application was made at the trial that it should be so quashed.

(7) If a bill of indictment is preferred in accordance with subsections (1) and (2), no objection to the indictment may be taken after the commencement of the trial by reason of any failure to observe any requirement of or under section 303 (Application to make summons under section 300 ineffective).

(8) For the purposes of subsection (7), the trial commences —

(a) if there is a jury - when the jury is sworn to consider the issue of guilt or whether the defendant did the act or made the omission charged;

(b) if the court accepts a plea of guilty before the time when a jury is sworn - when that plea is accepted;

(c) in any other case - when the prosecution commences opening the case.

[UK Administration of Justice (Miscellaneous Provisions) Act 1933 s.2 (part) am. by Courts Act 2003 and Coroners & Justice Act 2009]

291. Contents of indictments

(1) Every indictment must contain, and is sufficient if it contains, a statement of the specific offence or offences with which the defendant is charged, together with any particulars needed to give reasonable information as to the nature of the charge.

(2) Despite any rule of law or practice, an indictment is, subject to the provisions of this Part, not open to objection in respect of its form or contents if it is framed in accordance with relevant criminal procedure rules.

[UK Indictments Act 1915 s.3]

292. Joining of charges in same indictment

(1) Subject to relevant criminal procedure rules, charges for more than one offence may be joined in the same indictment.

[UK Indictments Act 1915 s.4]

(2) A count charging a person with an offence to which this section applies may be included in an indictment if the charge is on a linked offence, but only if the facts or evidence relating to the offence are disclosed by material which has been served on the person charged.

(3) If a count charging an offence to which subsection (2) applies is included in an indictment, the offence must be tried in the same manner as if it were an indictment-only offence, but the Supreme Court may only deal with the offender in respect of it in a manner in which the Magistrate's Court could have dealt with the offender.

(4) This section does not affect sections 309 to 311 as to summary offences included in cases sent for trial to the Supreme Court.

[UK Criminal Justice Act 1988 s.40 adapted]

293. Objections to and amendment of indictments

(1) An objection to an indictment for any formal defect on its face must be taken immediately after the indictment has been read over to the defendant and not later.

(2) If, before trial, or at any stage of a trial, it appears to the court that the indictment is defective, the court —

(a) must make such order for the amendment of the indictment as the court thinks necessary to meet the circumstances of the case, unless, having regard to the merits of the case, the required amendments cannot be made without injustice; and

(b) may make such order as to the payment of any costs incurred owing to the necessity for amendment as the court thinks fit.

(3) If an indictment is amended under this section, a note of the order for amendment must be endorsed on it.

[UK Indictments Act 1915 s.5 (part)]

294. Separate trial of counts and postponement of trial

(1) If, before trial, or at any stage of a trial, the court is of opinion that —

(a) a person who is a defendant may be prejudiced or embarrassed in the person's defence by reason of being charged with more than one offence in the same indictment; or

(b) for any other reason it is desirable to direct that the person should be tried separately for any one or more offences charged in an indictment,

the court may order a separate trial of any count or counts of the indictment.

(2) If, before trial, or at any stage of a trial, the court is of opinion that the postponement of the trial of a defendant is expedient as a consequence of the exercise of any power of the court under this Part to amend an indictment or to order a separate trial of a count, the court must make any order as to the postponement of the trial that appears necessary.

(3) If an order of the court is made under this section for a separate trial or for the postponement of a trial —

(a) if the order is made during a trial - the court may order that the jury are to be discharged from giving a verdict on the count or counts the trial of which is postponed or on the indictment, as the case may be;

(b) the procedure on the separate trial of a count is the same in all respects as if the count had been found in a separate indictment, and the procedure on the postponed trial is the same in all respects, if the jury has been discharged, as if the trial had not commenced; and

(c) the court may make such order as to costs and as to admitting the defendant to bail, and as to the enlargement of recognisances and otherwise as the court thinks fit.

(4) Any power of the court under this section is in addition to and does not derogate from any other power of the court for the same or similar purposes.
[UK Indictments Act 1915 s.5 (part)]

Pleas

295. Plea of guilty to other offence
If a person is charged on an indictment for any offence, and can lawfully be convicted on that indictment of some other offence not charged in the indictment, the person may plead not guilty of the offence charged in the indictment, but guilty of that other offence.
[UK Criminal Law Act 1925 s.6]

296. Pleas by corporations
(1) A corporation may, on appearing on an indictment before the Supreme Court, enter in writing by its representative a plea of guilty or not guilty, and if either the corporation does not appear by a representative or, though it does so appear, fails to enter any plea, the court must order a plea of not guilty to be entered and the trial must proceed as though the corporation had duly entered a plea of not guilty.

(2) In this section "representative", in relation to a corporation, means a person duly appointed by the corporation to represent it for the purpose of doing any act or thing which the representative of a corporation is by this section authorised to do, but a person so appointed is not, by virtue only of being so appointed, qualified to act on behalf of the corporation before any court for any other purpose.

(3) A representative for the purposes of this section need not be appointed under the seal of the corporation, and a statement in writing purporting to be signed by a managing director of the corporation, or by any person (by whatever name called) having, or being one of the persons having, the management of the affairs of the corporation, to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this section, is admissible without further proof as *prima facie* evidence that that person has been so appointed.

(4) If a corporation does not appear on an indictment in the manner provided for by this Ordinance —

(a) the court may summon any officer of the corporation before it in the manner provided in this Ordinance for compelling the attendance of witnesses; and

(b) if the officer fails to attend the court may issue a warrant to apprehend the officer and cause him or her to be brought before the court.

(5) A warrant must not be issued under this section for the arrest of any person unless the court is satisfied by evidence on oath that the summons directed to that person was duly served.

(6) Nothing in this section affects the power of a court to deal with a case in the absence of the defendant corporation in the manner for which provision is made by this Part.
[UK Criminal Justice Act 1925 s.33]

297. Plea of *autrefois acquit* or *autrefois convict*
(1) A defendant charged upon an indictment may plead —

(a) that the defendant has previously been convicted or acquitted, as the case may be, of the same offence; or

(b) that the defendant has obtained a pardon for the offence,

and if either of such pleas is pleaded in any case and denied to be true in fact, the court must try whether the plea is true in fact or not.

(2) If the court finds that the facts alleged by the defendant do not establish the plea, or if it finds that it is false in fact, the defendant must be required to plead to the indictment.

(3) If a defendant pleads *autrefois acquit* or *autrefois convict* it is for the judge, without the presence of a jury, to decide the issue.
[UK Criminal Justice Act 1988 s.122]

Choice of mode of trial

298. Right to choose mode of trial in respect of indictment-only offences
(1) Subject to subsection (2), a person who has been sent for trial for an offence in respect of which the person is to be tried on indictment ("the defendant") must, in accordance with Part 18 (Jury Trial), be tried in respect of that offence in the Supreme Court before a judge and a jury unless the defendant elects to be tried by a judge alone.

(2) If an indictment contains more than one count in respect of the same defendant, not including any counts which the trial judge has ordered to be separately tried, the defendant's must be tried in the Supreme Court before a judge and jury in respect of all of those counts unless the defendant elects to be tried by a judge alone in respect of all of those counts.

(3) If more than one person is sent for trial for an offence on the same indictment, they must all be tried in respect of that offence in the Supreme Court before a judge and a jury unless each of them elects to be tried by judge alone, in which case the trial is to be by judge alone.

(4) A defendant must personally state his or her choice of the mode of trial under this section as provided by section 299.
[Jury Ord. s.16]

299. Choice of mode of trial: Supplementary provisions

(1) Immediately after the defendant has pleaded to all of the counts of the indictment on which he or she is to be tried on indictment on that occasion, the trial judge must, in open court, explain to the defendant in ordinary language —

(a) the respective roles of the judge and jury in a trial upon indictment;

(b) the different role of the judge sitting alone to try an indictment;

(c) the defendant's right to choose whether to be tried by a judge and jury or by the judge alone;

(d) if appropriate, the effect of section 325(2);

(e) if appropriate, the effect of section 325(3);

(f) the effect of subsection (2) of this section; and

(g) the effect of section 338(1),

and the judge must then call upon the defendant to make his or her choice.

(2) The defendant's choice is irrevocable, unless the trial judge otherwise permits, and in any case is irrevocable once a member of the jury has been sworn or, if there is no jury, once any witness has been called to give evidence.

(3) If a defendant is unable, or refuses, to choose whether to be tried before the judge with a jury or by the judge sitting alone, he or she is deemed to have chosen to be tried before the judge sitting with a jury.

[Jury Ord. s.17]

Witnesses

300. Issue of witness summons on application to the Court

(1) This section applies if the Supreme Court is satisfied that a person other than a police officer is likely to be able to give evidence likely to be material evidence, or produce any document or thing likely to be material evidence, for the purpose of any criminal proceedings before the Supreme Court.

(2) In such a case the Supreme Court must, subject to the following provisions of this section, issue a witness summons directed to the person concerned and requiring him or her to —

(a) attend before the Supreme Court at the time and place stated in the summons; and

(b) give the evidence or produce the document or thing.

(3) A witness summons may only be issued under this section on an application; and the Supreme Court may refuse to issue the summons if any requirement relating to the application is not fulfilled.

(4) If a person has been sent for trial under Part 12 (Sending for Trial) for any offence to which the proceedings concerned relate, an application must be made as soon as is reasonably practicable after the issue of the notice of trial.

(5) If the proceedings concerned relate to an offence in relation to which a bill of indictment has been preferred under the authority of section 15(1) of the Court of Appeal Ordinance (bill preferred by direction of Court of Appeal) or by direction or with consent of a judge, an application must be made as soon as is reasonably practicable after the bill was preferred.

(6) An application must be made in accordance with any relevant criminal procedure rules.

(7) Criminal procedure rules may specify the cases which —

(a) require an application to be made by a party to the case;

(b) require the service of notice of an application on the person to whom the witness summons is proposed to be directed;

(c) require an application to be supported by an affidavit or a statement containing a declaration of truth that contains any matters the rules require.

(8) Criminal procedure rules may make provision for enabling the person to whom the witness summons is proposed to be directed to be present or represented at the hearing of the application for the witness summons.

(9) The rules may in particular require an affidavit or statement to —

(a) set out any charge on which the proceedings concerned are based;

(b) specify any stipulated evidence, document or thing in such a way as to enable the directed person to identify it;

(c) specify grounds for believing that the directed person is likely to be able to give any stipulated evidence or produce any stipulated document or thing;

(d) specify grounds for believing that any stipulated evidence is likely to be material evidence;

(e) specify grounds for believing that any stipulated document or thing is likely to be material evidence.

(10) In subsection (9) —

(a) references to any stipulated evidence, document or thing are to any evidence, document or thing whose giving or production is proposed to be required by the witness summons;

(b) references to the directed person are to the person to whom the witness summons is proposed to be directed.

[UK Criminal Procedure (Attendance of Witnesses) Act 1965 s.2 as amended]

301. Power to require advance production

A witness summons which is issued under section 300 and which requires a person to produce a document or thing as mentioned in subsection (2) of that section may also require the person to produce the document or thing —

(a) at a place stated in the summons; and

(b) at a time which is so stated and precedes that stated under that subsection,

for inspection by the person applying for the summons.

[UK Criminal Procedure (Attendance of Witnesses) Act 1965 s.2A ins. by Criminal Procedure & Investigations Act 1996 s.65]

302. Directions if summons no longer needed

(1) If —

(a) a document or thing is produced pursuant to a requirement imposed by a witness summons under section 301;

(b) the person applying for the summons concludes that a requirement imposed by the summons under section 300(2) is no longer needed; and

(c) the person accordingly applies to the Supreme Court for a direction that the summons is to be of no further effect,

the court may direct accordingly.

(2) An application under this section must be made in accordance with relevant criminal procedure rules.

(3) Criminal procedure rules may, in cases the rules specify, require the effect of a direction under this section to be notified to the person to whom the summons is directed.

[UK Criminal Procedure (Attendance of Witnesses) Act 1965 s.2B ins. by Criminal Procedure & Investigations Act 1996 s.65]

303. Application to make summons under section 300 ineffective

(1) If a witness summons issued under section 300 is directed to a person who —

(a) applies to the Supreme Court;

(b) satisfies the court that he or she was not served with notice of the application to issue the summons and was neither present nor represented at the hearing of the application; and

(c) satisfies the court that he or she cannot give any evidence likely to be material evidence or, as the case may be, produce any document or thing likely to be material evidence,

the court may direct that the summons is of no effect.

(2) For the purposes of subsection (1) it is immaterial whether or not criminal procedure rules —

(a) require the person to be served with notice of the application to issue the summons; or

(b) enable the person to be present or represented at the hearing of the application.

(3) In subsection (1)(b) "served" means —

(a) if the criminal procedure rules require the person to be served with notice of the application to issue the summons - served in accordance with relevant criminal procedure rules;

(b) in any other case - served in a way that appears reasonable to the court to which the application is made.

(4) The Supreme Court may refuse to make a direction under this section if any requirement relating to the application under this section is not fulfilled.

(5) An application under this section must be made in accordance with relevant criminal procedure rules.

(6) Criminal procedure rules may specify the cases which —

(a) require the service of notice of an application under this section on the person on whose application the witness summons was issued;

(b) require that if —

(i) a person applying under this section can produce a particular document or thing; but

(ii) the person seeks to satisfy the court that the document or thing is not likely to be material evidence,

the person must arrange for the document or thing to be available at the hearing of the application.

(7) If a direction is made under this section that a witness summons is of no effect, the person on whose application the summons was issued may be ordered to pay the whole or any part of the costs of the application under this section.

(8) Any costs payable under an order made under subsection (7) must be taxed by the Registrar, and payment of those costs is enforceable in the same manner as an order for payment of costs made by the Supreme Court in a civil case or as a sum adjudged summarily to be paid as a civil debt.
[UK Criminal Procedure (Attendance of Witnesses) Act 1965 s.2C ins. by Criminal Procedure & Investigations Act 1996 s.65]

304. Issue of witness summons on court's own initiative
(1) For the purpose of any criminal proceedings before it, the Supreme Court may on its own initiative issue a witness summons directed to a person and requiring the person to —

(a) attend before the court at the time and place stated in the summons; and

(b) give evidence, or produce any document or thing specified in the summons.

(2) The Supreme Court may, at any stage of any proceedings under this Ordinance, summon or call any person as a witness, or examine any person in attendance though not summoned as a witness, or recall and re-examine any person already examined.

(3) If the evidence of a person mentioned in subsection (2) appears to the court to be essential to the just decision of a case, the court must summon and examine or recall and re-examine the person.

(4) Upon the examination of a person under subsection (2) or (3), the prosecutor and the defendant, or the legal practitioner for the defendant, each has the right to cross-examine the person, and the court must adjourn the case if it is necessary to enable such cross- examination to be adequately prepared if, in the court's opinion, either party may be prejudiced by the calling of the person as a witness.
[UK Criminal Procedure (Attendance of Witnesses) Act 1965 s.2D ins. by Criminal Procedure & Investigations Act 1996 s.65; Criminal Proc. Rules r.28]

305. Application to make summons under section 304 ineffective
(1) If a witness summons issued under section 304 is directed to a person who —

(a) applies to the Supreme Court; and

(b) satisfies the court that he or she cannot give any evidence likely to be material evidence or, as the case may be, produce any document or thing likely to be material evidence,

the court may direct that the summons is of no effect.

(2) The Supreme Court may refuse to make a direction under this section if any requirement relating to the application under this section is not fulfilled.

(3) An application under this section must be made in accordance with relevant criminal procedure rules.

(4) Criminal procedure rules may specify the cases which —

(a) require the service of notice of an application under this section on the person on whose application the witness summons was issued;

(b) require that if —

(i) a person applying under this section can produce a particular document or thing; but

(ii) the person seeks to satisfy the court that the document or thing is not likely to be material evidence,

the person must arrange for the document or thing to be available at the hearing of the application.

[UK Criminal Procedure (Attendance of Witnesses) Act 1965 s.2E ins. by Criminal Procedure & Investigations Act 1996 s.65]

306. Penalty for disobeying a witness summons or requirement

(1) A person who without just excuse disobeys a witness summons requiring the person to attend before the Supreme Court commits contempt of court and may be punished summarily as if the contempt had been committed in the face of the court.

(2) A person who without just excuse disobeys a requirement made by the Supreme Court under section 301 commits contempt of court and may be punished summarily as if the contempt had been committed in the face of the court.

(3) No person is by reason of any disobedience mentioned in subsection (1) or (2) liable to imprisonment for a period exceeding 6 months.

[UK Criminal Procedure (Attendance of Witnesses) Act 1965 s.3 as amended]

307. Further process to ensure attendance of witness

(1) If a judge of the Supreme Court is satisfied by evidence on oath that a witness in respect of whom a witness summons is in force is unlikely to comply with the summons, the judge may, subject to subsection (2), issue a warrant to arrest the witness and bring him or her before the court.

(2) A warrant may not be issued under subsection (1) unless the judge is satisfied by evidence as mentioned in that subsection that the witness is likely to be able to give material evidence or to produce any document or thing that will be material evidence in the proceedings.

(3) If a witness who is required to attend before the Supreme Court by virtue of a witness summons fails to attend in compliance with the summons —

(a) the court may serve on the person a notice requiring him or her to attend the court at a specified time; and

(b) if —

(i) there are reasonable grounds for believing that the person has failed to attend without just excuse; or

(ii) the person has failed to comply with the notice,

the court may issue a warrant to arrest the person and bring him or her before the court.

(4) A witness brought before the Supreme Court pursuant to a warrant under this section may be remanded in custody or on bail (with or without sureties) until a time the court appoints for receiving the person's evidence or dealing with the person under section 306.

(5) If a witness attends the Supreme Court pursuant to a notice under this section the court may direct that the notice has effect as if it required the person to attend at any later time appointed by the court for receiving the person's evidence or dealing with the person under section 306.
[UK Criminal Procedure (Attendance of Witnesses) Act 1965 s.4 as amended]

308. Expenses of witnesses

(1) Every person who attends any criminal trial of the Supreme Court as a witness for the prosecution or for the defence, in response to a witness summons, is entitled at the conclusion of the case, whether the person has been examined or not, to be paid for his or her attendance and expenses in accordance with a scale established by criminal procedure rules.

(2) The court may, if it thinks fit, disallow the payment to a witness of any sum that would otherwise be payable under subsection (1).

(3) If the court certifies that in its opinion any witness examined for the defence, not being a witness mentioned in subsection (1) —

(a) has given material evidence; and

(b) has given his or her evidence in a truthful and satisfactory manner,

it may order that the witness is to be paid allowances and expenses as if he or she had attended in response to a witness summons, and the account of such a witness is to be taxed and paid accordingly.

(4) No claim made by a witness for payment of a sum under subsection (3) is to be entertained unless the claim is made within one month after the last day of the criminal trial in respect of which it is made.

(5) Payment of any allowances or expenses under this section is to be made out of the Consolidated Fund.
[UK Costs in Criminal Cases (General) Regs. 1986 Part V]

Powers of Supreme Court to deal with summary offences

309. Procedure following trial on indictment
(1) This section applies to a summary offence if —

(a) a person was sent to the Supreme Court for trial in respect of it;

(b) that person (or another person) has been convicted of one or more offences on an indictment;

(c) the judge considers that the summary offence is a linked offence in relation to one or more of those offences; and

(d) no trial has commenced in the Supreme Court in respect of the summary offence.

(2) This section also applies to a summary offence if —

(a) a person was sent to the Supreme Court for trial in respect of it;

(b) no plea has been entered in relation to it (either by the person or on the person's behalf); and

(c) the person is charged on an indictment which (following amendment of the indictment as a result of an application for dismissal or for any other reason) no longer includes an indictment-only offence.

(3) If the person was sent to the Supreme Court in respect of more than one summary offence, the provisions of this section apply to each of the summary offences separately.

(4) If this section applies to a summary offence, the judge must —

(a) state to the person the substance of it; and

(b) ask the person to plead guilty or not guilty to the offence.

(5) Subsection (6) applies to a summary offence if either —

(a) the person pleads guilty to it; or

(b) a plea of guilty to it is entered on the person's behalf under section 310(2)(b).

(6) If this subsection applies to a summary offence, the judge —

(a) must convict the person of it; and

(b) may deal with the person in respect of it.

(7) The remaining provisions of this section apply to a summary offence unless either —

(a) the person pleads guilty to it; or

(b) a plea of guilty to it is entered on the person's behalf under section 310(2)(b).

(8) If this subsection applies to a summary offence, the judge must ask the prosecutor if he or she intends to submit evidence on the charge relating to the offence.

(9) If the prosecutor informs the court that he or she does not intend to submit evidence on the charge, the Supreme Court must dismiss it.

(10) If the prosecutor informs the court that he or she does intend to submit evidence on the charge, the Supreme Court must —

(a) remit the defendant on bail or in custody to the court which sent the defendant for trial, for the defendant to be dealt with by that court on a date specified in the remittal order; and

(b) advise the respective court of the remittal.

[Admin. of Justice Ord. Sched.4; UK Criminal Justice Act 1988 s.41; Crime & Disorder Act 1998 Sched. 3 adapted]

310. Power of Supreme Court to proceed in absence of defendant

(1) Proceedings before the Supreme Court under section 309 may take place in the absence of a defendant if —

(a) the defendant is represented by a legal practitioner;

(b) either —

(i) the judge conducting the proceedings considers that, by reason of the person's disorderly conduct before the court, it is not practicable for the proceedings to be conducted in the person's presence; or

(ii) the defendant's legal practitioner signifies to the court that the defendant consents to the proceedings being conducted in the person's absence; and

(c) the judge considers that the proceedings should continue in the defendant's absence.

(2) If proceedings take place in the absence of the defendant, the judge must —

(a) state the substance of the summary offence to the defendant's legal practitioner (instead of stating it to the defendant); and

(b) ask the legal practitioner to enter a plea of guilty or not guilty to it on behalf of the defendant.

(3) If the legal practitioner enters a plea of guilty on behalf of the defendant, the Supreme Court must proceed under section 309 as if —

(a) the substance of the summary offence had been stated to the defendant; and

(b) the defendant had pleaded guilty to it.

(4) Unless the legal practitioner enters a plea of guilty on behalf of the defendant, the Supreme Court must proceed under section 309 as if —

(a) the substance of the summary offence had been stated to the defendant; and

(b) the defendant had not pleaded guilty to it.

[Admin. of Justice Ord. Sched.4 (part); Crime & Disorder Act 1998 Sched. 3 (part)]

311. Procedure following successful appeal against conviction

(1) Subsection (2) applies to a summary offence if —

(a) a person was convicted of it under section 309(6)(a); but

(b) an appeal court allows an appeal against conviction of an offence tried on indictment in relation to which it was a linked offence (or all of the offences tried on indictment in relation to which it was a linked offence, if there was more than one).

(2) If this subsection applies —

(a) the proceedings before the Supreme Court in relation to the summary offence must be disregarded for all purposes;

(b) the appeal court must —

(i) set aside the person's conviction of the summary offence; and

(ii) notify the court that sent the person for trial on the offence that it has done so;

(c) the appeal court may direct that no further proceedings are to be undertaken in relation to the summary offence;

(d) if the appeal court does that, it must notify the court that sent the person for trial on the offence about the direction.

(3) In this section, "appeal court" means either the Court of Appeal or the Judicial Committee of the Privy Council in their respective criminal jurisdictions.
[Admin. of Justice Ord. Sched.4 (part); Crime & Disorder Act 1998 Sched. 3 (part)]

Miscellaneous provisions

312. Process to compel appearance
(1) Any direction to appear and any condition of a recognisance to appear before the Supreme Court, and any summons or order to appear before that court, may be so framed as to require appearance at such time and place as may be directed by the Supreme Court, and if a time or place is specified in the direction, condition, summons or order, it may be varied by any subsequent direction of that court.

(2) If an indictment has been signed, although the person charged has not been sent for trial, the Supreme Court may issue a summons requiring that person to appear before it, or may issue a warrant for his or her arrest.

(3) The Supreme Court, on issuing a warrant for the arrest of any person, may endorse the warrant for bail, in which case —

(a) the person arrested under the warrant must, unless the Supreme Court otherwise directs, be taken to a police station; and

(b) the officer in charge of the station must release the person from custody if the person enters, and any sureties required by the endorsement and approved by the officer enter into recognisances of an amount specified in the endorsement.

(4) A person in custody pursuant to a warrant issued by the Supreme Court with a view to the person's appearance before that court must be brought forthwith before either the Supreme Court or the Magistrate's Court.
[UK Senior Courts Act 1981 ss.80, 81 (part)]

313. Power to postpone or adjourn proceedings
(1) If, from the absence of witnesses or any other reasonable cause, which must be recorded in the proceedings, the Supreme Court considers it necessary or desirable to postpone the commencement of or to adjourn any trial, the court may from time to time postpone or adjourn the trial for a period it considers reasonable and may by warrant remand the defendant in prison or other place of security.

(2) In deciding whether to adjourn a trial, the court must take into account, among other things—

(a) the importance of the trial and the interests of justice in the efficient despatch of business;

(b) the likely adverse effect on the party seeking the adjournment of refusing it;

(c) the likely adverse effect on any other party of granting it.

(3) During a remand the court may at any time order the defendant to be brought before it.

(4) The court may on a remand admit a defendant to bail in accordance with Part 9 (Bail in Criminal Proceedings) or permit the defendant to be at large.

(5) A period of adjournment under subsection (1) must be stated in the presence and hearing of the party or parties or their respective advocates (if any) then present.

(6) If it appears that the court will not be able to deal with any case on the day on which a person has been summoned to appear in connection with it, or on the date on which a person granted bail is required to surrender to custody, the Registrar may give written notice to the person to the effect that the person's attendance is not required on that date and that the person should attend on a later date specified in the notice.

(7) A notice given under subsection (6) has effect as if —

(a) the original summons served upon the person had required the person's attendance on the later date specified in the notice; or

(b) the person had been granted bail with a duty to surrender to custody on that later date,

as the case may be.
[Common law; see cases in Archbold para.4-71]

314. Criminal procedure rules
(1) The Chief Justice may, by criminal procedure rules, make provision to implement this Part, including, but not limited to, provision —

(a) prescribing rates of expenses to be paid to witnesses, as provided by section 308;

(b) relating to the functions of the Registrar, and the delegation of functions by the Registrar to assistant registrars or other public officers;

(c) generally governing the procedure in the Supreme Court in its criminal jurisdiction.

(2) Rules made under this section may make provision regulating indictments and any matter connected with them, and in particular as to —

(a) the form of an indictment;

(b) how and when bills of indictment are to be preferred; and

(c) how application is to be made for the consent of a judge to the preferment of a bill of indictment.

(3) Rules made under subsection (1) must be consistent with the other provisions of this Ordinance, but may displace any directions given by the Chief Justice under section 785.
[UK Administration of Justice (Miscellaneous Provisions) Act 1933 s.2 (part)]

PART 18 – JURY TRIAL

315. Interpretation

In this Part, except where the context otherwise requires —

"appropriate officer" means the Registrar and any officer of the court acting under the direction of the Registrar;

"immigration permit" means a permanent residence permit, a residence permit or a work permit issued under the Immigration Ordinance.
[Jury Ord. s.2]

Jury service

316. Qualification for jury service – Schedule 6

(1) A person is qualified to serve as a juror in the Supreme Court if each of the following conditions is satisfied —

(a) the person has reached the age of 18 but has not yet reached the age of 75;

(b) the person —

(i) is registered as a voter under the Electoral Ordinance;

(ii) holds a permanent residence permit; or

(iii) holds a work permit or a residence permit (or is named as a dependent on a work permit or a residence permit) and has been ordinarily resident in the Falkland Islands throughout the preceding 36 months;

(c) the person is not ineligible for jury service under Part 1 of Schedule 6; and

(d) the person is not disqualified from jury service under Part 2 of Schedule 6 or subsection (2) of this section.

(2) A person is temporarily disqualified from jury service if the person is either —

(a) on bail in criminal proceedings; or

(b) remanded in custody in criminal proceedings.
[Jury Ord. s.3; UK Juries Act 1974 s.1]

317. Provision of information to Registrar
(1) The Registrar may request information for the purpose of summoning jurors —

(a) under subsection (2), from a person who is a registration officer under the Electoral Ordinance; and

(b) under subsection (3), from the Principal Immigration Officer.

(2) When requested by the Registrar, a registration officer must arrange for —

(a) the Registrar to be provided as soon as possible with as many copies as the Registrar requires of the register of electors maintained by that registration officer; and

(b) the copies to be marked to indicate those persons on the register who, as far as can be ascertained, are (on a date as close as possible to when the copies are provided) aged either—

(i) under 18; or

(ii) 75 or over.

(3) When requested by the Registrar, the Principal Immigration Officer must arrange for —

(a) the Registrar to be provided as soon as possible with as many copies as the Registrar requires of a list of all those persons —

(i) holding immigration permits; and

(ii) named as dependents on immigration permits;

(b) the copies to be marked to indicate —

(i) those persons on the list who, as far as can be ascertained, are (on a date as close as possible to when the copies are provided) either under 18 or 75 or over; and

(ii) those persons on the list who hold residence permits or work permits (or are named as dependents on them) and as far as can be ascertained, have not (on a date as close as possible to when the copies are provided) been ordinarily resident throughout the preceding 36 months.
[Jury Ord. s.3B]

318. Liability to jury service
(1) Every person who is qualified for jury service under section 316 is liable to be summoned for jury service.

(2) Subject to the provisions of this Part, a person summoned under this Part must attend as directed by the summons or by the appropriate officer, and is liable to serve on any jury at the place to which the person is summoned.
[Jury Ord. ss.3A and 9]

319. Summoning for jury service
(1) Subject to this Part, and in accordance with a code of practice issued under subsection (6), the Registrar is responsible —

(a) for the summoning of jurors to attend for service in the Supreme Court; and

(b) for determining the occasions on which they are to attend when so summoned and the number to be summoned.

(2) Subject to this Part, jurors must be summoned by notice in writing sent by post, or delivered by hand.

(3) A written summons sent or delivered to any person under subsection (2) must be accompanied by a notice informing the person —

(a) of the effect of sections 318, 324(1), 325 and 338(5);

(b) that the person may make representations to the Registrar with a view to obtaining the withdrawal of the summons, if for any reason the person is not qualified for jury service, or wishes or is entitled to be excused.

(4) If a person is summoned under this section, the Registrar may at any time put or cause to be put to the person any questions the Registrar thinks fit in order to establish whether or not the person is qualified for jury service.

(5) If it appears to the Registrar, at any time before the day on which a person summoned under section 319 is first to attend, that the person's attendance is unnecessary the Registrar may withdraw or alter the summons by notice served in the same way as a notice of summons.

(6) The Chief Justice, after consulting the Criminal Justice Council, must issue guidelines as to the manner of selection of jurors. The guidelines must address, but need not be limited to, such matters as —

(a) the convenience of persons summoned, having regard to their occupations and places of residence and the likely length of a potential trial;

(b) the desirability of not having persons who are married to each other serving on the same jury;

(c) the need to avoid having relatives of a defendant serving on a jury to try that defendant;

(d) the need to avoid calling too many employees of the same business at the same time.
[Jury Ord. ss.4 (part) and 6 modified; UK Juries Act 1974 ss 2, 4]

320. Service of notices

(1) A notice required by or under this Part will be treated as having been sent by post to a juror if—

(a) it is addressed to the juror at either —

(i) in the case of a juror who is registered as a voter under the Electoral Ordinance - the address at which the juror is registered; or

(ii) in the case of a juror who either holds an immigration permit or is named as a dependent on one - the address held for that person by the Immigration Office of the Government;

(b) it is delivered to the post office in Stanley; and

(c) either —

(i) postage is prepaid on it; or

(ii) it is exempt from prepayment of postage.

(2) A notice will be treated as having been delivered by hand to a juror if —

(a) it is addressed to the juror at either —

(i) in the case of a juror who is registered as a voter under the Electoral Ordinance - the address at which that juror is registered; or

(ii) in the case of a juror who either holds an immigration permit or is named as a dependent on one - the address held for that person by the Immigration Office of the Government; and

(b) it is delivered by hand to that address.

(3) A certificate signed by the Registrar or any other public officer employed in the office of the court that the conditions of either subsection (1) or (2) were met in relation to a notice is admissible as evidence in proceedings without the signature having to be proved.
[Jury Ord. s.4 (part)]

321. Panels

(1) The arrangements to be made by the Registrar under this Part include the preparation, in accordance with any criminal procedure rules made or directions issued under this Part, of lists (hereafter called “panels”) of persons summoned as jurors, and the information to be included in

panels, the court sittings for which they are prepared, and the enlargement or amendment of panels.

(2) A person sent for trial by the Supreme Court on indictment, the Attorney General and any person acting on behalf of such a person or on behalf of the Attorney General, is entitled to all reasonable facilities for inspecting the panel from which the jurors are or will be drawn.

(3) The right conferred by subsection (2) is not exercisable after the close of the trial by jury (or after it is no longer possible for there to be a trial by jury).

(4) The judge may, if he or she thinks fit, at any time afford to any person facilities for inspecting the panel, although not given the right by subsection (2).
[Jury Ord. s.7; UK Juries Act 1974 s.5]

322. Excusal for previous jury service
(1) If a person summoned under this Part shows to the satisfaction of the appropriate officer, or of the court to which them person is summoned —

(a) that the person has served on a jury in the 2 years ending with the service of the summons;

(b) that the Supreme Court has excused him or her from jury service for a period which has not terminated,

the officer or the court must excuse the person from attending, or further attending, in response to the summons.

(2) The phrase "served on a jury" in subsection (1) does not include service on a jury in a coroner's court.
[Jury Ord. s.10; UK Juries Act 1974 s.8]

323. Excusal for certain persons and discretionary refusal
(1) A person summoned under this Part is entitled, if he or she so wishes, to be excused from jury service if the person is among the persons listed in Part 3 of Schedule 6 but, except as provided by that Part of Schedule 6 in respect of members of the forces, a person is not by this section exempt from the obligation to attend if summoned, unless the person is excused from attending under subsection (2).

(2) If any person summoned under this Part shows to the satisfaction of the appropriate officer that there is good reason why he or she should be excused from attending in response to the summons, the appropriate officer may excuse the person from so attending, and must do so if the reason shown is that the person is entitled to excusal under subsection (1).

(3) Without affecting the other provisions of this section, the Supreme Court, having due regard to the provisions of any guidelines issued under section 319(6), may excuse from attending any person summoned for jury service under this Part.

[Jury Ord. s.11; UK Juries Act 1974 s.9]

324. Discharge of summonses

(1) If it appears to the appropriate officer, when a person attends the court in response to a summons under this Part, that —

(a) on account of physical disability; or

(b) on account of insufficient knowledge of English,

there is doubt as to the person's capacity to act effectively as a juror, the person may be brought before the judge.

(2) When a person is brought before the judge under subsection (1)(a) or (b), the judge must determine, in the light of any disability or lack of knowledge of English, as the case may be, whether or not the person is capable of acting or should act as a juror.

(3) If of the opinion that the person should not act as a juror, the judge must discharge the summons, but otherwise must affirm it.

[Jury Ord. ss.12 and 13; UK Juries Act 1974 ss.9B and 10]

Conduct of jury trials

325. Size and composition of juries

(1) A person who has elected to be tried before the judge and jury and who is indicted with the crime of treason or murder must be tried before a jury of 12 persons.

(2) A person who has elected to be tried before the judge and jury and to whom subsection (1) does not apply must be tried before a jury of 7 persons.

(3) Subsections (1) and (2) do not affect section 331 (continuation of trial) or section 334 (Majority verdicts).

[Jury Ord. s.20]

326. The ballot and swearing of jurors

(1) The jury to try an issue before the Supreme Court must be selected by ballot in open court from the panel, or part of the panel, of jurors summoned to attend at the time and place in question.

(2) Each member of a jury to try an issue in the Supreme Court must be sworn separately.

(3) Subject to subsection (4), the jury selected by any one ballot must try only one issue, but any juror may be selected on more than one ballot.

(4) Subsection (3) does not prevent the trial of 2 or more issues by the same jury if the trial of the second or last issue begins within 24 hours from the time when the jury is constituted.

(5) In the cases within subsection (4) the court may, on the trial of the second or any subsequent issue, instead of proceeding with the same jury in its entirety, order any juror to withdraw, if the court considers that juror could be challenged or excused, or if the parties to the proceedings consent, and the juror to replace tat juror must, subject to subsection (2), be selected by ballot in open court.

(6) The foregoing provisions of this section are subject to the right to choose the mode of trial conferred by Part 11 (Criminal Jurisdiction).
[Jury Ord. s.14; UK Juries Act 1974 s.11]

327. Challenge of jurors
(1) In proceedings for the trial of a person for an offence on indictment —

(a) the person or the prosecution may challenge all or any of the jurors for cause;

(b) any challenge for cause must be tried by the judge before whom the person is to be tried.

(2) A challenge to a juror must be made after the juror's name has been drawn by ballot (unless the court, pursuant to section 325(2), has dispensed with balloting for jurors) and before the juror is sworn.

(3) The fact that a person summoned to serve on a jury is not qualified to serve is a ground of challenge for cause.

(4) There is no right of peremptory challenge of a juror, either by the Crown or by the defendant.

(5) The right of challenge to the array, that is to say the right of challenge on the ground that the person responsible for summoning the jurors in question is biased or has acted improperly, is not affected by any of the foregoing provisions of this section.

(6) The powers of the court to order the exclusion of the public from any proceedings include power for the judge to order that the hearing of a challenge for cause must be in camera or in chambers.
[Jury Ord. s.19; UK Juries Act 1974 s.12]

328. Appointment of foreman
(1) When the jurors have been sworn, they must appoint one of their number to be foreman.

(2) If a majority of the jurors do not agree in the appointment of a foreman within a time the judge considers reasonable, the judge must appoint a foreman.

(3) The functions of the foreman are —

(a) to preside during the deliberations of the jury;

(b) to ask any information from the court that is required by the jury or any of the jurors;

(c) to announce the verdict of the jury.
[Common law]

329. Documents produced as exhibits
(1) This section applies if on a trial before a judge and jury for an offence —

(a) a statement made in a document is admitted in evidence; and

(b) the document or a copy of it is produced as an exhibit.

(2) The exhibit must not accompany the members of the jury when they retire to consider their verdict unless —

(a) the judge considers it appropriate; or

(b) all the parties to the proceedings agree that it should accompany the jury.
[Common law; UK Criminal Justice Act 2003 s.122]

330. Separation and refreshment
(1) After the jury has been sworn for the trial of a person the judge may, if he or she thinks fit, permit the jury to separate, either before or after it has been directed to consider its verdict.

(2) If the jury is allowed to separate, the judge must give a suitable warning about not speaking to anyone who is not a member of the jury.

(3) A jury, after being sworn, may in the discretion of the court be allowed reasonable refreshment at the court's expense.
[Jury Ord. ss.20 and 21; UK Juries Act 1974 s.13]

331. Continuation of trial on death or discharge of a juror
(1) If in the course of a trial with a jury one or more members of the jury dies or is discharged by the court, whether because of illness, incapacity to continue to act, or any other reason, the jury remains (subject to subsections (2) and (3)) for all the purposes of the trial properly constituted and the trial must proceed and a verdict may be given accordingly.

(2) Subsection (1) does not apply, and the jury must be discharged, if the number of jurors is reduced —

(a) in the case of a trial for treason - to below 10;

(b) in the case of any other trial – to below 6.

(3) Despite subsection (1), on the death or discharge of a member of the jury in the course of the trial of any person for an offence on indictment the court may discharge the jury in any case where the court sees fit to do so.
[Jury Ord. s.23; UK Juries Act 1974 s.16]

332. Discharge of jury for jury tampering

(1) If the judge is minded during a trial on indictment to discharge the jury because jury tampering appears to have taken place, then before taking any steps to discharge the jury, the judge must —

(a) inform the parties that he or she is minded to discharge the jury;

(b) inform the parties of the reason; and

(c) allow the parties an opportunity to make representations.

(2) If the judge, after considering any such representations, discharges the jury, the judge may, subject to subsection (4), order that the trial is to continue without a jury if the judge is satisfied that —

(a) jury tampering has taken place; and

(b) to continue the trial without a jury would be fair to the defendant or defendants.

(3) If the judge considers that it is necessary in the interests of justice for the trial to be terminated, he or she must terminate the trial.

(4) If a trial is continued without a jury, the court has all the powers, authorities and jurisdiction that the court would have had if the trial had been continued with a jury (including power to determine any question and to make any finding which would be required to be determined or made by a jury).

(5) Unless the context otherwise requires, any reference in an enactment to a jury, the verdict of a jury or the finding of a jury is to be read, in relation to a trial continued without a jury, as a reference to the court, the verdict of the court or the finding of the court.

(6) If a trial is continued without a jury and the court convicts a defendant —

(a) the judge must give a judgment which states the reasons for the conviction at, or as soon as reasonably practicable after, the time of the conviction; and

(b) for purposes of an appeal (or any other purpose) the date of the conviction is to be read as a reference to the date of that judgment.

[UK Criminal Justice Act 2003 s.46]

333. Delivery of verdict

(1) Every verdict in a criminal case must be delivered orally in open court by the foreman of the jury, and must thereupon be recorded and read over to the jury before they are discharged.

(2) In every case the foreman must announce the number of jurors who agreed on the verdict and the number who dissented.

[Common law]

334. Majority verdicts

(1) Subject to subsections (2) and (3), the verdict of a jury need not be unanimous —

(a) in a trial of an offence of treason or murder, if at least 10 jurors agree on the verdict; and

(b) in any other trial, if at least 6 jurors agree on the verdict.

(2) A verdict of guilty by virtue of subsection (1) must not be accepted by the trial judge unless the foreman of the jury has stated in open court the number of the jurors who respectively agreed to and dissented from the verdict.

(3) The trial judge must not —

(a) accept a verdict by virtue of subsection (1) unless it appears to the judge that the jury has had a period of time for deliberation that the judge considers reasonable having regard to the nature and complexity of the case; and

(b) in any case accept such a verdict unless it appears to the judge that the jury has had at least 2 hours for deliberation.

[Jury Ord. s.24; UK Juries Act 1974 s.17]

335. Jury unable to reach a verdict

(1) If in any criminal case the judge is satisfied that there is no reasonable prospect of the jury agreeing upon a verdict which the court can accept, the judge must, subject to subsection (2), discharge the jury and either —

(a) cause a new jury to be at once eempanelled and sworn and charged with the case; or

(b) adjourn the proceedings to a date the judge thinks fit.

(2) A jury must not be discharged before it has deliberated for at least 3 hours after the conclusion of the summing-up.

(3) A trial with a new jury must proceed afresh as if the first jury had not been empanelled.

[Common law]

336. Judgments: Limit on stay and reversal

(1) A judgment after a verdict in a trial by jury must not be stayed or reversed only because of any alleged impossibility or difficulty in the circumstances of the Falkland Islands or of the particular case in obtaining a fair trial by jury of the defendant in the Falkland Islands in respect of the offence in question, as it is open to any defendant who apprehends any such impossibility or difficulty to elect trial by the judge sitting without a jury.

(2) A judgment after a verdict in a trial by jury must not be stayed or reversed only because —

(a) the provisions of this Part about the summoning or empanelling of juries or the selection of jurors by ballot have not been complied with;

(b) a juror was not qualified in accordance with section 316;

(c) any juror was misnamed or misdescribed; or

(d) any juror was unfit to serve.

(3) Subsection (2)(a) does not apply in respect of an irregularity if objection is taken at, or as soon as practicable after, the time it occurs, and the irregularity is not corrected.

(4) Nothing in subsection (1) or (2) applies to an objection to a verdict on the ground of personation.
[Jury Ord. s.18; UK Juries Act 1974 s.18]

Miscellaneous provisions

337. Payment for jury service
(1) A person who serves as a juror is entitled, in respect of attendance at court for the purpose of performing jury service, to receive payment —

(a) for travelling and subsistence; and

(b) As compensation for financial loss,

at the rates and subject to the conditions prescribed by criminal procedure rules.

(2) Compensation for financial loss is payable only if in consequence of a person's attendance at court for jury service the person has —

(a) incurred any expenditure (otherwise than on travelling and subsistence) to which the person would not otherwise be subject; or

(b) suffered any loss of earnings which the person would otherwise have made or received.
[Jury Ord. s.25]

338. Offences relating to juries and jurors
(1) Subject to subsections (2) to (4) it is an offence for —

(a) a person duly summoned under this Part to fail to attend in compliance with the summons;

(b) a person, after attending in response to a summons, not to be available when called to serve as a juror, or to be is unfit for service by reason of drink or drugs.
Penalty: A fine at level 3 on the standard scale.

(2) An offence under subsection (1) is punishable either on summary conviction or as if it were criminal contempt of court committed in the face of the court.

(3) Subsection (1)(a) does not apply to a person summoned, otherwise than under section 322, unless the summons was duly served on the person not later than 14 days before the date fixed by the summons for the person's first attendance.

(4) A person who can show reasonable cause for failure to comply with a summons, or for not being available when called upon to serve, does not commit an offence under the preceding subsections; and those subsections have effect subject to the provisions of this Part about the withdrawal or alteration of a summons and about the granting of any excusal.

(5) It is an offence for a person —

(a) having been summoned under this Part, to make or cause to be made on his or her behalf a false representation to the appropriate officer with the intention of evading jury service;

(b) to make or cause to be made on behalf of another person who has been so summoned a false representation to that officer with the intention of enabling the other to avoid jury service;

(c) when any question is put to the person pursuant to section 319(5), to refuse without reasonable excuse to answer, or to give an answer which he or she knows to be false in a material particular;

(d) knowing that he or she is not qualified for jury service by reason of section 316(2), to serve on a jury;

(e) to impersonate a juror.

Penalty: A fine at level 5 on the standard scale.
[Jury Ord. s.26; Common law]

(6) It is an offence for a person to —

(a) attempt to corrupt or influence a juror by any means other than evidence and argument in open court at the trial;

(b) give money to a juror in consideration of the juror giving or having given a verdict favourable to one of the parties;

(c) by improper means procure for the person or others to be sworn upon a jury for the purpose of giving a verdict favourable to one of the parties;

(d) induce a juror not to appear.

Penalty: imprisonment for one year or a fine at level 6 on the standard scale, or both.

(7) A juror who consents to or assists in the commission of any of the acts mentioned in subsection (6) commits an offence.
Penalty: Imprisonment for one year or a fine at level 6 on the standard scale, or both.
[Admin. of Justice Ord. s.42]

339. Rules and directions
(1) The Chief Justice may, in accordance with section 785, make criminal procedure rules and issue directions as contemplated by this Part and generally as required to ensure the effective conduct of criminal trials before a judge and jury.

(2) Rules made under this section may provide for juries to view the scene of a crime and to make notes, and for other matters, whether similar to those matters or not.

CHAPTER 7 – EVIDENCE

PART 19 – EVIDENCE: GENERAL PRINCIPLES
Principles for admission of evidence

340. Principles for admission of statements
(1) If, having regard to all the circumstances —

(a) the Supreme Court —

(i) on a trial on indictment;

(ii) on an appeal from the Magistrate's Court or the Summary Court; or

(b) the Magistrate's Court or the Summary Court on a trial of an information,

is of the opinion that in the interests of justice a statement which is admissible by virtue of this Part nevertheless ought not to be admitted, it may direct that the statement be not admitted.

(2) Without limiting subsection (1), the court, in deciding whether a statement should be admitted, must have regard to —

(a) the nature and source of the document containing the statement and to whether or not, having regard to its nature and source and to any other circumstances that appear to the court to be relevant, it is likely that the document is authentic;

(b) the extent to which the statement appears to supply evidence which would otherwise not be readily available;

(c) the relevance of the evidence that it appears to supply to any issue which is likely to have to be determined in the proceedings; and

(d) any risk, having regard in particular to whether it is likely to be possible to controvert the

statement if the person making it does not attend to give oral evidence in the proceedings, that its admission or exclusion will result in unfairness to the defendant or, if there is more than one, to any of them.

(3) Nothing in this Part affects —

(a) any power of a court to exclude evidence (whether by preventing questions from being put or otherwise) at its discretion;

(b) any power of a court to exclude at its discretion a statement admissible by virtue of this Part;

(c) the admissibility of a statement not made by a person while giving oral evidence in court which is admissible otherwise than by virtue of this Part.

(4) Nothing in this Ordinance affects any power of a court to exclude evidence at its discretion (whether by preventing questions being put or otherwise) which is exercisable apart from this Ordinance.
[CJ Ord. s.2 (part); UK PACE Act 1984 s.82]

341. Exclusion of unfair evidence
(1) In any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.

(2) Nothing in this section affects any rule of law requiring a court to exclude evidence.
[CJ (Evidence) Ord. s.105; UK PACE Act 1984 s.78 am. by Criminal Procedure & Investigations Act 1996]

342. Onus of proving exceptions, etc.
If the defendant to an information or on indictment relies for a defence on any exception, exemption, proviso, excuse or qualification, whether or not it accompanies the description of the offence or matter of complaint in the enactment creating the offence or on which the complaint is founded, the burden of proving the exception, exemption, proviso, excuse or qualification is on the defendant, even if the information or complaint contains an allegation negativing the exception, exemption, proviso, excuse or qualification.
[UK Magistrate's Courts Act 1980 s.101]

Summoning and calling of witnesses

343. General power to summon witnesses, etc.
(1) A court may, at any stage of any criminal proceedings, and in accordance with this Ordinance—

(a) summon or call any person as a witness;

(b) examine any person in attendance though not summoned as a witness;

(c) recall and re-examine any person already examined.

(2) The court must summon and examine or recall and re-examine any witness if the person's evidence appears to it essential to the just decision of the case.

(3) The prosecutor or counsel for the prosecution or the defendant or counsel for the defendant may, with the leave of the court, cross-examine any person summoned or called by the court pursuant to subsection (1), and the court must adjourn the case for the time it thinks necessary to enable such cross-examination to be adequately prepared if, in its opinion, either party may be prejudiced by the calling of any such person as a witness.
[Case law summarised]

344. Witnesses in custody
(1) Without affecting any other power to summon witnesses conferred upon it by this Ordinance or any other law, a court that wishes to examine as a witness in any criminal proceedings before it a person who is in prison, may issue an order to the Chief Police Officer requiring the person to be brought in proper custody, at a time specified in the order, before the court for examination.

(2) The Chief Police Officer, on receipt of such an order, must —

(a) act in accordance with it; and

(b) provide for the safe custody of the prisoner during the prisoner's absence from the prison for such purpose.
[Case law summarised]

345. Arrest and punishment of recalcitrant witnesses
(1) Without affecting any other powers conferred by this Ordinance or any other law in relation to witnesses, a court may, if any person summoned to attend as a witness before it in any criminal proceedings fails to attend as required by the summons, issue a warrant to arrest the person and bring the person before the court at the time specified in the warrant.

(2) Without affecting any other powers conferred by this Ordinance or any other law, a person who, without just excuse —

(a) fails to attend before a court as required by any summons; or

(b) having attended a court, departs without obtaining the permission of the court or fails to attend after adjournment of the court after being ordered so to attend,

is liable by order of the court to a fine at level 3 on the standard scale.

(3) If any person summoned to attend as a witness before a court in any criminal proceedings refuses without just excuse to be sworn or give evidence, or to produce any document or thing, the court may —

(a) commit the person to custody for up to 28 days or until the person sooner gives evidence or produces the document or thing;

(b) impose on the person a fine at level 4 on the standard scale; or

(c) commit the person to custody under paragraph (a) and fine the person under paragraph (b).

(4) If any person summoned to attend as a witness before a court in any criminal proceedings upon being brought before the court under a warrant issued under subsection (3) at or before the expiration of the period specified in the warrant, again refuses to do what is required of him or her, the court may, if it sees fit, commit the person to custody for a further period of up to 28 days and so again, from time to time, until the person consents to do what is required of him or her.
[Case law summarised; UK Criminal Procedure Rules 2012 Part 62]

346. Calling of the defendant
(1) If the only witness to the facts of the case called by the defence is the defendant, that person must be called as a witness immediately after the close of the evidence for the prosecution.

(2) Every defendant in criminal proceedings who is called as a witness in the proceedings must, unless otherwise ordered by the court, give evidence from the witness box or other place from which the other witnesses give their evidence.
[UK Criminal Evidence Act 1898 ss.1 and 2]

347. Time for taking defendant's evidence
If at the trial of any person for an offence —

(a) the defence intends to call 2 or more witnesses to the facts of the case; and

(b) those witnesses include the defendant,

the defendant must, subject to section 366 (Defendant's silence at trial), be called before the other witnesses unless the court in its discretion otherwise directs.
[CJ Ord. s.106; UK PACE Act 1984 s.79]

348. Evidence to be on oath
Subject to the provisions of any enactment or rule of law authorising the reception of unsworn evidence, evidence given before a court must be given on oath or by affirmation.
[UK Magistrate's Courts Act 1980 s.98 adapted]

Competence and compellability

349. Competence of witnesses to give evidence

(1) Subject to subsections (2) and (3), at every stage in criminal proceedings all persons (whatever their age) are competent to give evidence.

(2) A person is not competent to give evidence in criminal proceedings if it appears to the court that he or she is not a person who is able to —

(a) understand questions put to him or her as a witness; and

(b) give answers to them which can be understood.

(3) A defendant in criminal proceedings is not competent to give evidence in the proceedings for the prosecution, whether he or she is the only person, or is one of 2 or more persons, charged in the proceedings.

(4) In subsection (3) the reference to a defendant in criminal proceedings does not include a person who is not, or is no longer, liable to be convicted of any offence in the proceedings, whether as a result of pleading guilty or for any other reason.

[CJ (Evidence) Ord. ss.3(3) and 40; UK Youth Justice and Criminal Evidence Act 1999 s.53]

350. Determining competence of witnesses

(1) Any question whether a witness in criminal proceedings is competent to give evidence in the proceedings, whether raised by —

(a) a party to the proceedings; or

(b) the court on its own initiative,

is to be decided by the court in accordance with this section.

(2) It is for the party calling the witness to satisfy the court that, on a balance of probabilities, the witness is competent to give evidence in the proceedings.

(3) In determining the question mentioned in subsection (1) the court must treat the witness as having the benefit of any directions under section 429 (Special measures direction relating to eligible witness) which the court has given, or proposes to give, in relation to the witness.

(4) Any proceedings held for the determination of the question must take place in the absence of the jury (if there is one).

(5) Expert evidence may be received on the question.

(6) Any questioning of the witness (if the court considers that necessary) must be conducted by the court in the presence of the parties.

[CJ (Evidence) Ord. s.41; UK Youth Justice & Criminal Evidence Act 1999 s.54]

351. Deciding whether witness to be sworn

(1) Any question whether a witness in criminal proceedings may be sworn for the purpose of giving evidence on oath, whether raised by —

(a) a party to the proceedings; or

(b) the court on its own initiative,

is to be decided by the court in accordance with this section.

(2) The witness may not be sworn for that purpose unless he or she —

(a) has attained the age of 14; and

(b) has a sufficient appreciation of the solemnity of the occasion and of the particular responsibility to tell the truth which is involved in taking an oath.

(3) A witness who is able to give intelligible oral evidence is presumed to have a sufficient appreciation of those matters if no evidence tending to show the contrary is adduced by any party.

(4) If any such evidence is adduced, it is for the party seeking to have the witness sworn to satisfy the court that, on a balance of probabilities, the witness has attained the age of 14 and has a sufficient appreciation of the matters mentioned in subsection (2)(b).

(5) Any proceedings held for deciding the question mentioned in subsection (1) must take place in the absence of the jury (if there is one).

(6) Expert evidence may be received on the question.

(7) Any questioning of the witness, if the court considers that necessary, must be conducted by the court in the presence of the parties.

(8) For the purposes of this section a person is able to give intelligible oral evidence if the person is able to —

(a) understand questions put to him or her as a witness; and

(b) give answers to them which can be understood.

[CJ (Evidence) Ord. s.42; UK Youth Justice & Criminal Evidence Act 1999 s.55]

352. Reception of unsworn evidence

(1) Subsections (2) and (3) apply to a person of any age who —

(a) is competent to give evidence in criminal proceedings; but

(b) by virtue of section 351(2) is not permitted to be sworn for the purpose of giving evidence on oath in such proceedings.

(2) The evidence in criminal proceedings of a person to whom this subsection applies is to be given unsworn.

(3) A deposition of unsworn evidence given by a person to whom this subsection applies may be taken for the purposes of criminal proceedings as if that evidence had been given on oath.

(4) A court in criminal proceedings must receive in evidence any evidence given unsworn pursuant to subsection (2) or (3).

(5) If a person ("the witness") who is competent to give evidence in criminal proceedings gives evidence in such proceedings unsworn, no conviction, verdict or finding in those proceedings is to be taken to be unsafe for the purposes of an appeal against conviction by reason only that it appears to the Court of Appeal that the witness was a person falling within section 351(2) (and should accordingly have given evidence on oath).
[CJ (Evidence) Ord. s.43; UK Youth Justice & Criminal Evidence Act 1999 s.56]

353. No right for defendant to make unsworn statement
(1) Subject to subsections (2) and (3), in any criminal proceedings the defendant is not entitled to make a statement without being sworn, and accordingly, if the defendant gives evidence, he or she must, subject to sections 351 and 352, do so on oath and is liable to cross-examination.

(2) This section does not affect the right of the defendant, if not legally represented, to address the court or jury otherwise than on oath on any matter on which, if the defendant were so represented, a legal practitioner could address the court or jury on the defendant's behalf.

(3) Nothing in subsection (1) prevents the defendant making a statement without being sworn if—

(a) it is one which the defendant is required by law to make personally; or

(b) the defendant makes it by way of mitigation before the court passes sentence.
[CJ Ord. s.106A; UK Criminal Justice Act 1982 s.72]

354. Competence of defendants and their spouses
(1) Subject to this section, a defendant, and the spouse of a defendant, is a competent witness for the defence at every stage of the proceedings, whether the defendant is charged solely or jointly with any other person.

(2) A defendant in criminal proceedings may not be called as a witness in the proceedings except upon the person's own application.

(3) The spouse of a defendant may not, except as provided in this Part, be called as a witness pursuant to this Part except upon the application of the defendant.

(4) A defendant in criminal proceedings who is called as a witness in the proceedings may be asked any question in cross-examination even though it would tend to incriminate the person as to any offence with which he or she is charged in the proceedings.
[UK Criminal Evidence Act 1898 s.1 am. by Youth Justice & Criminal Evidence Act 1999 etc.]

355. Compellability of defendant's spouse
(1) In any criminal proceedings the spouse of a defendant in the proceedings is, subject to subsection (4), compellable to give evidence on behalf of that person.

(2) In any criminal proceedings a person who has been, but is no longer, married to the defendant is compellable to give evidence as if that person and the defendant had never been married.

(3) In any criminal proceedings the spouse of a defendant in the proceedings is, subject to subsection (4), compellable to give evidence —

(a) on behalf of any other person charged in the proceedings, but only in respect of any specified offence with which that other person is charged;

(b) for the prosecution, but only in respect of any specified offence with which any person is charged in the proceedings.

(4) No defendant in any proceedings is compellable by virtue of subsection (1), (2) or (3) to give evidence in the proceedings.

(5) The failure of the spouse of a defendant in any proceedings to give evidence in the proceedings must not be made the subject of any comment by the prosecution.
[CJ Ord. s.107 (part); UK PACE Act 1984 s.80 am. by Youth Justice & Criminal Evidence Act 1999, etc.]

356. Compellability of defendant's spouse: Supplementary
(1) In relation to the spouse of a defendant in any criminal proceedings, an offence is a specified offence for the purposes of section 355(3) if —

(a) it involves an assault on, or injury or a threat of injury to, the spouse or a person who was at the material time under the age of 16;

(b) it is a sexual offence (as defined in section 2(1)) alleged to have been committed in respect of a person who was at the material time under that age;

(c) it consists of attempting or conspiring to commit, or of encouraging or aiding and abetting the commission of, an offence falling within paragraph (a) or paragraph (b).

(2) References in section 355 or this section to a defendant in any proceedings do not include a person who is not, or is no longer, liable to be convicted of any offence in the proceedings, whether as a result of pleading guilty or for any other reason.
[CJ Ord. s.107 (part); UK PACE Act 1984 s.80A ins. by Youth Justice & Criminal Evidence Act 1999]

Convictions and acquittals

357. Evidence in Magistrate's Court or Summary Court
If —

(a) person is convicted of a summary offence by the Magistrate's Court or Summary Court, except when sitting as a Youth Court;

(b) it is proved to the satisfaction of the court that not less than 7 days previously a notice was served on the person in a form and manner prescribed by criminal procedure rules specifying an alleged previous conviction of the person of an offence proposed to be brought to the notice of the court in the event of the person's conviction of the offence charged; and

(c) the person is not present in person before the court,

the court may take account of any such previous conviction so specified as if the defendant had appeared and admitted it.
[UK Magistrates Courts Act 1980 s.104]

358. Proof of convictions and acquittals
(1) If in any proceedings the fact that a person has been convicted or acquitted of an offence in the Falkland Islands or elsewhere, other than by a court martial, is admissible in evidence, it may be proved by —

(a) producing a certificate of conviction or, as the case may be, of acquittal relating to that offence; and

(b) proving that the person named in the certificate as having been convicted or acquitted of the offence is the person whose conviction or acquittal of the offence is to be proved.

(2) For the purposes of this section, a certificate of conviction or of acquittal must be, as regards a conviction or acquittal —

(a) on indictment - a certificate, signed by the proper officer of the court where the conviction or acquittal took place, giving the substance and effect (omitting the formal parts) of the indictment and of the conviction or acquittal;

(b) on summary trial - a copy of the conviction or of the dismissal of the information, signed by the proper officer of the court where the conviction or acquittal took place or by the proper officer of the court, if any, to which a memorandum of the conviction or acquittal

was sent;

(c) by a court outside the Falkland Islands – a certificate, signed by the proper officer of the court where the conviction or acquittal took place, giving details of the offence, of the conviction or acquittal, and of any sentence.

(3) A document purporting to be a duly signed certificate of conviction or acquittal under this section is to be taken to be such a certificate unless the contrary is proved.

(4) In subsection (2) "proper officer" means —

(a) in relation to the Magistrate's Court or the Summary Court - the Clerk of the court;

(b) in relation to the Supreme Court - the Registrar;

(c) in relation to a court outside the Falkland Islands – a person who would be the proper officer of the court if the court were in the Falkland Islands.

(5) References in this section to the clerk or registrar of a court include references to the deputy and to any other person having the custody of the court record.

(6) The method of proving a conviction or acquittal authorised by this section is in addition to any other authorised manner of proving a conviction or acquittal.
[CJ Ord. s.101; UK PACE Act 1984 s.73; Evidence Act 1851 s.7]

359. Conviction as evidence of commission of offence
(1) In any proceedings, if —

(a) evidence is admissible of the fact that the defendant has committed an offence; and

(b) the defendant is proved to have been convicted of the offence by or before any court or court martial in the Falkland Islands or elsewhere,

the defendant is to be taken to have committed that offence unless the contrary is proved.

(2) In any proceedings, the fact that a person other than the defendant has been convicted of an offence by or before any court or court martial in the Falkland Islands or elsewhere is admissible to prove that the person committed that offence, if evidence of the person having committed it is admissible, whether or not any other evidence of the person having committed that offence is given.

(3) In any proceedings in which by virtue of this section or section 358 a person other than the defendant is proved to have been convicted of an offence by or before any court or court martial in the Falkland Islands or elsewhere, the person is to be taken to have committed that offence unless the contrary is proved.

(4) Nothing in this section affects —

(a) the admissibility in evidence of any conviction which would be admissible apart from this section; or

(b) the operation of any enactment by which a conviction or a finding of fact in any proceedings is for the purposes of any other proceedings made conclusive evidence of any fact.

(5) If evidence that a person has been convicted of an offence is admissible by virtue of this section, then, without affecting the reception of any other admissible evidence for the purpose of identifying the facts on which the conviction was based, the contents of —

(a) any document which is admissible as evidence of the conviction; and

(b) the information, complaint, indictment or charge-sheet on which the person in question was convicted,

are admissible in evidence for that purpose.

(6) For the purposes of this section —

(a) a conviction leading to a conditional or absolute discharge, to a community sentence or to a probation order is a conviction; but

(b) a conviction that no longer subsists is not a conviction.

(7) If in any proceedings the contents of any document are admissible in evidence by virtue of subsection (5), a copy of the document, or of the material part of it, purporting to be certified or otherwise authenticated by or on behalf of the court or authority that has custody of the document is admissible in evidence and is to be taken to be a true copy of the document or part unless the contrary is shown.
[CJ Ord. s.102; UK PACE Act 1984 ss.74 and 75 am. by Criminal Justice Act 2003]

360. Proof by fingerprints

(1) A previous conviction may be proved against any person in any proceedings, by the production of such evidence of the conviction as is mentioned in this section, and by showing that that person's fingerprints and those of the person convicted are the fingerprints of the same person.

(2) A certificate purporting to be signed by or on behalf of the Chief Police Officer containing particulars relating to a conviction extracted from the criminal records kept by the police, and certifying that the copies of the fingerprints exhibited to the certificate are copies of the fingerprints appearing in the records to have been taken from the person convicted on the occasion of the conviction, is evidence of the conviction and that the copies of the fingerprints exhibited to the certificate are copies of the fingerprints of the person convicted.

(3) A certificate purporting to be signed by or on behalf of the Chief Police Officer, certifying that the fingerprints exhibited to it were taken from any person while in lawful custody, is evidence that the fingerprints exhibited to the certificate are the fingerprints of that person.

(4) A certificate purporting to be signed by or on behalf of the Chief Police Officer and certifying that the fingerprints, copies of which are certified by or on behalf of the Chief Police Officer to be copies of the fingerprints of a person previously convicted and the fingerprints certified by or on behalf of the Chief Police Officer under subsection (3), or otherwise shown to be the fingerprints of the person against whom the previous conviction is sought to be proved are the fingerprints of the same person, is evidence of the matters so certified.

(5) The method of proving a previous conviction authorised by this section is in addition to and not to the exclusion of any other authorised method of proving such conviction.
[UK case law summarised]

Admissions and confessions

361. Proof by formal admission
(1) Subject to this section, any fact of which oral evidence may be given in any proceedings may be admitted for the purpose of those proceedings by or on behalf of the prosecutor or defendant, and the admission by any party of any such fact under this section is, as against that party, conclusive evidence in those proceedings of the fact admitted.

(2) An admission under this section —

(a) may be made before or at the proceedings;

(b) if made otherwise than in court, must be in writing;

(c) if made in writing by an individual, must purport to be signed by the person making it and, if so made by a corporate body, to be signed by a director or manager, or the secretary or clerk, or some other similar officer of the body;

(d) if made on behalf of a defendant who is an individual, must be made by his or her legal practitioner;

(e) if made at any stage before the trial by a defendant who is an individual, must be approved by his or her legal practitioner, whether at the time it was made or subsequently, before or at the proceedings in question.

(3) An admission under this section for the purpose of proceedings relating to any matter is to be treated as an admission for the purpose of any subsequent criminal proceedings relating to that matter, including any appeal or retrial.

(4) An admission under this section may with the leave of the court be withdrawn in the proceedings for the purpose of which it is made or any subsequent criminal proceedings relating to the same matter.
[UK Criminal Justice Act 1967 s.10]

362. Confessions: General
(1) In any proceedings a confession made by a defendant may be given in evidence against the defendant in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court pursuant to this section.

(2) If, in any proceedings in which the prosecution proposes to give in evidence, a confession made by a defendant, it is represented to the court that the confession was or may have been obtained —

(a) by oppression of the person who made it; or

(b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by the defendant in consequence of that thing,

the court must not allow the confession to be given in evidence against the defendant (even if it may be true) unless the prosecution proves to the court beyond reasonable doubt that the confession was not obtained as described in paragraph (a) or (b).

(3) In any proceedings in which the prosecution proposes to give in evidence a confession made by a defendant, the court may on its own initiative require the prosecution, as a condition of allowing it to do so, to prove that the confession was not obtained as mentioned in subsection (2).

(4) The fact that a confession is wholly or partly excluded pursuant to this section does not affect the admissibility in evidence —

(a) of any facts discovered as a result of the confession; or

(b) if the confession is relevant as showing that the defendant speaks, writes or expresses himself or herself in a particular way - of so much of the confession as is necessary to show that he or she does so.

(5) Evidence that a fact to which this subsection applies was discovered as a result of a statement made by a defendant is not admissible unless evidence of how it was discovered is given by the defendant or on his or her behalf.

(6) Subsection (5) applies to any fact discovered as a result of a confession which is —

(a) wholly excluded pursuant to this section; or

(b) partly so excluded, if the fact is discovered as a result of the excluded part of the confession.

(7) In this section "oppression" includes torture, inhuman or degrading treatment and the use or threat of violence (whether or not amounting to torture).
[CJ Ord. s.103; UK PACE Act 1984 s.76 am. by Criminal Procedure & Investigations Act 1996]

363. Confessions may be given in evidence for co-defendant
(1) In any proceedings a confession made by a defendant may be given in evidence for another person charged in the same proceedings (a co-defendant) insofar as it is relevant to any matter in issue in the proceedings and is not excluded by the court pursuant to this section.

(2) If, in any proceedings where a co-defendant proposes to give in evidence a confession made by a defendant, it is represented to the court that the confession was or may have been obtained—

(a) by oppression of the person who made it; or

(b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by the person in consequence of it,

the court must not allow the confession to be given in evidence for the co-defendant except insofar as it is proved to the court on the balance of probabilities that the confession (even if it might be true) was not so obtained.

(3) Before allowing a confession made by a defendant to be given in evidence for a co-defendant in any proceedings, the court may on its own initiative require the fact that the confession was not obtained as mentioned in subsection (2) to be proved in the proceedings on the balance of probabilities.

(4) The fact that a confession is wholly or partly excluded pursuant to this section does not affect the admissibility in evidence —

(a) of any facts discovered as a result of the confession; or

(b) if the confession is relevant as showing that the defendant speaks, writes or expresses himself or herself in a particular way - of so much of the confession as is necessary to show that the defendant does so.

(5) Evidence that a fact to which this subsection applies was discovered as a result of a statement made by a defendant is not admissible unless evidence of how it was discovered is given by the defendant or on his or her behalf.

(6) Subsection (5) applies to —

(a) any fact discovered as a result of a confession which is wholly excluded pursuant to this section; and

(b) any fact discovered as a result of a confession which is partly so excluded, if the fact is discovered as a result of the excluded part of the confession.

(7) In this section "oppression" includes torture, inhuman or degrading treatment, and the use or threat of violence (whether or not amounting to torture).
[UK PACE Act 1984 s.76A inserted by Criminal Justice Act 2003 s.128]

364. Confessions by mentally handicapped persons
(1) Without affecting the general duty of the court at a trial on indictment with a jury to direct the jury on any matter on which it appears to the court appropriate to do so, if in such a trial —

(a) the case against the defendant depends wholly or substantially on a confession by the defendant; and

(b) the court is satisfied that —

(i) the defendant is mentally handicapped; and

(ii) the confession was not made in the presence of an independent person,

the court must —

(c) warn the jury, if there is one, or direct itself, if there is not, that there is special need for caution before convicting the defendant in reliance on the confession; and

(d) explain that the need arises because of the circumstances mentioned in paragraphs (a) and (b).

(2) If in a summary trial or a trial without a jury of a person for an offence it appears to the court that a warning under subsection (1) would be required if the trial were on indictment with a jury, the court must treat the case as one in which there is a special need for caution before convicting the defendant on his or her confession.

(3) In this section —

"independent person" does not include a police officer or a person employed for or engaged on police purposes;

"mentally handicapped", in relation to a person, means that the person is in a state of arrested or incomplete development of mind which includes significant impairment of intelligence and social functioning;

"police purposes" includes the purposes of civilians employed by the police and police cadets undergoing training with a view to becoming members of the police force.
[CJ Ord. s.104; UK PACE Act 1984 s.77 am. by UK Police Act 1996]

Inferences from silence

365. Defendant's failure to mention facts when questioned or charged
(1) If, in any proceedings against a person for an offence, evidence is given that the defendant —

(a) at any time before the person was charged with the offence, on being questioned under caution by a police officer trying to discover whether or by whom the offence had been committed, failed to mention any fact relied on in his or her defence in those proceedings; or

(b) on being charged with the offence or officially informed that he or she might be prosecuted for it, failed to mention any such fact,

and the fact is one which in the circumstances existing at the time the defendant could reasonably have been expected to mention when so questioned, charged or informed, as the case may be, subsection (2) applies.

(2) If this subsection applies —

(a) a judge, in determining whether there is a case to answer; and

(b) a court or jury, in determining whether the defendant is guilty of the offence charged,

may draw any inferences from the failure that appear proper.

(3) If the defendant was at a place of lawful custody at the time of the failure, subsections (1) and (2) do not apply if the defendant had not been allowed an opportunity to consult a legal practitioner before being questioned, charged or informed as mentioned in subsection (1).

(4) Subject to any directions by the court, evidence tending to establish the failure may be given before or after evidence tending to establish the fact which the defendant is alleged to have failed to mention.

(5) This section applies in relation to questioning by persons (other than police officers) charged with the duty of investigating offences or charging offenders as it applies in relation to questioning by police officers; and in subsection (1) "officially informed" means informed by a police officer or any such person.

(6) This section does not —

(a) affect the admissibility in evidence of the silence or other reaction of the defendant in the face of anything said in the defendant's presence relating to the conduct in respect of which

the defendant is charged, insofar as evidence of it would be admissible apart from this section; or

(b) preclude the drawing of any inference from any such silence or other reaction of the defendant which could properly be drawn apart from this section.

(7) This section does not apply in relation to a failure to mention a fact if the failure occurred before the commencement of this section.
UK Criminal Justice & Public Order Act 1994 s.34

366. Defendant's silence at trial
(1) At the trial of any person for an offence, subsections (3) and (4) apply unless —

(a) the defendant's guilt is not in issue; or

(b) it appears to the court that the physical or mental condition of the defendant makes it undesirable for him or her to give evidence.

(2) Subsection (3) does not apply if, at the conclusion of the evidence for the prosecution, the defendant's legal practitioner informs the court that the defendant will give evidence or, if the defendant is unrepresented, the court ascertains from the defendant that he or she will give evidence.

(3) If this subsection applies, the court must, at the conclusion of the evidence for the prosecution, satisfy itself (in the case of proceedings on indictment, in the presence of the jury, if any) that the defendant is aware that —

(a) the stage has been reached at which evidence can be given for the defence;

(b) the defendant can, if he or she wishes, give evidence; and

(c) if the defendant chooses not to give evidence, or having been sworn, without good cause refuses to answer any question, it will be permissible for the court or jury to draw such inferences as appear proper from the defendant's failure to give evidence or refusal, without good cause, to answer any question.

(4) If this subsection applies, the court or jury, in determining whether the defendant is guilty of the offence charged, may draw any inferences that appear proper from the defendant's failure to give evidence or refusal, without good cause, to answer any question.

(5) This section does not render the defendant compellable to give evidence on his or her own behalf, and the defendant is accordingly not guilty of contempt of court by reason of a failure to do so.

(6) For the purposes of this section a person who, having been sworn, refuses to answer any question is to be taken to do so without good cause unless —

(a) the person is entitled to refuse to answer the question by virtue of any enactment, whenever passed or made, or on the ground of privilege; or

(b) the court in the exercise of its general discretion excuses the person from answering it.

(7) This section applies —

(a) in relation to proceedings on indictment for an offence - only if the person charged with the offence appears on the indictment on or after the commencement of this section;

(b) in relation to proceedings in the Magistrate's Court or the Summary Court - only if the time when the court begins to receive evidence in the proceedings falls after the commencement of this section.

[UK Criminal Justice & Public Order Act 1994 s.35]

367. Defendant's failure or refusal to account for objects, substances or marks

(1) If —

(a) a person is arrested by a police officer, and there is —

(i) on his or her person;

(ii) in or on his or her clothing or footwear;

(iii) otherwise in his or her possession; or

(iv) in any place in which he or she is when arrested,

any object, substance or mark, or there is any mark on any such object;

(b) that or another police officer investigating the case reasonably believes that the presence of the object, substance or mark may be attributable to the participation of the arrested person in the commission of an offence specified by the officer;

(c) the police officer informs the arrested person that the officer so believes, and requests the person to account for the presence of the object, substance or mark; and

(d) the person fails or refuses to do so,

then if, in any proceedings against the person for the offence so specified, evidence of those matters is given, subsection (2) applies.

(2) If this subsection applies —

(a) a judge, in determining whether there is a case to answer; and

(b) a court or jury, in determining whether the defendant is guilty of the offence charged,

may draw any inferences from the failure or refusal that appear proper.

(3) Subsections (1) and (2) apply to the condition of clothing or footwear as they apply to a substance or mark on clothing or footwear.

(4) Subsections (1) and (2) do not apply unless the defendant was told in ordinary language by the police officer when making the request mentioned in subsection (1)(c) what the effect of this section would be if the defendant failed or refused to comply with the request.

(5) If the defendant was at a place of lawful custody at the time of the failure or refusal, subsections (1) and (2) do not apply if the defendant had not been allowed an opportunity to consult a legal practitioner before the request was made.

(6) This section applies in relation to questioning by customs officers investigating offences or charging offenders as it applies in relation to questioning by police officers.

(7) This section does not preclude the drawing of any inference from a failure or refusal of the defendant to account for the presence of an object, substance or mark or from the condition of clothing or footwear which could properly be drawn apart from this section.

(8) This section does not apply in relation to a failure or refusal which occurred before the commencement of this section.
[UK Criminal Justice & Public Order Act 1994 s.36 am. by Youth Justice & Criminal Evidence Act 1999]

368. Defendant's failure or refusal to account for presence at a particular place
(1) If —

(a) a person arrested by a police officer was found by the officer at a place at or about the time the offence for which he or she was arrested is alleged to have been committed;

(b) that or another police officer investigating the offence reasonably believes that the presence of the person at that place and at that time may be attributable to his or her participation in the commission of the offence;

(c) the police officer informs the person that the officer so believes, and requests the person to account for that presence; and

(d) the person fails or refuses to do so,

then if, in any proceedings against the person for the offence, evidence of those matters is given, subsection (2) applies.

(2) If this subsection applies —

(a) a judge, in determining whether there is a case to answer; and

(b) a court or jury, in determining whether the defendant is guilty of the offence charged,

may draw any inferences from the failure or refusal that appear proper.

(3) Subsections (1) and (2) do not apply unless the defendant was told in ordinary language by the police officer when making the request mentioned in subsection (1)(c) what the effect of this section would be if the defendant failed or refused to comply with the request.

(4) If the defendant was at a place of lawful custody at the time of the failure or refusal, subsections (1) and (2) do not apply if the defendant had not been allowed an opportunity to consult a legal practitioner before the request was made.

(5) This section applies in relation to questioning by other public officers investigating offences or charging offenders under statutory powers as it applies in relation to questioning by police officers.

(6) This section does not preclude the drawing of any inference from a failure or refusal of the defendant to account for his or her presence at a place which could properly be drawn apart from this section.

(7) This section does not apply in relation to a failure or refusal which occurred before the commencement of this section.
[UK Criminal Justice & Public Order Act 1994 s.37 am. by Youth Justice & Criminal Evidence Act 1999]

369. Interpretation and savings for sections 365 to 368
(1) In sections 365 to 368, references to an offence charged include references to any other offence of which the defendant could lawfully be convicted on that charge.

(2) A person must not be sent to the Supreme Court for trial, will not have a case to answer and must not be convicted of an offence by any court solely on an inference drawn from such a failure or refusal as is mentioned in section 365(2), 366(4), 367(2) or 368(2).

(3) Nothing in any of sections 365 to 368 affects the operation of a provision of any enactment which provides (in whatever words) that any answer or evidence given by a person giving evidence in specified circumstances is not admissible in evidence against that person or some other person in any proceedings or class of proceedings (however described, and whether civil or criminal).

(4) In subsection (3), the reference to giving evidence is a reference to giving evidence in any manner, whether by furnishing information, making discovery, producing documents or otherwise.

(5) Nothing in any of sections 365 to 368 affects any power of a court, in any proceedings, to exclude evidence (whether by preventing questions being put or otherwise) at its discretion.
[UK Criminal Justice & Public Order Act 1994 s.38 am. by Youth Justice & Criminal Evidence Act 1999]

370. Inferences in murder and manslaughter cases
(1) Subsection (2) applies if a defendant is charged in the same proceedings with an offence of murder or manslaughter and with an offence under section 77 of the Crimes Ordinance 2014 (Causing or allowing the death of a child or vulnerable adult) in respect of the same death ("the section 77 offence").

(2) If by virtue of section 366(4) a court or jury is permitted, in relation to the section 77 offence, to draw any inferences that appear proper from the defendant's failure to give evidence or refusal to answer a question, the court or jury 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) In any trial on a charge of murder or manslaughter the question whether there is a case for the defendant to answer is not to be considered before the close of all the evidence.
[UK Domestic Violence, Crime and Victims Act 2004 s.6 adapted]

Evidence of bad character

371. Interpretation of sections 372 to 383
(1) In sections 372 to 383 —

"bad character" is to be read in accordance with section 372;

"important matter" means a matter of substantial importance in the context of the case as a whole;

"misconduct" means the commission of an offence or other reprehensible behaviour;

"probative value", and "relevant"(in relation to an item of evidence), are to be read in accordance with section 383;

"prosecution evidence" means evidence which is to be (or has been) adduced by the prosecution, or which a witness is to be invited to give (or has given) in cross-examination by the prosecution.

(2) If a defendant is charged with 2 or more offences in the same criminal proceedings, sections 374 to 385 (except section 375(3)) have effect as if each offence were charged in separate proceedings; and references to the offence with which the defendant is charged are to be read accordingly.

(3) Nothing in sections 374 to 385 affects the exclusion of evidence —

(a) under the rule in section 401 (Witness may be discredited by the party producing) against a party impeaching the credit of that party's own witness by general evidence of bad character;

(b) under section 455 (questions about complainant's sexual history); or

(c) on grounds other than the fact that it is evidence of a person's bad character.
[UK Criminal Justice Act 2003 s.112]

372. "Bad character"
(1) References in sections 374 to 385 to evidence of a person's "bad character" are to evidence of, or of a disposition towards, misconduct on the person's part, other than evidence which —

(a) has to do with the alleged facts of the offence with which the defendant is charged; or

(b) is evidence of misconduct in connection with the investigation or prosecution of that offence.

(2) For the purpose of this section, evidence of bad character may include —

(a) notwithstanding section 136(3) - evidence of a previous caution, including a caution which has become "spent" in terms of section 136;

(b) notwithstanding section 505 - a conviction resulting in an absolute discharge under Part 24 (Absolute or Conditional Discharges); and

(c) notwithstanding section 628 - evidence of a previous conviction, including a conviction which has become "spent" in terms of section 627.
[UK Criminal Justice Act 2003 s.98 expanded]

373. Abolition of common law rules
(1) The common law rules governing the admissibility of evidence of bad character in criminal proceedings are abolished.

(2) Subsection (1) is subject to section 396(1) (categories of admissibility) in so far as it preserves the rule under which in criminal proceedings a person's reputation is admissible for the purposes of proving his or her bad character.
[UK Criminal Justice Act 2003 s.99]

374. Non-defendant's bad character

(1) In criminal proceedings, evidence of the bad character of a person other than the defendant is admissible if and only if —

(a) it is important explanatory evidence;

(b) it has substantial probative value in relation to a matter which —

(i) is a matter in issue in the proceeding; and

(ii) is of substantial importance in the context of the case as a whole; or

(c) all parties to the proceedings agree to the evidence being admissible.

(2) For the purposes of subsection (1)(a) evidence is important explanatory evidence if —

(a) without it, the court or jury would find it impossible or difficult properly to understand other evidence in the case; and

(b) its value for understanding the case as a whole is substantial.

(3) In assessing the probative value of evidence for the purposes of subsection (1)(b) the court must have regard to the following factors (and to any others it considers relevant) —

(a) the nature and number of the events, or other things, to which the evidence relates;

(b) when those events or things are alleged to have happened or existed;

(c) if —

(i) the evidence is evidence of a person's misconduct; and

(ii) it is suggested that the evidence has probative value by reason of similarity between that misconduct and other alleged misconduct,

the nature and extent of the similarities and the dissimilarities between each of the alleged instances of misconduct;

(d) if —

(i) the evidence is evidence of a person's misconduct;

(ii) it is suggested that that person is also responsible for the misconduct charged; and

(iii) the identity of the person responsible for the misconduct charged is disputed,

the extent to which the evidence shows or tends to show that the same person was responsible each time.

(4) Except where subsection (1)(c) applies, evidence of the bad character of a person other than the defendant must not be given without leave of the court.
[UK Criminal Justice Act 2003 s.100]

375. Defendant's bad character
(1) In criminal proceedings evidence of the defendant's bad character is admissible if, but only if—

(a) all parties to the proceedings agree to the evidence being admissible;

(b) the evidence is adduced by the defendant or is given in answer to a question asked by the defendant in cross-examination and intended to elicit it;

(c) it is important explanatory evidence;

(d) it is relevant to an important matter in issue between the defendant and the prosecution;

(e) it has substantial probative value in relation to an important matter in issue between the defendant and a co-defendant;

(f) it is evidence to correct a false impression given by the defendant; or

(g) the defendant has made an attack on another person's character.

(2) Sections 376 to 380 contain provisions supplementing subsection (1).

(3) The court must not admit evidence under subsection (1)(d) or (g) if, on an application by the defendant to exclude it, it appears to the court that the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.

(4) On an application to exclude evidence under subsection (3) the court must have regard, in particular, to the length of time between the matters to which that evidence relates and the matters which form the subject of the offence charged.
[UK Criminal Justice Act 2003 s.101]

376. "Important explanatory evidence"
For the purposes of section 375(1)(c) evidence is important explanatory evidence if —

(a) without it, the court or jury would find it impossible or difficult properly to understand other evidence in the case; and

(b) its value for understanding the case as a whole is substantial.
[UK Criminal Justice Act 2003 s.102]

377. "Matter in issue between the defendant and the prosecution" – Schedule 7
(1) For the purposes of section 375(1)(d) the matters in issue between the defendant and the prosecution include —

(a) the question whether the defendant has a propensity to commit offences of the kind with which he or she is charged, except where having such a propensity makes it no more likely that the defendant is guilty of the offence;

(b) the question whether the defendant has a propensity to be untruthful, except where it is not suggested that the defendant's case is untruthful in any respect.

(2) If subsection (1)(a) applies, a defendant's propensity to commit offences of the kind with which he or she is charged may (without affecting any other way of doing so) be established by evidence that the defendant has been convicted of —

(a) an offence of the same description as the one with which he or she is charged; or

(b) an offence of the same category as the one with which he or she is charged.

(3) Subsection (2) does not apply in the case of a particular defendant if the court is satisfied, by reason of the length of time since the conviction or for any other reason, that it would be unjust for it to apply in his or her case.

(4) For the purposes of subsection (2) —

(a) 2 offences are of the same description as each other if the statement of the offence in an indictment would, in each case, be in the same terms;

(b) 2 offences are of the same category as each other if they belong to the same category of offences as set out in Schedule 7.

(5) Only prosecution evidence is admissible under section 375(1)(d).
[UK Criminal Justice Act 2003 s.103 and SI 2004 No. 3346]

378. "Matter in issue between the defendant and a co-defendant"
(1) Evidence which is relevant to the question whether the defendant has a propensity to be untruthful is admissible on that basis under section 375(1)(e) only if the nature or conduct of his or her defence is such as to undermine the co-defendant's defence.

(2) Only evidence —

(a) which is to be (or has been) adduced by the co-defendant; or

(b) which a witness is to be invited to give (or has given) in cross-examination by the co-defendant,

is admissible under section 375(1)(e).
[UK Criminal Justice Act 2003 s.104]

379. Evidence to correct a false impression

(1) For the purposes of section 375(1)(f) —

(a) the defendant gives a false impression if he or she is responsible for the making of an express or implied assertion which is apt to give the court or jury a false or misleading impression about the defendant;

(b) evidence to correct such an impression is evidence which has probative value in correcting it.

(2) A defendant is treated as being responsible for the making of an assertion if —

(a) the assertion is made by the defendant in the proceedings (whether or not in evidence given by him or her);

(b) the assertion was made by the defendant —

(i) on being questioned under caution, before charge, about the offence with which he or she is charged; or

(ii) on being charged with the offence or officially informed he or she might be prosecuted for it,

and evidence of the assertion is given in the proceedings;

(c) the assertion is made by a witness called by the defendant;

(d) the assertion is made by any witness in cross-examination in response to a question asked by the defendant that is intended to elicit it, or is likely to do so; or

(e) the assertion was made by any person out of court, and the defendant adduces evidence of it in the proceedings.

(3) A defendant who would otherwise be treated as responsible for the making of an assertion is not to be so treated if, or to the extent that, the defendant withdraws it or disassociates himself or herself from it.

(4) If it appears to the court that a defendant, by means of his or her conduct (other than the giving of evidence) in the proceedings, is seeking to give the court or jury an impression about himself or herself that is false or misleading, the court may if it appears just to do so treat the defendant as being responsible for the making of an assertion which is apt to give that impression.

(5) In subsection (4) "conduct" includes appearance or dress.

(6) Evidence is admissible under section 375(1)(f) only if it goes no further than is necessary to correct the false impression.

(7) Only prosecution evidence is admissible under section 375(1)(f).
[UK Criminal Justice Act 2003 s.105]

380. Attack on another person's character
(1) For the purposes of section 375(1)(g) a defendant makes an attack on another person's character if —

(a) the defendant adduces evidence attacking the other person's character;

(b) the defendant (or any legal practitioner appointed under section 453(4) to cross-examine a witness in his or her interests) asks questions in cross-examination that are intended to elicit such evidence, or are likely to do so; or

(c) evidence is given of an imputation about the other person made by the defendant —

(i) on being questioned under caution, before charge, about the offence with which he or she is charged; or

(ii) on being charged with the offence or officially informed that he or she might be prosecuted for it.

(2) In subsection (1) "evidence attacking the other person's character" means evidence to the effect that the other person —

(a) has committed an offence (whether a different offence from the one with which the defendant is charged or the same one); or

(b) has behaved, or is disposed to behave, in a reprehensible way;

and "imputation about the other person" means an assertion to that effect.

(3) Only prosecution evidence is admissible under section 375(1)(g).
[UK Criminal Justice Act 2003 s.106]

381. Stopping the case if evidence contaminated
(1) If on a defendant's trial before a judge and jury for an offence —

(a) evidence of the defendant's bad character has been admitted under any of paragraphs (c) to (g) of section 375(1); and

(b) the court is satisfied at any time after the close of the case for the prosecution that —

(i) the evidence is contaminated; and

(ii) the contamination is such that, considering the importance of the evidence to the case against the defendant, his or her conviction of the offence would be unsafe,

the court must either direct the jury to acquit the defendant of the offence or, if it considers that there ought to be a retrial, discharge the jury.

(2) If —

(a) a jury is directed under subsection (1) to acquit a defendant of an offence; and

(b) the circumstances are such that, apart from this subsection, the defendant could if acquitted of that offence be found guilty of another offence,

the defendant may not be found guilty of that other offence if the court is satisfied as mentioned in subsection (1)(b) in respect of it.

(3) If —

(a) a jury is required to decide under section 764 (Finding that the defendant did the act or made the omission charged) whether a person charged on an indictment with an offence did the act or made the omission charged;

(b) evidence of the person's bad character has been admitted under any of paragraphs (c) to (g) of section 375(1); and

(c) the court is satisfied at any time after the close of the case for the prosecution that —

(i) the evidence is contaminated; and

(ii) the contamination is such that, considering the importance of the evidence to the case against the person, a finding that he or she did the act or made the omission would be unsafe,

the court must either direct the jury to acquit the defendant of the offence or, if it considers that there ought to be a rehearing, discharge the jury.

(4) This section does not prejudice any other power a court may have to direct a jury to acquit a person of an offence or to discharge a jury.

(5) For the purposes of this section a person's evidence is contaminated if —

(a) as a result of an agreement or understanding between the person and one or more others; or

(b) as a result of the person being aware of anything alleged by one or more others whose evidence may be, or has been, given in the proceedings,

the evidence is false or misleading in any respect, or is different from what it would otherwise have been.
[UK Criminal Justice Act 2003 s.107]

382. Offences committed by defendant when a child
(1) In proceedings for an offence committed or alleged to have been committed by the defendant when aged 21 or over, evidence of his or her conviction for an offence when under the age of 14 is not admissible unless —

(a) both of the offences are indictment-only; and

(b) the court is satisfied that the interests of justice require the evidence to be admissible.

(2) Subsection (1) applies in addition to section 375.
[UK Criminal Justice Act 2003 s.108]

383. Assumption of truth in assessment of relevance or probative value
(1) Subject to subsection (2), a reference in any of sections 374 to 385 to the relevance or probative value of evidence is a reference to its relevance or probative value on the assumption that it is true.

(2) In assessing the relevance or probative value of an item of evidence for any purpose of sections 374 to 385, a court need not assume that the evidence is true if it appears, on the basis of any material before the court (including any evidence it decides to hear on the matter) that no court or jury could reasonably find it to be true.
[UK Criminal Justice Act 2003 s.109]

384. Court's duty to give reasons for rulings
(1) If the court makes a relevant ruling —

(a) it must state in open court (but in the absence of the jury, if there is one) its reasons for the ruling;

(b) if it is the Magistrate's Court or the Summary Court, it must cause the ruling and the reasons for it to be entered in the register of the court's proceedings.

(2) In this section "relevant ruling" means —

(a) a ruling on whether an item of evidence is evidence of a person's bad character;

(b) a ruling on whether an item of such evidence is admissible under section 374 or 375 (including a ruling on an application under section 375(3));

(c) a ruling stopping the case under section 381.
[UK Criminal Justice Act 2003 s.110]

385. Criminal procedure rules
(1) The Chief Justice may, by criminal procedure rules, make further provision for the purposes of sections 371 to 384, including a provision requiring a prosecutor who proposes to —

(a) adduce evidence of a defendant's bad character; or

(b) cross-examine a witness with a view to eliciting such evidence,

to serve on the defendant such notice, and such particulars of or relating to the evidence, as are prescribed by the rules.

(2) The criminal procedure rules may provide that the court or the defendant may, in prescribed circumstances, dispense with a requirement imposed by virtue of subsection (1).

(3) In considering the exercise of its powers with respect to costs, the court may take into account any failure by a party to comply with a requirement imposed by virtue of subsection (1) and not dispensed with by virtue of subsection (2).

(4) The criminal procedure rules may —

(a) limit the application of any provision of the rules to prescribed circumstances;

(b) subject any provision of the rules to prescribed exceptions;

(c) make different provision for different cases or circumstances.
[UK Criminal Justice Act 2003 s.111]

Expert evidence

386. Expert reports
(1) Subject to the following sections, an expert report is admissible as evidence in criminal proceedings, whether or not the person making it attends to give oral evidence in those proceedings.

(2) If the person making the report does not give oral evidence, the report is only admissible with the leave of the court.

(3) In deciding whether to give leave the court must have regard to —

(a) the contents of the report;

(b) the reasons why it is proposed that the person making the report should not give oral evidence;

(c) any risk, having regard in particular to whether it is likely to be possible to controvert statements in the report if the person making it does not attend to give oral evidence in the proceedings, that its admission or exclusion will result in unfairness to the defendant or, if there is more than one, to any of them; and

(d) any other circumstances that appear to the court to be relevant.

(4) An expert report, when admitted, is evidence of any fact or opinion of which the person making it could have given oral evidence.

(5) In this section, "expert report" means a written report by a person dealing wholly or mainly with matters on which the person is (or would if living be) qualified to give expert evidence.
[UK Criminal Justice Act 1988 s.30]

387. Form of evidence and glossaries
(1) For the purpose of helping the members of a jury to understand complicated issues of fact or technical terms in any proceedings, the court may, subject to relevant criminal procedure rules, provide, or give leave for one of the parties to provide to the jury —

(a) evidence in any form, even if there exists admissible material from which the evidence to be given in that form would be derived; and

(b) one or more glossaries for specified purposes.

(2) The Chief Justice may by criminal procedure rules provide for the circumstances in which, and the manner in which, provision as described in subsection (1) may be made.
[UK Criminal Justice Act 1988 s.31]

388. Expert evidence: Preparatory work
(1) This section applies if —

(a) a statement has been prepared for the purposes of criminal proceedings;

(b) the person who prepared the statement had or may reasonably be supposed to have had personal knowledge of the matters stated;

(c) notice is given pursuant to relevant criminal procedure rules that another person ("the expert") will in evidence given in the proceedings orally, or under section 408 (Proof by written statement), base an opinion or inference on the statement; and

(d) the notice gives the name of the person who prepared the statement and the nature of the matters stated.

(2) In evidence given in the proceedings the expert may base an opinion or inference on the statement.

(3) If evidence based on the statement is given under subsection (2) the statement is to be treated as evidence of what it states.

(4) This section does not apply if the court, on an application by a party to the proceedings, orders that it is not in the interests of justice that it should apply.

(5) The matters to be considered by the court in deciding whether to make an order under subsection (4) include —

(a) the expense of calling as a witness the person who prepared the statement;

(b) whether relevant evidence could be given by that person which could not be given by the expert;

(c) whether that person can reasonably be expected to remember the matters stated well enough to give oral evidence of them.

(6) Subsections (1) to (5) apply to a statement prepared for the purposes of a criminal investigation as they apply to a statement prepared for the purposes of criminal proceedings, and in such a case references to the proceedings are to criminal proceedings arising from the investigation.
[UK Criminal Justice Act 2003 s.127]

389. Advance notice of expert evidence: Criminal procedure rules
(1) The Chief Justice may by criminal procedure rules make provision —

(a) requiring any party to proceedings before any court to disclose to the other party or parties any expert evidence which the party proposes to adduce in the proceedings; and

(b) prohibiting a party who fails to comply in respect of any evidence with any requirements imposed by virtue of paragraph (a) from adducing that evidence without the leave of the court.

(2) Criminal procedure rules made pursuant to subsection (1) may —

(a) specify the kinds of expert evidence to which they apply; and

(b) exempt facts or matters of any description specified in the rules.
[Criminal Justice Ord. s.108; UK PACE Act 1984 s.81]

Proof of non-payment of sum adjudged

390. Proof of non-payment of sum adjudged
If a court has ordered one person to pay to another any sum of money, and proceedings are taken before that or any other court to enforce payment of that sum, then —

(a) if the person to whom the sum is ordered to be paid is the Registrar or the Clerk of the court - a certificate, purporting to be signed by the registrar or clerk, that the sum has not been paid to the registrar or clerk; and

(b) in any other case - a document purporting to be a statutory declaration by the person to whom the sum is ordered to be paid, that the sum has not been paid to that person,

is admissible as evidence that the sum has not been paid, unless the court requires the registrar or clerk or other person to be called as a witness.
[UK Magistrates Courts Act 1980 s.99 adapted]

PART 20 – HEARSAY AND DOCUMENTARY EVIDENCE

391. Interpretation of Part

(1) In this Part —

"oral evidence" includes evidence which, by reason of any disability, disorder or other impairment, a person called as a witness gives in writing or by signs or by way of any device;

"video recording" means any recording, on any medium, from which a moving image may by any means be produced, and includes the accompanying sound-track.

(2) If a defendant is charged with 2 or more offences in the same criminal proceedings, this Part has effect as if each offence were charged in separate proceedings.
[UK Criminal Justice Act 2003 s.133]

Hearsay: Main provisions

392. Admissibility of hearsay evidence

(1) In criminal proceedings a statement not made in oral evidence in the proceedings is admissible as evidence of any matter stated if, but only if —

(a) any provision of this Part or any other statutory provision makes it admissible;

(b) any rule of law preserved by section 396 makes it admissible;

(c) all parties to the proceedings agree to it being admissible; or

(d) the court is satisfied that it is in the interests of justice for it to be admissible.

(2) In deciding whether a statement not made in oral evidence should be admitted under subsection (1)(d), the court must have regard to the following factors (and to any others it considers relevant) —

(a) how much probative value the statement has (assuming it to be true) in relation to a matter in issue in the proceedings, or how valuable it is for the understanding of other evidence in the case;

(b) what other evidence has been, or can be, given on the matter or evidence mentioned in paragraph (a);

(c) how important the matter or evidence mentioned in paragraph (a) is in the context of the case as a whole;

(d) the circumstances in which the statement was made;

(e) how reliable the maker of the statement appears to be;

(f) how reliable the evidence of the making of the statement appears to be;

(g) whether oral evidence of the matter stated can be given and, if not, why it cannot;

(h) the amount of difficulty involved in challenging the statement;

(i) the extent to which that difficulty would be likely to prejudice the party facing it.

(3) Nothing in this Part affects the exclusion of evidence of a statement on grounds other than the fact that it is a statement not made in oral evidence in the proceedings.
[UK Criminal Justice Act 2003 s.114]

393. Statements and matters stated
(1) In this Part references to a statement or to a matter stated are to be read as follows.

(2) A statement is any representation of fact or opinion made by a person by whatever means; and it includes a representation made in a sketch, photofit or other pictorial form.

(3) A matter stated is one to which this Part applies if (and only if) the purpose, or one of the purposes, of the person making the statement appears to the court to have been —

(a) to cause another person to believe the matter; or

(b) to cause another person to act or a machine to operate on the basis that the matter is as stated.
[UK Criminal Justice Act 2003 s.115]

Principal categories of admissibility

394. Cases where a witness is unavailable
(1) In criminal proceedings a statement not made in oral evidence in the proceedings is admissible as evidence of any matter stated if —

(a) oral evidence given in the proceedings by the person who made the statement (the relevant person) would be admissible as evidence of that matter;

(b) the person who made the statement is identified to the court's satisfaction; and

(c) any of the 5 conditions mentioned in subsection (2) is satisfied.

(2) The conditions are that the relevant person —

(a) is dead;

(b) is unfit to be a witness because of his or her bodily or mental condition;

(c) is outside the Falkland Islands and it is not reasonably practicable to ensure his or her attendance;

(d) cannot be found although such steps as it is reasonably practicable to take to find him or her have been taken;

(e) through fear or because he or she is kept out of the way, does not give (or does not continue to give) oral evidence in the proceedings, either at all or in connection with the subject matter of the statement, and the court gives leave for the statement to be given in evidence.

(3) For the purposes of subsection (2)(e) "fear" is to be widely construed and (for example) includes fear of the death or injury of another person or of financial loss.

(4) Leave may be given under subsection (2)(e) only if the court considers that the statement ought to be admitted in the interests of justice, having regard to —

(a) the statement's contents;

(b) any risk that its admission or exclusion will result in unfairness to any party to the proceedings (and in particular to how difficult it will be to challenge the statement if the relevant person does not give oral evidence);

(c) in appropriate cases - the fact that a direction under section 429 (Special measures direction relating to eligible witness) could be made in relation to the relevant person; and

(d) any other relevant circumstances.

(5) A condition set out in any paragraph of subsection (2) which is in fact satisfied is to be treated as not satisfied if it is shown that the circumstances described in that paragraph are caused —

(a) by the person in support of whose case it is sought to give the statement in evidence; or

(b) by a person acting on that person's behalf,

in order to prevent the relevant person giving oral evidence in the proceedings (whether at all or in connection with the subject matter of the statement).
[UK Criminal Justice Act 2003 s.116]

395. Business and other documents
(1) In criminal proceedings a statement contained in a document is admissible as evidence of any matter stated if —

(a) oral evidence given in the proceedings would be admissible as evidence of that matter; and

(b) the requirements of subsection (2) are satisfied.

(2) The requirements of this subsection are satisfied if —

(a) the document or the part containing the statement was created or received by a person in the course of a trade, business, profession or other occupation, or as the holder of a paid or unpaid office;

(b) the person who supplied the information contained in the statement (the relevant person) had or may reasonably be supposed to have had personal knowledge of the matters dealt with; and

(c) each person (if any) through whom the information was supplied from the relevant person to the person mentioned in paragraph (a) received the information in the course of a trade, business, profession or other occupation, or as the holder of a paid or unpaid office.

(3) The persons mentioned in paragraphs (a) and (b) of subsection (2) may be the same person.

(4) A statement is not admissible under this section if the court makes a direction to that effect under subsection (5).

(5) The court may make a direction under this subsection if satisfied that the statement's reliability as evidence for the purpose for which it is tendered is doubtful in view of —

(a) its contents;

(b) the source of the information contained in it;

(c) the way in which or the circumstances in which the information was supplied or received; or

(d) the way in which or the circumstances in which the document concerned was created or received.

[UK Criminal Justice Act 2003 s.117 adapted]

396. Preservation of certain common law categories of admissibility

(1) The following rules of law are preserved so far as they allow the court to treat such evidence as proving the matter concerned —

A. Public information, etc.

Any rule of law under which in criminal proceedings —

(a) published works dealing with matters of a public nature (such as histories, scientific works, dictionaries and maps) are admissible as evidence of facts of a public nature stated in them;

(b) public documents (such as public registers, and returns made under public authority with respect to matters of public interest) are admissible as evidence of facts stated in them;

(c) records (such as the records of certain courts, treaties, Crown grants, pardons and commissions) are admissible as evidence of facts stated in them; or

(d) evidence relating to a person's age or date or place of birth may be given by a person without personal knowledge of the matter.

B. Reputation as to character

Any rule of law under which in criminal proceedings evidence of a person's reputation is admissible for the purpose of proving his or her good or bad character, so far as it allows the court to treat such evidence as proving the matter concerned.

C. Reputation or family tradition

Any rule of law under which in criminal proceedings evidence of reputation or family tradition is admissible for the purpose of proving or disproving —

(a) pedigree or the existence of a marriage;

(b) the existence of any public or general right; or

(c) the identity of any person or thing,

so far as it allows the court to treat such evidence as proving or disproving the matter concerned.

D. Res gestae

Any rule of law under which in criminal proceedings a statement is admissible as evidence of any matter stated if —

(a) the statement was made by a person so emotionally overpowered by an event that the possibility of concoction or distortion can be disregarded;

(b) the statement accompanied an act which can be properly evaluated as evidence only if considered in conjunction with the statement; or

(c) the statement relates to a physical sensation or a mental state (such as intention or emotion).

E. Confessions, etc.
Any rule of law relating to the admissibility of confessions or mixed statements in criminal proceedings.

F. Admissions by agents, etc.
Any rule of law under which in criminal proceedings —

(a) an admission made by an agent of a defendant is admissible against the defendant as evidence of any matter stated; or

(b) a statement made by a person to whom a defendant refers a person for information is admissible against the defendant as evidence of any matter stated.

G. Common enterprise
Any rule of law under which in criminal proceedings a statement made by a party to a common enterprise is admissible against another party to the enterprise as evidence of any matter stated.

H. Expert evidence
Any rule of law under which in criminal proceedings an expert witness may draw on the body of expertise relevant to his or her field.

(2) With the exception of the rules preserved by this section, the common law rules governing the admissibility of hearsay evidence in criminal proceedings are abolished.
[UK Criminal Justice Act 2003 s.118 adapted]

397. Inconsistent statements
(1) If in criminal proceedings a person gives oral evidence and —

(a) the person admits making a previous inconsistent statement; or

(b) a previous inconsistent statement made by the person is proved by virtue of section 398 or 399,

the statement is admissible as evidence of any matter stated of which oral evidence by the person would be admissible.

(2) If in criminal proceedings evidence of an inconsistent statement by any person is given under section 403(2)(c) the statement is admissible as evidence of any matter stated in it of which oral evidence by that person would be admissible.
[UK Criminal Justice Act 2003 s.119]

398. Witness may be discredited by the party producing

(1) A party producing a witness —

(a) may not impeach the credit of the witness by general evidence of bad character; but

(b) may, if the witness in the opinion of the judge proves adverse, contradict the witness by other evidence, or, by leave of the judge, prove that the witness has made at other times a statement inconsistent with his or her present oral evidence.

(2) Before proof can be given as in subsection (1)(b), the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and the witness must be asked whether or not he or she has made such statement.
[UK Criminal Procedure Act 1865 s.3]

399. Proof of contradictory statements of adverse witness

(1) If a witness, upon cross-examination as to a former statement made by the witness relative to the subject matter of the indictment or proceeding, and inconsistent with his or her present oral evidence, does not distinctly admit that he or she has made such statement, proof may be given that the witness did in fact make it.

(2) Before such proof can be given, the circumstances of the supposed statement sufficient to designate the particular occasion, must be mentioned to the witness, and the witness must be asked whether or not he or she has made such statement.

(3) A witness may be cross-examined as to previous statements made by the witness in writing, or reduced into writing, relative to the subject matter of the indictment or proceeding, without such writing being shown to the witness.

(4) If it is intended to contradict such witness by the writing, the attention of the witness must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him or her.

(5) The judge, at any time during the trial, may require the production of the writing for the judge's inspection, and may then make such use of it for the purposes of the trial as the judge thinks fit.
[UK Criminal Procedure Act 1865 ss.4 & 5]

400. Other previous statements of witnesses

(1) This section applies when a person (the witness) is called to give evidence in criminal proceedings.

(2) If a previous statement by the witness is admitted as evidence to rebut a suggestion that his or her oral evidence has been fabricated, that statement is admissible as evidence of any matter stated of which oral evidence by the witness would be admissible.

(3) A statement made by the witness in a document —

(a) which is used by the witness to refresh his or her memory while giving evidence;

(b) on which the witness is cross-examined; and

(c) which as a consequence is received in evidence in the proceedings,

is admissible as evidence of any matter stated of which oral evidence by the witness would be admissible.

(4) A previous statement by the witness is admissible as evidence of any matter stated of which oral evidence by the witness would be admissible, if —

(a) any of the following three conditions is satisfied; and

(b) while giving evidence the witness indicates that to the best of his or her belief he or she made the statement, and that to the best of his or her belief it states the truth.

(5) The first condition is that the statement identifies or describes a person, object or place.

(6) The second condition is that the statement was made by the witness when the matters stated were fresh in his or her memory but the witness does not remember them, and cannot reasonably be expected to remember them, well enough to give oral evidence of them in the proceedings.

(7) The third condition is that —

(a) the witness claims to be a person against whom an offence has been committed;

(b) the offence is one to which the proceedings relate;

(c) the statement consists of a complaint made by the witness (whether to a person in authority or not) about conduct which would, if proved, constitute the offence or part of the offence;

(d) the complaint was not made as a result of a threat or a promise; and

(e) before the statement is adduced the witness gives oral evidence in connection with its subject matter.

(8) For the purposes of subsection (7), the fact that the complaint was elicited (for example, by a leading question) is irrelevant unless a threat or a promise was involved.
[UK Criminal Justice Act 2003 s.120 am. by Coroners & Justice Act 2009]

401. Admissibility of multiple hearsay

(1) A hearsay statement is not admissible to prove the fact that an earlier hearsay statement was made unless —

(a) one of the statements is admissible under section 395, 398 or 400;

(b) all parties to the proceedings so agree; or

(c) the court is satisfied that the value of the evidence in question, taking into account how reliable the statements appear to be, is so high that the interests of justice require the later statement to be admissible for that purpose.

(2) In this section "hearsay statement" means a statement, not made in oral evidence, that is relied on as evidence of a matter stated in it.
[UK Criminal Justice Act 2003 s.121]

402. Capability to make statement

(1) Nothing in section 394, 397 or 400 makes a statement admissible as evidence if it was made by a person who did not have the required capability at the time when he or she made the statement.

(2) Nothing in section 395 makes a statement admissible as evidence if any person who, in order for the requirements of section 395(2) to be satisfied, must at any time have supplied or received the information concerned or created or received the document or part concerned —

(a) did not have the required capability at that time; or

(b) cannot be identified but cannot reasonably be assumed to have had the required capability at that time.

(3) For the purposes of this section a person has the required capability if the person is able to —

(a) understand questions put to him or her about the matters stated; and

(b) give answers to the questions which can be understood.

(4) If by reason of this section there is an issue as to whether a person had the required capability when he or she made a statement —

(a) proceedings held for deciding the issue must take place in the absence of the jury (if there is one);

(b) in determining the issue the court may receive expert evidence and evidence from any person to whom the statement in question was made;

(c) the burden of proof on the issue lies on the party seeking to adduce the statement, and the standard of proof is the balance of probabilities.

[UK Criminal Justice Act 2003 s.123]

403. Credibility

(1) This section applies if in criminal proceedings —

(a) a statement not made in oral evidence in the proceedings is admitted as evidence of a matter stated; and

(b) the person who made the statement does not give oral evidence in connection with the subject matter of the statement.

(2) In such a case —

(a) any evidence which (if the person had given such evidence) would have been admissible as relevant to his or her credibility as a witness is so admissible in the proceedings;

(b) evidence may with the court's leave be given of any matter which (if the person had given such evidence) could have been put to the person in cross-examination as relevant to his or her credibility as a witness but of which evidence could not have been adduced by the cross-examining party;

(c) evidence tending to prove that the person made (at whatever time) any other statement inconsistent with the statement admitted as evidence is admissible for the purpose of showing that the person contradicted himself or herself.

(3) If as a result of evidence admitted under this section an allegation is made against the maker of a statement, the court may permit a party to lead additional evidence of a description specified by the court for the purposes of denying or answering the allegation.

(4) In the case of a statement in a document which is admitted as evidence under section 394, each person who, in order for the statement to be admissible, must have supplied or received the information concerned, or created or received the document or part concerned, is to be treated as the maker of the statement for the purposes of subsections (1) to (3) of this section.

[UK Criminal Justice Act 2003 s.124]

404. Stopping the case if evidence is unconvincing

(1) If on a defendant's trial before a judge and jury for an offence the court is satisfied at any time after the close of the case for the prosecution that —

(a) the case against the defendant is based wholly or partly on a statement not made in oral evidence in the proceedings; and

(b) the evidence provided by the statement is so unconvincing that, considering its importance to the case against the defendant, a conviction of the offence would be unsafe,

the court must either direct the jury to acquit the defendant of the offence or, if it considers that there ought to be a retrial, discharge the jury.

(2) If —

(a) a jury is directed under subsection (1) to acquit a defendant of an offence; and

(b) the circumstances are such that, apart from this subsection, the defendant could if acquitted of that offence be convicted of another offence,

the defendant may not be convicted of that other offence if the court is satisfied as mentioned in subsection (1) in respect of it.

(3) If —

(a) a jury is required to decide under section 764 whether a person charged on an indictment with an offence did the act or made the omission charged; and

(b) the court is satisfied as mentioned in subsection (1) at any time after the close of the case for the prosecution that —

(i) the case against the defendant is based wholly or partly on a statement not made in oral evidence in the proceedings; and

(ii) the evidence provided by the statement is so unconvincing that, considering its importance to the case against the person, a finding that the person did the act or made the omission would be unsafe,

the court must either direct the jury to acquit the defendant of the offence or, if it considers that there ought to be a rehearing, discharge the jury.

(4) This section does not affect any other power a court may have to direct a jury to acquit a person of an offence or to discharge a jury.

(5) This section applies with necessary modifications to a trial on indictment by judge alone and to a summary trial.
[UK Criminal Justice Act 2003 s.125]

405. Court's general discretion to exclude evidence
(1) In criminal proceedings the court may refuse to admit a statement as evidence of a matter stated if —

(a) the statement was made otherwise than in oral evidence in the proceedings; and

(b) the court is satisfied that the case for excluding the statement, taking account of the danger that to admit it would result in undue waste of time,

substantially outweighs the case for admitting it, taking account of the value of the evidence.

(2) Nothing in this Part affects —

(a) any power of a court to exclude evidence under section 341 (Exclusion of unfair evidence); or

(b) any other power of a court to exclude evidence at its discretion (whether by preventing questions from being put or otherwise).

[UK Criminal Justice Act 2003 s.126]

406. Representations other than by a person

(1) If a representation of any fact —

(a) is made otherwise than by a person; but

(b) depends for its accuracy on information supplied (directly or indirectly) by a person,

the representation is not admissible in criminal proceedings as evidence of the fact unless it is proved that the information was accurate.

(2) Subsection (1) does not affect the operation of the presumption that a mechanical device has been properly set or calibrated.

[UK Criminal Justice Act 2003 s.129]

407. Criminal procedure rules

(1) The Chief Justice may by criminal procedure rules make such provision as appears to the Chief Justice to be necessary or expedient for the purposes of this Part.

(2) The criminal procedure rules may —

(a) make provision about the procedure to be followed and other conditions to be fulfilled by a party proposing to tender a statement in evidence under any provision of this Part;

(b) require a party proposing to tender the evidence to serve on each party to the proceedings prescribed notice, and prescribed particulars of or relating to the evidence;

(c) provide that the evidence is to be treated as admissible by agreement of the parties if —

(i) a notice has been served in accordance with provision made under paragraph (b); and

(ii) no counter-notice in the prescribed form objecting to the admission of the evidence has been served by a party.

(3) If a party proposing to tender evidence fails to comply with a prescribed requirement applicable to it —

(a) the evidence is not admissible except with the court's leave;

(b) if leave is given the court or jury may draw such inferences from the failure as appear proper.

(4) In considering whether or how to exercise any of its powers under subsection (3) the court must have regard to whether there is any justification for the failure to comply with the requirement.

(5) A person is not to be convicted of an offence solely on an inference drawn under subsection (3)(b).

(6) The criminal procedure rules may —

(a) limit the application of any provision of the rules to prescribed circumstances;

(b) subject any provision of the rules to prescribed exceptions;

(c) make different provision for different cases or circumstances.

(7) Nothing in this section limits any enactment conferring power to make criminal procedure rules; and no particular provision of this section prejudices any general provision of it.
[UK Criminal Justice Act 2003 s.132]

Documentary evidence

408. Proof by written statement
(1) In any criminal proceedings, a written statement by any person is, if such of the conditions mentioned in subsection (2) as are applicable are satisfied, admissible as evidence to the same extent as oral evidence to the same effect by that person.

(2) The conditions are —

(a) the statement purports to be signed by the person who made it;

(b) the statement contains a declaration by that person to the effect that it is true to the best of his or her knowledge and belief and that he or she made the statement knowing that, if it were tendered in evidence, he or she would be liable to prosecution if he or she wilfully stated in it anything which he or she knew to be false or did not believe to be true;

(c) before the hearing at which the statement is tendered in evidence, a copy of the statement is served, by or on behalf of the party proposing to tender it, on each of the other parties to the proceedings; and

(d) none of the other parties or their legal practitioners, within 7 days after the service of the copy of the statement, serves a notice on the party so proposing objecting to the statement being tendered in evidence under this section.

(3) The conditions mentioned in paragraphs (c) and (d) of subsection (2) do not apply if the parties agree before or during the hearing that the statement may be tendered in evidence.

(4) The following provisions also have effect in relation to any written statement tendered in evidence under this section, that is to say —

(a) if the statement is made by a person under the age of 18, it must give his or her age;

(b) if it is made by a person who cannot read it, it must be read to the person before he or she signs it and be accompanied by a declaration by the person who read the statement to the effect that it was so read; and

(c) if it refers to any other document as an exhibit, the copy served on any other party to the proceedings under subsection (2)(c) must be accompanied by a copy of that document or by any information necessary to enable the party on whom it is served to inspect the document or a copy of it.

(5) Even if a written statement made by a person is admissible as evidence by virtue of this section —

(a) the party by whom or on whose behalf a copy of the statement was served may call the person to give evidence; and

(b) the court may, on its own initiative or on the application of any party to the proceedings, require the person to attend before the court and give evidence.

(6) An application under subsection (5)(b) to a court may be made before the hearing, and on any such application the powers of the court are exercisable by any person eligible to preside over or sit as a member of the court.

(7) If a statement is admitted in evidence by virtue of this section —

(a) the statement must, unless the court otherwise directs, be read aloud at the hearing;

(b) if the court so directs, an account must be given orally of any of the statement that is not read aloud.

(8) Any document or object referred to as an exhibit and identified in a written statement tendered in evidence under this section must be treated as if it had been produced as an exhibit and identified in court by the maker of the statement.

(9) A document required by this section to be served on any person may be served —

(a) by delivering it to the person or to his or her legal practitioner;

(b) by addressing it to the person and leaving it at his or her usual or last known place of abode or place of business or by addressing it to his or her legal practitioner and leaving it at the practitioner's office;

(c) by sending it in a registered letter or by the recorded delivery service addressed to the person at his or her usual or last known place of abode or place of business or addressed to the person's legal practitioner at the practitioner's office; or

(d) in the case of a corporate body, by delivering it to the secretary or clerk of the body at its registered or principal office or sending it in a registered letter or by the recorded delivery service addressed to the secretary or clerk of that body at that office.

[UK Criminal Justice Act 1967 s.9]

409. Evidence by certificate

(1) In any proceedings, a certificate purporting to be signed by a police officer and certifying that—

(a) a plan or drawing exhibited thereto is a plan or drawing made by the officer of the place or object specified in the certificate; and

(b) the plan or drawing is correctly drawn to a scale so specified,

is evidence of the relative position of the things shown on the plan or drawing.

(2) In any proceedings for an offence under the Road Traffic Ordinance, or any other law relating to the use of vehicles on roads, a certificate purporting to be signed by a police officer and certifying that a person specified in the certificate stated to the police officer that a particular motor vehicle on a particular occasion —

(a) was being driven by, or belonged to, that person;

(b) belonged to a firm in which that person also stated that he or she was at the time of the statement a partner; or

(c) belonged to a corporation of which that person also stated that he or she was at the time of the statement a director, officer or employee,

is admissible as evidence for the purpose of determining by whom the vehicle was being driven, or to whom it belonged, as the case may be, on that occasion.

(3) In any proceedings for an offence relating to the theft, receiving or unlawful detention of a mail bag or postal packet, a statutory declaration by any person that —

(a) the person dispatched or received or failed to receive any goods or postal packet, or that any goods or postal packet when dispatched or received by the person were in a particular state or condition; or

(b) a vessel, vehicle or aircraft was at any time employed by or under the Government for, or engaged in, the transmission of postal packets under contract,

is admissible as evidence of the facts stated in the declaration.

(4) Nothing in this section makes a certificate or statutory declaration admissible as evidence in proceedings for an offence except if and to the extent that oral evidence to the same effect would have been admissible in those proceedings.

(5) Nothing in this section makes a certificate or statutory declaration admissible as evidence in proceedings for any offence —

(a) unless a copy of it has, not less than 7 days before the hearing or trial, been served on the person charged with the offence; or

(b) if that person, not later than 3 days before the hearing or trial, or within any further time the court in special circumstances allows, serves notice on the prosecutor requiring the attendance at the trial of the person who signed the certificate or the person by whom the declaration was made, as the case may be.

[UK Criminal Justice Act 1948 s.41]

410. Proof of statements in documents

(1) If a statement contained in a document is admissible as evidence in criminal proceedings, it may be proved by the production of —

(a) the document; or

(b) a copy of the document, or of the material part of it, (whether or not the document is still in existence),

authenticated in any manner the court approves.

(2) It is immaterial for the purposes of this section how many removes there are between a copy and the original.

[UK Criminal Justice Act 2003 s.133]

411. Use of documents to refresh memory

(1) A person giving oral evidence in criminal proceedings about any matter may, at any stage in the course of doing so, refresh his or her memory of it from a document made or verified by the person at an earlier time if —

(a) the person states in oral evidence that the document records his or her recollection of the matter at that earlier time; and

(b) the person's recollection of the matter is likely to have been significantly better at that time than it is at the time of that oral evidence.

(2) If —

(a) a person giving oral evidence in criminal proceedings about any matter has previously given an oral account, of which a sound recording was made, and the person states in that evidence that the account represented his or her recollection of the matter at that time;

(b) the person's recollection of the matter is likely to have been significantly better at the time of the previous account than it is at the time of the oral evidence; and

(c) a transcript has been made of the sound recording,

the person may, at any stage in the course of giving evidence, refresh his or her memory of the matter from that transcript.
[UK Criminal Justice Act 2003 s.139]

412. Microfilm copies
In any proceedings, the contents of a document may (whether or not the document is still in existence) be proved by the production of an enlargement of a microfilm copy of that document or of the material part of it, authenticated in any manner the court approves.
[UK PACE Act 1984 s.71]

413. Proof by production of copy
(1) If a statement, deposition or document is admissible in evidence by virtue of any provision of this Part, it may be proved by the production of —

(a) the statement, deposition or document; or

(b) a copy of it or the material part of it.

(2) Subsection (1)(b) applies whether or not the statement, deposition or document is still in existence.

(3) It is immaterial for the purposes of this section how many removes there are between a copy and the original.
[UK Magistrates Courts Act 1980 s.5F]

414. Documentary evidence: Supplementary
(1) Sections 408 to 413 are in addition to and do not displace the provisions of Part 19 (Evidence: General Principles) or any other written law governing the reception of documentary evidence in the Falkland Islands so far as those provisions are relevant to criminal proceedings.

(2) A statement in a document is not capable of corroborating evidence given by the person making it.

(3) In estimating the weight, if any, to be attached to such a statement regard must be had to all the circumstances from which any inference can reasonably be drawn as to its accuracy or otherwise.
[Common law]

Video recordings

415. Evidence by video recording
(1) This section applies if —

(a) a person is called as a witness in criminal proceedings;

(b) the person claims to have witnessed (whether visually or in any other way) —

(i) events alleged by the prosecution to include conduct constituting the offence or part of the offence; or

(ii) events closely connected with such events;

(c) the person has previously given an account of the events in question (whether in response to questions asked or otherwise);

(d) the account was given at a time when those events were fresh in the person's memory (or would have been, assuming the truth of the claim mentioned in paragraph (b));

(e) a video recording was made of the account;

(f) the court has given a direction that the recording should be admitted as evidence in chief of the witness, and the direction has not been rescinded; and

(g) the recording is played in the proceedings in accordance with the direction.

(2) If, or to the extent that, the witness in his or her oral evidence in the proceedings asserts the truth of the statements made by him or her in the recorded account, they are to be treated as if made by the witness in that evidence.

(3) A direction under subsection (1)(f) —

(a) may not be made in relation to a recorded account given by the defendant;

(b) may be made only if it appears to the court that —

(i) the witness's recollection of the events in question is likely to have been significantly better when the witness gave the recorded account than it will be when he or she gives oral evidence in the proceedings; and

(ii) it is in the interests of justice for the recording to be admitted, having regard in particular to the matters mentioned in subsection (4).

(4) The matters referred to in subsection (3) are —

(a) the interval between the time of the events in question and the time when the recorded account was made;

(b) any other factors that might affect the reliability of what the witness said in that account;

(c) the quality of the recording;

(d) any views of the witness as to whether his or her evidence in chief should be given orally or by means of the recording.

(5) For the purposes of subsection (2) it does not matter if the statements in the recorded account were not made on oath.
[UK Criminal Justice Act 2003 s.137]

416. Video recordings: Further provisions
(1) The reference in section 415(1)(f) to the admission of a recording includes a reference to the admission of part of a recording; and references in that section and this one to the video recording or to the witness's recorded account are, when appropriate, to be read accordingly.

(2) In considering whether any part of a recording should be admitted under section 418, the court must consider —

(a) whether admitting that part would carry a risk of prejudice to the defendant; and

(b) if so, whether the interests of justice nevertheless require it to be admitted in view of the desirability of showing the whole, or substantially the whole, of the recorded interview.

(3) A court may not give a direction under section 4158(1)(f) in relation to any proceedings unless it is satisfied that arrangements can be made for implementing directions under that section.

(4) Nothing in section 415 affects the admissibility of any video recording which would be admissible apart from that section.
[UK Criminal Justice Act 2003 s.138 am. by Coroners & Justice Act 2009]

PART 21 – LIVE LINK EVIDENCE

417. Interpretation and savings

(1) In this Part "live link" means an arrangement by which a person (when not in the place where criminal proceedings are being conducted) is able —

(a) to see and hear a person at the place; and

(b) to be seen and heard by the persons mentioned in subsection (2),

and for this purpose any impairment of eyesight or hearing is to be disregarded.

(2) The persons are —

(a) the judge, Senior Magistrate or justices of the peace taking part in the proceedings;

(b) the Registrar or Clerk of the court while taking part in the proceedings;

(c) the defendant or defendants and the prosecutor;

(d) legal practitioners appearing for the defence or prosecution and persons assisting them;

(e) the jury, if any; and

(f) any interpreter appointed to assist a defendant, while performing that role.

(3) Nothing in this Part affects any power of a court —

(a) to make an order, give directions or give leave of any description in relation to any witness (including the defendant or defendants);

(b) to exclude evidence at its discretion (whether by preventing questions being put or otherwise);

(c) to give a direction for live link evidence to be received under section 435 (Evidence by live link) or 445 (Live link directions).

[UK Criminal Justice Act 2003 s.56 adapted; Youth Justice & Criminal Evidence Act 1999 s.33B]

418. Evidence by live link by persons outside the Falkland Islands

(1) A person other than the defendant may, with the leave of the court, give evidence through a live television link in proceedings to which subsection (2) applies, if the person is outside the Falkland Islands.

(2) This subsection applies to —

(a) trials on indictment and appeals to the Court of Appeal; and

(b) proceedings in the Magistrate's Court or the Summary Court (including when sitting as the Youth Court) and appeals to the Supreme Court arising out of such proceedings.

[UK Criminal Justice Act 1988 s.32 as amended]

419. Evidence by live link by persons generally

(1) A witness (other than the defendant) may, if the court so directs, give evidence through a live link in the following criminal proceedings —

(a) a summary trial;

(b) an appeal to the Supreme Court arising out of such a trial;

(c) a trial on indictment;

(d) an appeal in a criminal matter to the Court of Appeal; and

(e) a hearing before the Magistrate's Court or the Summary Court, or the Supreme Court, after the defendant has entered a plea of guilty.

(2) A direction may be given under this section —

(a) on an application by a party to the proceedings; or

(b) on the court's own initiative,

but may not be given unless the court is satisfied, after considering any representations made by the prosecutor and the defence —

(c) that it is in the interests of the efficient or effective administration of justice for the person concerned to give evidence in the proceedings through a live link; and

(d) that suitable facilities for receiving evidence through a live link are available in the place in which it appears to the court that the proceedings will take place.

(3) In deciding whether to give a direction under this section the court must consider all the circumstances of the case, including, but not limited to —

(a) the availability of the witness;

(b) the need for the witness to attend in person;

(c) the importance of the witness's evidence to the proceedings;

(d) the views of the witness;

(e) the suitability of the facilities at the place where the witness would give evidence through a live link; and

(f) whether a direction might tend to inhibit any party to the proceedings from effectively testing the witness's evidence.

(4) The court must state in open court its reasons for granting or refusing an application for a direction under this section and, if it is the Magistrate's Court or the Summary Court, must cause the reasons to be entered in the register of its proceedings.

(5) Nothing in this section limits section 6 of the Constitution with regard to participating in proceedings.
[UK Criminal Justice Act 2003 s.51]

420. Effect of, and rescission of, a direction under section 419
(1) If the court gives a direction under section 419 for a person to give evidence through a live link in particular proceedings, that person may not give evidence in those proceedings after the direction is given except through a live link, subject to the following provisions of this section.

(2) The court may rescind a direction under section 419 if it appears to the court to be in the interests of justice to do so.

(3) If the court rescinds a direction, the person concerned may no longer give evidence in the proceedings through a live link, but this does not prevent the court from giving a further direction under section 419 in relation to that person.

(4) A direction under section 419 may be rescinded under subsection (2) —

(a) on an application by a party to the proceedings; or

(b) on the court's own initiative,

but no application may be made under paragraph (a) unless there has been a material change of circumstances since the direction was given.

(5) The court must state in open court its reasons for —

(a) rescinding a direction under section 419; or

(b) refusing an application to rescind such a direction,

and, if it is the Magistrate's Court or the Summary Court, must cause the reasons to be entered in the register of its proceedings.
[UK Criminal Justice Act 2003 s.52]

421. Warning to jury

If, by virtue of section 418 or 419, evidence has been given through a live link in criminal proceedings before the Supreme Court, the judge must give the jury (if there is one) any direction the judge considers necessary to ensure that the jury gives the same weight to the evidence as if it had been given by the witness in the courtroom or other place where the proceedings are held.

[UK Criminal Justice Act 2003 s.54]

422. Procedural provisions

In relation to an application under this Part —

(a) uncontested applications may be decided by the court without a hearing;

(b) an unsuccessful application under section 418 may not be renewed unless there has been a material change of circumstances.

[UK Criminal Justice Act 2003 s.55 (part) as substantive provision]

423. Criminal procedure rules

(1) The Chief Justice may by criminal procedure rules make any provision that appears to the Chief Justice to be necessary or expedient for the purposes of this Part.

(2) Criminal procedure rules may in particular make provision as to —

(a) the procedure to be followed in connection with applications under section 418 or 419; and

(b) the arrangements or safeguards to be put in place in connection with the operation of live links.

(3) The provision which may be made by virtue of subsection (2)(a) includes provision for the manner in which confidential or sensitive information is to be treated in connection with an application under section 418 or 419, and in particular as to its being disclosed to, or withheld from, a party to the proceedings.

[UK Criminal Justice Act 2003 s.55 (part)]

424. Offence of perjury

A statement made on oath by a witness and given in evidence through a live link by virtue of this Part is to be treated for the purposes of Part 19 of the Crimes Ordinance 2014 (Perjury, etc.) as having been made in the proceedings in which it is given in evidence.

[UK Criminal Justice Act 1988 s.32 (part)]

PART 22 – VULNERABLE WITNESSES

425. Interpretation of Part

(1) In this Part, unless the context otherwise requires —

“child witness” has the meaning given to it by section 431(1);

“eligible witness” means a witness eligible for assistance by virtue of section 426 or 427;

“relevant recording”, in relation to a witness or a complainant, is a video recording of an interview of the witness or complainant made with a view to its admission as evidence in chief of the witness or complainant;

“relevant time” in relation to a direction under this Part means —

(a) the time when the direction was given; or

(b) if a previous application has been made for a direction, the time when the application (or last application) was made;

“special measures direction” means a direction given under section 426;

“witness anonymity order” has the meaning given by section 469.

(2) In this Part —

(a) references to the quality of a witness’s evidence are to its quality in terms of completeness, coherence and accuracy; and for this purpose “coherence” refers to a witness’s ability in giving evidence to give answers which address the questions put to the witness and can be understood both individually and collectively;

(b) references to the special measures available in relation to a witness are to be construed in accordance with section 428;

(c) references to a person being able to see or hear, or be seen or heard by, another person are to be read as not applying to the extent that either of them is unable to see or hear by reason of any impairment of eyesight or hearing;

(d) a reference to cross-examination includes a reference to further cross-examination;

(e) a reference to an offence includes a reference to attempting or conspiring to commit, or encouraging, or aiding and abetting the commission of, that offence;

(f) in proceedings in which there is more than one defendant, a reference to the defendant includes a reference to all or any of the defendants, as the court determines.

(3) For the purposes of this Part —

(a) if it is alleged that an offence to which this Part applies has been committed, the fact that any person has consented to an act which, on a prosecution for that offence, would fall to be proved by the prosecution, does not prevent that person from being regarded as a person

against whom the alleged offence was committed;

(b) if it is alleged that an offence of conspiracy or encouragement of another to commit an offence has been committed, the person against whom the substantive offence is alleged to have been intended to be committed is to be regarded as the person against whom the conspiracy or encouragement is alleged to have been committed;

(c) if a person is accused of an offence under any of sections 212 to 218 of the Crimes Ordinance 2014, (Child sex offences) or under section 227, 228, 283 or 284 (Familial sex offences) of that Ordinance, the other party to the act in question is to be taken to be a person against whom the offence was committed even though he or she consented to that act;

(d) a person is accused of an offence if —

(i) an information is laid alleging that the person has committed the offence;

(ii) the person appears before a court charged with the offence;

(iii) a court before which the person is appearing sends the person to the Supreme Court for trial on a new charge alleging the offence; or

(iv) part of an indictment charging the person with the offence is preferred before the Supreme Court.

[CJ (Evidence) Ord. s.21; UK Youth Justice and Criminal Evidence Act 1999 ss.33, 62, 65; Coroners & Justice Act 2009]

Special measures: Eligible witnesses

426. Witnesses eligible for assistance on grounds of age or incapacity

(1) A witness in criminal proceedings (other than the defendant) is eligible for assistance by virtue of this section if —

(a) the witness is under the age of 18 at the time of the hearing; or

(b) the court considers that the quality of evidence given by the witness is likely to be diminished by reason of any circumstances falling within subsection (2).

(2) The circumstances falling within this subsection are —

(a) that the witness —

(i) suffers from mental disorder; or

(ii) otherwise has a significant impairment of intelligence and social functioning;

(b) that the witness has a physical disability or is suffering from a physical disorder.

(3) In subsection (1)(a) “the time of the hearing”, in relation to a witness, means the time when it falls to the court to make a determination for the purposes of section 429 in relation to the witness.

(4) In determining whether a witness falls within subsection (1)(b) the court must consider any views expressed by the witness.
[CJ (Evidence) Ord. s.4; UK Youth Justice and Criminal Evidence Act 1999 s.16]

427. Witnesses eligible for assistance on grounds of fear or distress about testifying
(1) A witness in criminal proceedings (other than the defendant) is eligible for assistance by virtue of this subsection if the court is satisfied that the quality of evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings.

(2) In determining whether a witness falls within subsection (1) the court must take into account, in particular —

(a) the nature and alleged circumstances of the offence to which the proceedings relate;

(b) the age of the witness;

(c) any of the following matters that appear to the court to be relevant, namely —

(i) the social and cultural background and ethnic origins of the witness;

(ii) the domestic and employment circumstances of the witness; and

(iii) any religious beliefs or political opinions of the witness;

(d) any behaviour towards the witness on the part of —

(i) the defendant;

(ii) members of the family or associates of the defendant; or

(iii) any other person who is likely to be a defendant or a witness in the proceedings.

(3) In determining that question the court must in addition consider any views expressed by the witness.

(4) If the complainant in respect of a sexual offence is a witness in proceedings relating to that offence (or to that offence and any other offences), the witness is eligible for assistance in relation to those proceedings by virtue of this subsection unless the witness has informed the court of the witness’s wish not to be so eligible by virtue of this subsection.
[CJ (Evidence) Ord. s.5; UK Youth Justice and Criminal Evidence Act 1999 s.17]

428. Special measures available to eligible witnesses

(1) For the purposes of this Part —

(a) the provision which may be made by a special measures direction by virtue of each of sections 434 to 442 is a special measure available in relation to a witness eligible for assistance by virtue of section 426; and

(b) (subject to subsection (3)) the provision which may be made by such a direction by virtue of each of sections 434 to 440 is a special measure available in relation to a witness eligible for assistance by virtue of section 427.

(2) A court must not make a special measures direction pursuant to subsection (1)(a) or (b) in relation to a witness in any proceedings unless the court is satisfied that relevant arrangements can be made available in the court where the proceedings will take place.

(3) In subsection (3) "relevant arrangements" means arrangements for implementing the measure in question which cover the witness and the proceedings in question.

[CJ (Evidence) Ord. s.6; UK Youth Justice and Criminal Evidence Act 1999 s.18 adapted]

429. Special measures direction relating to eligible witness

(1) This section applies when in any criminal proceedings —

(a) a party to the proceedings makes an application for the court to give a direction under this section in relation to a witness in the proceedings other than the defendant; or

(b) the court on its own initiative raises the issue whether such a direction should be given.

(2) If the court determines that the witness is eligible for assistance by virtue of section 426 or 427, the court must —

(a) determine whether any of the special measures available in relation to the witness (or any combination of them) would, in its opinion, be likely to improve the quality of evidence given by the witness; and

(b) if so —

(i) determine which of those measures (or combination of them) would, in its opinion, be likely to maximise so far as practicable the quality of such evidence; and

(ii) give a direction under this section providing for the measure or measures so determined to apply to evidence given by the witness.

(3) In determining for the purposes of this Part whether any special measure or measures would or would not be likely to improve, or to maximise so far as practicable, the quality of evidence given by the witness, the court must consider all the circumstances of the case, including in particular —

(a) any views expressed by the witness; and

(b) whether the measure or measures might tend to inhibit such evidence being effectively tested by a party to the proceedings.

(4) A special measures direction must specify particulars of the provision made by the direction in respect of each special measure which is to apply to the witness's evidence.
[*CJ (Evidence) Ord. s.7 (part); UK Youth Justice and Criminal Evidence Act 1999 s.19]*

430. General provisions about directions
(1) Subject to subsection (2) and section 431(8), a special measures direction has binding effect from the time it is made until the proceedings for the purposes of which it is made are either determined or abandoned, in relation to the defendant or (if there is more than one) in relation to each of the defendants.

(2) The court may discharge or vary (or further vary) a special measures direction if it appears to the court to be in the interests of justice to do so, and may do so either —

(a) on an application made by a party to the proceedings, if there has been a material change of circumstances since the relevant time; or

(b) on its own initiative.

(3) Nothing in any of sections 435(2) and (3), 438(4) to (6) or 440(4) to (6) affects the power of the court to vary or discharge a special measures direction under subsection (2).

(4) The court must state in open court its reasons for —

(a) giving or varying;

(b) refusing an application for, or for the variation or discharge of; or

(c) discharging,

a special measures direction and, if it is the Magistrate's Court or the Summary Court, must cause the reasons to be entered in the register of its proceedings.

(5) Uncontested applications may be determined by the Clerk of the court without a hearing.

(6) An unsuccessful application for a special measures direction may not be renewed unless there has been a material change of circumstances.

(7) The Chief Justice may by criminal procedure rules make provision for —

(a) expert evidence to be given in connection with an application for, or for varying or discharging, such a direction;

(b) the manner in which confidential or sensitive information is to be treated in connection with such an application and in particular as to its being disclosed to, or withheld from, a party to the proceedings.

[CJ (Evidence) Ord. s.8; UK Youth Justice and Criminal Evidence Act 1999 s.20]

431. Special provisions relating to child witnesses

(1) For the purposes of this section, a witness in criminal proceedings is a "child witness" if he or she is under the age of 18.

(2) If the court, in making a determination for the purposes of section 429(2), determines that a witness is a child witness, the court must —

(a) decide whether any of the special measures available in relation to the witness (or any combination of them) would be likely to improve the quality of evidence given by the witness; if so

(b) determine which of those measures (or combination of them) would be likely to maximise the quality of such evidence as far as practicable; and

(c) give a special measures direction accordingly, having regard to subsections (3) to (5) of this section.

(3) The primary rule for a special measures direction in the case of a child witness is that —

(a) any relevant recording is to be admitted under section 438; and

(b) any evidence given by the witness in the proceedings which is not given by means of a video recording is to be given by means of a live link in accordance with section 435.

(4) The primary rule is subject to the availability of recording equipment, and the interests of justice, as required by section 438(2).

(5) The primary rule is also disapplied if —

(a) the witness (not being a child in need of special protection) tells the court that he or she wishes the rule not to apply or to apply only in part; and

(b) the court is satisfied that not complying with the rule would not diminish the quality of the witness's evidence.

(6) If as a consequence of all or part of the primary rule being disapplied under subsection (5) a witness's evidence or any part of it would fall to be given as oral evidence in court, the court must give a special measures direction making provision as described in section 434 for the evidence or that part of it.

(7) In making a decision under subsection (5)(b), the court must take into account the following factors (and any others it considers relevant) —

(a) the age and maturity of the witness;

(b) the ability of the witness to understand the consequences of giving evidence otherwise than in accordance with subsection (3);

(c) the relationship (if any) between the witness and the defendant;

(d) the witness's social and cultural background and ethnic origins;

(e) the nature and alleged circumstances of the offence to which the proceedings relate.

(8) If a special measures direction is given in relation to a child witness who is an eligible witness by reason only of being under 18, then —

(a) subject to subsection (9); and

(b) unless the witness has already begun to give evidence in the proceedings,

the direction ceases to have effect when the witness attains the age of 18.

(9) If a special measures direction is given in relation to a child witness who is an eligible witness by reason only of being under 18, and —

(a) the direction provides for —

(i) any relevant recording to be admitted under section 438 as evidence in chief of the witness; or

(ii) recorded cross-examination or re-examination as provided by section 440; and

(b) the witness is still under the age of 18 when the video recording is made for the purposes of section 438 or 440,

the direction continues to have effect even though the witness subsequently attains that age.
[CJ (Evidence) Ord. s.9; UK Youth Justice and Criminal Evidence Act 1999 s.21]

432. Extension of section 431 to certain witnesses over 17

(1) For the purposes of this section, a witness in criminal proceedings (other than the defendant) is a "qualifying witness" if he or she —

(a) is not under the age of 18 at the time of the hearing; but

(b) was under that age when a relevant recording was made.

(2) Subsections (2) to (4) and (9) of section 431 apply to a qualifying witness in respect of the relevant recording as they apply to a child witness (within the meaning of that section).

(3) Subsection (5) of section 431 applies to a qualifying witness in need of special protection as it applies to a child witness in need of special protection.

(4) Subsections (6) and (7) of section 431 apply to a qualifying witness in need of special protection by virtue of subsection (1) of this section as they apply to a child witness as mentioned in that section.
[CJ (Evidence) Ord. s.10; UK Youth Justice and Criminal Evidence Act 1999 s.22]

433. Special provisions relating to sexual offences
(1) This section applies if in criminal proceedings relating to a sexual offence (or to a sexual offence and other offences) the complainant in respect of that offence is a witness in the proceedings and is aged 18 or over.

(2) If a party to the proceedings applies under section 429(1)(a) for a special measures direction in relation to the complainant, and the court is satisfied that the complainant is eligible for assistance by virtue of section 426(1)(b) or 429, the court must decide whether any of the special measures available in relation to the witness (or any combination of them) would be likely to improve the quality of evidence given by the witness and if so must give a special measures direction accordingly.

(3) If the application for a special measures direction includes an application for any relevant recording to be admitted under section 438, the court, if satisfied that the use of such a recording would improve the quality of the complainant's evidence, must, subject to section 438(2), give a special measures direction in relation to the complainant that provides for any relevant recording to be admitted under section 429.
[UK Youth Justice and Criminal Evidence Act 1999 s.22A added by Coroners & Justice Act 2009 adapted]

Special measures: General

434. Screening witness from defendant
(1) Subject to subsection (2), a special measures direction may provide for the witness, while giving oral evidence or being sworn in court, to be prevented by means of a screen or other arrangement from seeing the defendant.

(2) The screen or other arrangement provided under subsection (1) must not prevent the witness from being able to see, and to be seen by —

(a) the judge, the Senior Magistrate or justices and the jury, if any;

(b) any legal practitioners acting in the proceedings; and

(c) any interpreter or other person appointed to assist the witness.

(3) If 2 or more legal practitioners are acting for a party to the proceedings, subsection (2)(b) is satisfied in relation to those practitioners if the witness is able at all material times to see and be seen by at least one of them.
[CJ (Evidence) Ord. s.11; UK Youth Justice and Criminal Evidence Act 1999 s.23]

435. Evidence by live link
(1) A special measures direction may provide for the witness to give evidence by means of a live link.

(2) Such a direction may also provide for a specified person to accompany the witness while the witness is giving evidence by live link.

(3) In determining who may accompany the witness, the court must have regard to the wishes of the witness.

(4) If a direction provides for the witness to give evidence by means of a live link, the witness may not give evidence in any other way without the permission of the court.

(5) The court may give permission for the purposes of subsection (4) if it appears to the court to be in the interests of justice to do so, and may do so either —

(a) on an application by a party to the proceedings, if there has been a material change of circumstances since the relevant time; or

(b) on its own initiative.

(6) In this section, "live link" means a live television link or other arrangement whereby a witness, while absent from the courtroom or other place where the proceedings are being held, is able to see and hear a person there and to be seen and heard by the persons specified in section 434(2)(a) to (c).
[CJ (Evidence) Ord. s.12; UK Youth Justice and Criminal Evidence Act 1999 s.24]

436. Evidence given in private
(1) A special measures direction may provide for the exclusion from the court, during the giving of the witness's evidence, of persons of any description specified in the direction.

(2) The persons who may be excluded under subsection (1) do not include —

(a) the defendant;

(b) legal practitioner acting in the proceedings;

(c) any interpreter or other person appointed by the court to assist the witness.

(3) If a special measures direction provides for representatives of news gathering or reporting organisations to be excluded, it must be expressed in relation to a named person who —

(a) is a representative of the organisation; and

(b) has been nominated for the purpose by the organisations,

unless it appears to the court that no such nomination has been made.

(4) A special measures direction may only provide for the exclusion of persons under this section if —

(a) the proceedings relate to a sexual offence; or

(b) it appears to the court that there are reasonable grounds for believing that any person other than the defendant has sought, or will seek, to intimidate the witness in connection with testifying in the proceedings.

(5) Any proceedings from which persons are excluded under this section (whether or not those persons include representatives of news gathering or reporting organisations) are, despite the exclusion, to be taken to be held in public for the purposes of any privilege or exemption from liability available in respect of fair, accurate and contemporaneous reports of legal proceedings held in public.
[CJ (Evidence) Ord. s.13; UK Youth Justice and Criminal Evidence Act 1999 s.25]

437. Removal of wigs and gowns
A special measures direction may provide for the wearing of wigs or gowns to be dispensed with during the giving of the witness's evidence.
[CJ (Evidence) Ord. s.14; UK Youth Justice and Criminal Evidence Act 1999 s.26]

438. Video recorded evidence in chief
(1) Subject to subsection (2), a special measures direction may provide for a video recording of an interview of the witness to be admitted as evidence in chief of the witness.

(2) A special measures direction may not provide for a video recording, or a part of such a recording, to be admitted under this section if the court is of the opinion, having regard to all the circumstances, that in the interests of justice the recording, or that part of it, should not be so admitted.

(3) In considering for the purposes of subsection (2) whether any part of a recording should not be admitted under this section, the court must consider whether any prejudice to the defendant which might result from that part being so admitted is outweighed by the desirability of showing the whole, or substantially the whole, of the recorded interview.

(4) If a special measures direction provides for a recording to be admitted under this section, the court may nevertheless subsequently direct that it is not to be so admitted if —

(a) it appears to the court that —

(i) the witness will not be available for cross-examination; and

(ii) the parties to the proceedings have not agreed that there is no need for the witness to be so available; or

(b) criminal procedure rules requiring disclosure of the circumstances in which the recording was made have not been complied with to the satisfaction of the court.

(5) If a recording is admitted under this section —

(a) the witness must be called by the party tendering it in evidence, unless —

(i) a special measures direction provides for the witness's evidence on cross-examination to be given otherwise than by oral evidence in court; or

(ii) the parties to the proceedings have agreed as mentioned in subsection (4)(a)(ii); and

(b) the witness may not without the permission of the court give evidence in chief except by means of the recording as to any matter which, in the opinion of the court, is dealt with in the witness's recorded oral evidence.

(6) If, pursuant to subsection (2), a special measures direction provides for part only of a recording to be admitted, references in subsections (4) and (5) to the recording or to the witness's recorded oral evidence are references to the part of the recording or oral evidence which is to be so admitted.

(7) The court may give permission for the purposes of subsection (5)(b) if it appears to the court to be in the interests of justice to do so, and may do so either —

(a) on an application by a party to the proceedings; or

(b) on its own initiative.

(8) The court may, in giving permission for the purposes of subsection (5)(b), direct that the evidence in question is to be given by the witness by means of a live link, and section 443 applies in relation to that evidence as it applies in relation to evidence which is to be given in accordance with a special measures direction.

(9) Nothing in this section affects the admissibility of any video recording which would be admissible apart from this section.
[CJ (Evidence) Ord. s.15; UK Youth Justice and Criminal Evidence Act 1999 s.27]

439. Video recorded evidence in chief: Supplementary
(1) If a court, on an application by a party to the proceedings, or on its own initiative, grants leave to admit a video recording in evidence under section 441 and directs that any part of the recording be excluded under subsection (2) or (3) of that section, the party who made the

application to admit the recording, or to whom leave was given, must edit the recording in accordance with the court's directions and send a copy of the edited recording to —

(a) the Registrar or the Clerk of the respective court, as the case may be; and

(b) every other party to the proceedings.

(2) If a video recording is to be produced during any criminal proceedings, it should be produced and proved by the interviewer, or some other person who was present at the interview with the witness at which the recording was made. It is the responsibility of the party applying for the recording to be admitted in evidence, or to whom leave is given, to ensure that that person is available to give evidence, unless the parties have agreed to accept a written statement by that person instead of oral evidence.

(3) If a trial has to be adjourned for editing of a video recording that should have been edited before the trial, or to call a witness who should have been available, the court may make an appropriate order for costs in accordance with Part 30 (Costs in Criminal Cases).
[UK Practice Direction [2002] 1WLR 2870]

440. Video recorded cross-examination or re-examination
(1) If a special measures direction provides for a video recording to be admitted under section 441 as evidence in chief of the witness, the direction may also provide —

(a) for any cross-examination of the witness, and any re-examination, to be recorded by means of a video recording; and

(b) for such a recording to be admitted, so far as it relates to any such cross-examination or re-examination, as evidence of the witness under cross-examination or on re-examination, as the case may be.

(2) A recording referred to in subsection (1) must be made in the presence of such persons as the direction provides and in the absence of the defendant, and in conformity with subsection (3).

(3) A recording referred to in subsection (1) must be made in circumstances in which —

(a) the judge, the Senior Magistrate or justices, the jury if any, and any legal practitioner acting in the proceedings are able to see and hear the examination of the witness and to communicate with the persons in whose presence the recording is being made; and

(b) the defendant is able to see and hear any such examination and to communicate with any legal practitioner acting for him or her.

(4) If 2 or more legal practitioners are acting for a party to the proceedings, subsection (2)(a) and (b) are satisfied in relation to those practitioners if at all material times they are satisfied in relation to at least one of them.

(5) If a special measures direction provides for a recording to be admitted under this section, the court may nevertheless subsequently direct that it is not to be so admitted if a requirement of subsection (2) or any criminal procedure rules or the direction has not been complied with to the satisfaction of the court.

(6) If pursuant to subsection (1) a recording has been made of any examination of the witness, the witness may not be subsequently cross-examined or re-examined in respect of any evidence given by the witness in the proceedings unless the court gives a further special measures direction making a provision as mentioned in subsection (1)(a) and (b) in relation to any subsequent cross-examination, and re-examination, of the witness.

(7) The court may only give such a further direction if it appears to the court —

(a) that the proposed cross-examination is sought by a party to the proceedings as a result of that party having become aware, since the time when the original recording was made pursuant to subsection (1), of a matter which that party could not with reasonable diligence have ascertained by then; or

(b) that for any other reason it is in the interests of justice to give the further direction.

(8) This section does not apply in relation to any cross-examination of the witness by the defendant in person.
[CJ (Evidence) Ord. s.16; UK Youth Justice and Criminal Evidence Act 1999 s.28 am. by Courts Act 2003 s.109]

441. Examination of witness through intermediary
(1) A special measures direction may provide for any examination of the witness to be conducted through an interpreter or other person approved by the court for the purposes of this section ("an intermediary").

(2) The function of an intermediary is to communicate —

(a) to the witness, questions put to the witness; and

(b) to any person asking such questions, the answers given by the witness in reply to them,

and to explain such questions or answers so far as necessary to enable them to be understood by the witness or person.

(3) Any examination of the witness pursuant to subsection (1) must take place in the presence of such persons as criminal procedure rules or the direction provide, but so that —

(a) the judge, the Senior Magistrate or justices, the jury, if any, and any legal practitioner acting in the proceedings are able to see and hear the examination of the witness and to communicate with the intermediary; and

(b) (except in the case of a video recorded examination) the jury (if there is one) are able to see and hear the examination of the witness.

(4) If 2 or more legal practitioners are acting for a party to the proceedings, subsection (3)(a) is satisfied in relation to those practitioners if at all material times it is satisfied in relation to at least one of them.

(5) A person may not act as an intermediary in a particular case except after making a declaration, in a form prescribed by criminal procedure rules, that he or she will faithfully perform the function as intermediary.

(6) Subsection (1) does not apply to an interview of the witness which is recorded by means of a video recording with a view to its admission as evidence in chief of the witness; but a special measures direction may provide for such a recording to be admitted under section 443 if the interview was conducted through an intermediary and —

(a) that person complied with subsection (5) before the interview began; and

(b) the court's approval for the purposes of this section is given before the direction is given.

(7) Part 19 of the Crimes Ordinance 2014 (Perjury, etc.) applies in relation to a person acting as an intermediary as it applies in relation to a person lawfully sworn as an interpreter in a judicial proceeding; and for this purpose, if a person acts as an intermediary in any proceeding which is not a judicial proceeding for the purposes of that section, that proceeding is to be taken to be part of the judicial proceeding in which the witness's evidence is given.
[CJ (Evidence) Ord. s.17; UK Youth Justice and Criminal Evidence Act 1999 s.29]

442. Aids to communication
A special measures direction may provide for the witness, while giving evidence, to be provided with a device the court considers appropriate with a view to enabling questions or answers to be communicated to or by the witness despite any disability or disorder or other impairment which the witness has or suffers from.
[CJ (Evidence) Ord. s.18; UK Youth Justice and Criminal Evidence Act 1999 s.30]

443. Status of evidence given under special measures
(1) Subsections (2) to (4) apply to a statement made by a witness in criminal proceedings which, in accordance with a special measures direction, is not made by the witness in direct oral evidence in court but forms part of the witness's evidence in those proceedings.

(2) The statement is to be treated as if made by the witness in direct oral evidence in court; and accordingly it is —

(a) admissible evidence of any fact of which such oral evidence from the witness would be admissible;

(b) not capable of corroborating any other evidence given by the witness.

(3) Subsection (2) applies to a statement admitted under section 438 or 440 which is not made by the witness on oath even though it would have been required to be made on oath if made by the witness in direct oral evidence in court.

(4) In estimating the weight (if any) to be attached to the statement, the court must have regard to all the circumstances from which an inference can reasonably be drawn.

(5) If any statement made by a person on oath in any proceeding which is not a judicial proceeding for the purposes of Part 19 of the Crimes Ordinance 2014 (Perjury, etc.) is received in evidence pursuant to a special measures direction, that proceeding is to be taken for the purposes of that section to be part of the judicial proceeding in which the statement is so received in evidence.

(6) If in any proceeding which is not a judicial proceeding for the purposes of Part 19 of the Crimes Ordinance 2014 —

(a) a person wilfully makes a false statement otherwise than on oath which is subsequently received in evidence pursuant to a special measures direction; and

(b) the statement is made in such circumstances that had it been given on oath in any such judicial proceeding that person would have been guilty of perjury,

the person commits an offence.
Penalty: Imprisonment for 6 months, or a fine at level 5 on the standard scale, or both; or, if the person is under the age of 14, a fine at level 3 on the standard scale.

(7) In this section "statement" includes any representation of fact, whether made in words or otherwise.
[CJ (Evidence) Ord. s.19; UK Youth Justice and Criminal Evidence Act 1999 s.31]

444. Special measures: Warning to jury
If on a trial on indictment with a jury evidence has been given in accordance with a special measures direction, the judge must give the jury such warning (if any) as the judge considers necessary to ensure that the fact that the direction was given in relation to the witness does not prejudice the defendant.
[CJ (Evidence) Ord. s.20; UK Youth Justice and Criminal Evidence Act 1999 s.32]

Use of live link and intermediary for evidence of certain defendants

445. Live link directions
(1) This section applies to any proceedings against a person for an offence.

(2) The court may, on the application of the defendant, give a live link direction if it is satisfied that —

(a) the conditions in subsection (4) or, as the case may be, subsection (5) are met in relation to the defendant; and

(b) it is in the interests of justice for the defendant to give evidence through a live link.

(3) A live link direction is a direction that any oral evidence to be given before the court by the defendant is to be given through a live link.

(4) If the defendant is aged under 18 when the application is made, the conditions are that —

(a) the defendant's ability to participate effectively in the proceedings as a witness giving oral evidence in court is compromised by his or her level of intellectual ability or social functioning; and

(b) use of a live link would enable the defendant to participate more effectively in the proceedings as a witness.

(5) If the defendant has attained the age of 18 when the application is made, the conditions are that —

(a) the defendant suffers from a mental disorder or otherwise has a significant impairment of intelligence and social function;

(b) he or she is for that reason unable to participate effectively in the proceedings as a witness giving oral evidence in court; and

(c) use of a live link would enable him or her to participate more effectively in the proceedings as a witness.

(6) When a live link direction is in effect, the defendant may not give oral evidence before the court in the proceedings otherwise than through a live link.

(7) The court may discharge a live link direction at any time before or during any hearing to which it applies if it appears to the court to be in the interests of justice to do so, without affecting the power to give a further live link direction in relation to the defendant.

(8) The court may exercise the power conferred by subsection (7) on its own initiative or on an application by a party.

(9) The court must state in open court its reasons for —

(a) giving or discharging a live link direction; or

(b) refusing an application for, or for the discharge of a live link direction,

and, if it is the Magistrate's Court or the Summary Court, must cause those reasons to be entered in the register of its proceedings.
[UK Youth Justice and Criminal Evidence Act 1999 s.33A ins. by Police & Justice Act 2006 s.47]

446. Meaning of "live link"
(1) In section 448 "live link" means an arrangement by which the defendant, while absent from the place where the proceedings are being held, is able to —

(a) see and hear a person there; and

(b) be seen and heard by the persons mentioned in subsection (2),

and for this purpose any impairment of eyesight or hearing is to be disregarded.

(2) The persons are —

(a) the judge, the Senior Magistrate or justices and the jury, if any;

(b) if there are 2 or more defendants in the proceedings – the other defendant or each of the other defendants;

(c) any legal practitioner acting in the proceedings; and

(d) any interpreter or other person appointed by the court to assist the defendant.
[UK Youth Justice and Criminal Evidence Act 1999 s.33B ins. by Police & Justice Act 2006 s.47]

447. Examination of defendant through intermediary
(1) This section applies to any proceedings against a person for an offence.

(2) The court may, on the application of the defendant, give a direction under this section if it is satisfied that —

(a) the condition in subsection (5) is or, as the case may be, the conditions in subsection (6) are met in relation to the defendant; and

(b) making the direction is necessary in order to ensure that the defendant receives a fair trial.

(3) A direction under this section is a direction that provides for any examination of the defendant to be conducted through an interpreter or other person approved by the court for the purposes of this section ("an intermediary").

(4) The function of an intermediary is to communicate —

(a) to the defendant, questions put to him or her; and

(b) to any person asking such questions, the answers given by the defendant in reply to them,

and to explain such questions or answers so far as necessary to enable them to be understood by the defendant or the person in question.

(5) If the defendant is aged under 18 when the application is made, the condition is that the defendant's ability to participate effectively in the proceedings as a witness giving oral evidence in court is compromised by the defendant's level of intellectual ability or social functioning.

(6) If the defendant has attained the age of 18 when the application is made, the conditions are that the defendant —

(a) suffers from a mental disorder or otherwise has a significant impairment of intelligence and social function; and

(b) is for that reason unable to participate effectively in the proceedings as a witness giving oral evidence in court.

(7) Any examination of the defendant pursuant to a direction under this section must take place in the presence of such persons as the direction provides, and in circumstances in which —

(a) the judge, the Senior Magistrate or justices, the jury, if any, and any legal practitioner acting in the proceedings are able to see and hear the examination of the defendant and to communicate with the intermediary,

(b) the jury (if there is one) are able to see and hear the examination of the defendant; and

(c) if there are 2 or more defendant in the proceedings, each of the other defendants is able to see and hear the examination of the defendant.

(8) For the purposes of subsection (7) any impairment of eyesight or hearing is to be disregarded.

(9) If 2 or more legal practitioners are acting for a party to the proceedings, subsection (7)(a) is to be regarded as satisfied in relation to those practitioners if at all material times it is satisfied in relation to at least one of them.

(10) A person may not act as an intermediary in a particular case except after making a declaration, in a form prescribed by criminal procedure rules, that the person will faithfully perform the function of an intermediary.

(11) Part 19 of the Crimes Ordinance 2014 applies in relation to a person acting as an intermediary as it applies in relation to a person lawfully sworn as an interpreter in a judicial proceeding.

[UK Youth Justice and Criminal Evidence Act 1999 s.33BA added by Coroners & Justice Act 2009 ins. by Police & Justice Act 2006 s.47]

448. Further provision as to directions under section 447

(1) The court may discharge a direction given under section 447 at any time before or during the proceedings to which it applies if it appears to the court that the direction is no longer necessary in order to ensure that the defendant receives a fair trial, (but this does not affect the power to give a further direction under that section in relation to the defendant).

(2) The court may vary (or further vary) a direction given under section 447 at any time before or during the proceedings to which it applies if it appears to the court that it is necessary for the direction to be varied in order to ensure that the defendant receives a fair trial.

(3) The court may exercise the power in subsection (1) or (2) on its own in initiative or on an application by a party.

(4) The court must state in open court its reasons for —

(a) giving, varying or discharging a direction under section 447; or

(b) refusing an application for, or for the variation or discharge of, a direction under that section,

and, if it is the Magistrate's Court or the Summary Court, it must cause the reasons to be entered in the register of its proceedings.

[UK Youth Justice and Criminal Evidence Act 1999 s.33BB added by Coroners & Justice Act 2009]

Protection of witnesses from cross-examination by defendant in person

449. Complainants in proceedings for sexual offences

No person charged with a sexual offence may in any criminal proceedings cross-examine in person a witness who is the complainant, either —

(a) in connection with that offence; or

(b) in connection with any other offence with which that person is charged in the proceedings.

[CJ (Evidence) Ord. s.22; UK Youth Justice and Criminal Evidence Act 1999 s.34]

450. Child complainants and other child witnesses

(1) No person charged with an offence to which this section applies may in any criminal proceedings cross-examine in person a protected witness, either —

(a) in connection with that offence; or

(b) in connection with any other offence with which that person is charged in the proceedings.

(2) For the purposes of subsection (1) a "protected witness" is a witness who —

(a) is the complainant or is alleged to have been a witness to the commission of the offence to which this section applies; and

(b) is a child or falls to be cross-examined after giving evidence in chief —

(i) by means of a video recording made (for the purposes of section 438 at a time when the witness was a child; or

(ii) in any other way at a time when the witness was a child.

(3) The offences to which this section applies are —

(a) any sexual offence or offence of violence;

(b) any other offence that involves an assault on, or injury or a threat of injury to, any person.

(4) In this section "child" means —

(a) if the offence falls within subsection (3)(a) - a person under the age of 18;

(b) if the offence falls within subsection (3)(b) - a person under the age of 14.

(5) For the purposes of this section "witness" includes a witness who is charged with an offence in the proceedings.
[CJ (Evidence) Ord. s.23; UK Youth Justice and Criminal Evidence Act 1999 s.35]

451. Direction prohibiting defendant from cross-examining particular witness
(1) This section applies if, in a case in which neither section 449 nor section 450 operates to prevent a defendant in any criminal proceedings from cross-examining a witness in person —

(a) the prosecutor applies for the court to give a direction under this section in relation to the witness; or

(b) the court on its own initiative raises the issue whether such a direction should be given.

(2) If it appears to the court that —

(a) the quality of evidence given by the witness on cross-examination —

(i) is likely to be diminished if the cross-examination is conducted by the defendant in person; and

(ii) would be likely to be improved if a direction were given under this section; and

(b) it would not be contrary to the interests of justice to give such a direction,

the court may give a direction prohibiting the defendant from cross-examining the witness in person.

(3) In deciding whether subsection (2)(a) applies in the case of a witness, the court must have regard, in particular, to —

(a) any views expressed by the witness as to whether or not the witness is content to be cross-examined by the defendant in person;

(b) the nature of the questions likely to be asked, having regard to the issues in the proceedings and the defence case advanced so far (if any);

(c) any behaviour on the part of the defendant at any stage of the proceedings, both generally and in relation to the witness;

(d) any relationship between the witness and the defendant;

(e) whether any person other than the defendant is or has at any time been charged in the proceedings with an offence to which section 450 applies, and (if so) whether section 449 or 450 operates or would have operated to prevent that person from cross-examining the witness in person;

(f) any direction under section 429 which the court has given, or proposes to give, in relation to the witness.

(4) For the purposes of this section —

(a) "witness", in relation to a defendant, does not include any other person who is charged with an offence in the proceedings; and

(b) any reference to the quality of a witness's evidence is to be construed in accordance with section 425(2)(a).

[CJ (Evidence) Ord. s.24; UK Youth Justice and Criminal Evidence Act 1999 s.36]

452. Further provisions about directions under section 451

(1) Subject to subsection (2), a direction under section 451 has binding effect from the time it is made until the witness to whom it applies is discharged.

(2) The court may discharge a direction if it appears to the court to be in the interests of justice to do so, and may do so either —

(a) on an application made by a party to the proceedings, if there has been a material change of circumstances since the relevant time; or

(b) on its own initiative.

(3) The court must state in open court its reasons for —

(a) giving;

(b) refusing an application for, or for the discharge of; or

(c) discharging,

a direction and, if it is the Magistrate's Court or the Summary Court, must cause the reasons to be entered in the register of its proceedings.

(4) Uncontested applications may be determined by the Clerk of the court without a hearing.

(5) An unsuccessful application for a special measures direction may not be renewed unless there has been a material change of circumstances.

(6) The Chief Justice may by criminal procedure rules make provision for —

(a) expert evidence to be given in connection with an application for, or for varying or discharging, such a direction;

(b) the manner in which confidential or sensitive information is to be treated in connection with such an application and in particular as to its being disclosed to, or withheld from, a party to the proceedings.

(6) In this section "direction" means a direction under section 451.
[CJ (Evidence) Ord. s.25; UK Youth Justice and Criminal Evidence Act 1999 s.37]

453. Defence representation for purposes of cross-examination
(1) This section applies if a defendant is prevented from cross-examining a witness in person by virtue of section 449, 450 or 451.

(2) If it appears to the court that this section applies, it must —

(a) invite the defendant to arrange for a legal practitioner to act for him or her for the purpose of cross-examining the witness; and

(b) require the defendant to notify the court, by the end of a period specified by the court, whether a legal practitioner is to act for that purpose.

(3) If by the end of the period specified under subsection (2)(b) either —

(a) the defendant has notified the court that no legal practitioner is to act for him or her for the purpose of cross-examining the witness; or

(b) no notification has been received by the court and it appears to the court that no legal practitioner is to so act,

the court must consider whether it is necessary in the interests of justice for the witness to be cross-examined by a legal practitioner appointed to represent the interests of the defendant.

(4) If the court determines that it is necessary for the witness to be so cross-examined, the court must choose and appoint a legal practitioner to cross-examine the witness in the interests of the defendant.

(5) In the circumstances described in subsection (4) —

(a) a person so appointed is not responsible to the defendant;

(b) the court may order such sums as appear to the court to be reasonably necessary to cover the proper fee or costs of the legal practitioner and any expenses incurred in providing him or her with evidence or other material in connection with the appointment to be paid out of public funds.

(6) The Chief Justice may by criminal procedure rules make provision to implement this section, including (but not limited to) provision —

(a) as to the time when, and the manner in which, subsection (2) is to be complied with;

(b) in connection with the appointment and payment of a legal practitioner under subsection (4), and in particular for securing that a person so appointed is provided with evidence or other material relating to the proceedings.

[CJ (Evidence) Ord. s.26; UK Youth Justice and Criminal Evidence Act 1999 s.38]

454. Cross-examination: Warning to jury

If on a trial on indictment with a jury a defendant is prevented from cross-examining a witness in person by virtue of section 449, 450 or 451, the judge must give the jury such warning (if any) as the judge considers necessary to ensure that the defendant is not prejudiced —

(a) by any inferences that might be drawn from the fact that the defendant has been prevented from cross-examining the witness in person;

(b) if the witness has been cross-examined by a legal practitioner appointed under section 453(4), by the fact that the cross-examination was carried out by such a legal practitioner and not by a person acting as the defendant's own legal representative.

[CJ (Evidence) Ord. s.27; UK Youth Justice and Criminal Evidence Act 1999 s.39]

Protection of complainants in proceedings for sexual offences

455. Restriction on evidence or questions about complainant's sexual history

(1) If at a trial a person is charged with a sexual offence, then, except with the leave of the court—

(a) no evidence may be adduced; and

(b) no question may be asked in cross-examination, by or on behalf of any defendant at the trial,

about any sexual behaviour of the complainant.

(2) The court may give leave in relation to any evidence or question only on an application made by or on behalf of a defendant, and may not give such leave unless it is satisfied that —

(a) subsection (3) or (5) applies; and

(b) a refusal of leave might have the result of rendering unsafe a conclusion of the jury, or (as the case may be) the court on any relevant issue in the case.

(3) This subsection applies if the evidence or question relates to a relevant issue in the case and either —

(a) that issue is not an issue of consent;

(b) it is an issue of consent and the sexual behaviour of the complainant to which the evidence or question relates is alleged to have taken place at or about the same time as the event which is the subject matter of the charge against the defendant; or

(c) it is an issue of consent and the sexual behaviour of the complainant to which the evidence or question relates is alleged to have been, in any respect, so similar to —

(i) any sexual behaviour of the complainant which (according to evidence adduced or to be adduced by or on behalf of the defendant) took place as part of the event which is the subject matter of the charge against the defendant; or

(ii) any other sexual behaviour of the complainant which (according to such evidence) took place at or about the same time as that event,

that the similarity cannot reasonably be explained as a coincidence.

(4) For the purposes of subsection (3), no evidence or question is to be regarded as relating to a relevant issue in the case if it appears to the court to be reasonable to assume that the purpose (or main purpose) for which it would be adduced or asked is to establish or elicit material for impugning the credibility of the complainant as a witness.

(5) This subsection applies if the evidence or question —

(a) relates to any evidence adduced by the prosecution about any sexual behaviour of the complainant; and

(b) in the opinion of the court, would go no further than is necessary to enable the evidence adduced by the prosecution to be rebutted or explained by or on behalf of the defendant.

(6) For the purposes of subsections (3) and (5), the evidence or question must relate to a specific instance (or specific instances) of alleged sexual behaviour on the part of the complainant.

(7) If this section applies in relation to a trial by virtue of the fact that one or more of a number of persons charged in the proceedings is or are charged with a sexual offence —

(a) it ceases to apply if the prosecutor decides not to proceed with the case against that person or those persons in respect of that charge; but

(b) it does not cease to apply upon that person or those persons pleading guilty to, or being convicted of, that charge.

(8) Nothing in this section authorises any evidence to be adduced or any question to be asked which cannot be adduced or asked apart from this section.
[CJ (Evidence) Ord. s.28; UK Youth Justice and Criminal Evidence Act 1999 s.41]

456. Interpretation and application of section 455
(1) In section 455 —

(a) "relevant issue in the case" means any issue falling to be proved by the prosecution or defence in the trial of the defendant;

(b) "issue of consent" means any issue whether the complainant in fact consented to the conduct constituting the offence with which the defendant is charged;

(c) "sexual behaviour" means any sexual behaviour or other sexual experience, whether or not involving any defendant or other person, but excluding (except in section 455(3)(c)(i) and (5)(a)) anything alleged to have taken place as part of the event which is the subject matter of the charge against the defendant; and

(d) subject to any order made under subsection (2), "sexual offence" has the meaning given it in section 2 (Interpretation).

(2) Section 454 applies in relation to the following proceedings as it applies to a trial —

(a) any hearing held between conviction and sentencing for the purpose of determining matters relevant to the court's decision as to how the defendant is to be dealt with; and

(b) the hearing of an appeal,

and references in this section and section 455 to a person charged with an offence include a person convicted of an offence.
[CJ (Evidence) Ord. s.29; UK Youth Justice and Criminal Evidence Act 1999 s.42]

457. Procedure on applications under section 455
(1) An application for leave under section 455 must be heard in private and in the absence of the complainant.

(2) If such an application has been determined, the court must state in open court (but in the absence of the jury, if there is one) —

(a) its reasons for giving or refusing leave; and

(b) if it gives leave, the extent to which evidence may be adduced or questions asked in pursuance of the leave,

and, if it is the Magistrate's Court or the Summary Court, must cause those matters to be entered in the register of its proceedings.

(3) An applications for leave must specify, in relation to each item of evidence or question to which it relates, particulars of the grounds on which it is asserted that leave should be given by virtue of subsection (3) or (5) of section 458.

(4) The court may request a party to the proceedings to provide the court with any information which it considers would assist it in determining an application for leave.

(5) The Chief Justice may by criminal procedure rules make provision for the manner in which confidential or sensitive information is to be treated in connection with such an application, and in particular as to its being disclosed to, or withheld from, parties to the proceedings.
[CJ (Evidence) Ord. s.30; UK Youth Justice and Criminal Evidence Act 1999 s.43]

Reporting restrictions: General

458. Restrictions on reporting alleged offences involving youths
(1) This section applies (subject to subsection (3)) when a criminal investigation has begun in respect of an alleged offence against the law of the Falkland Islands.

(2) No matter relating to any person involved in the offence may, while the person is a youth, be included in any publication if it is likely to lead members of the public to identify him or her as a person involved in the offence.

(3) The restrictions imposed by subsection (2) cease to apply once there are proceedings in a court in respect of the offence.

(4) For the purposes of subsection (2), a reference to a person involved in the offence is to —

(a) a person by whom the offence is alleged to have been committed; or

(b) if this paragraph applies to the publication in question by virtue of subsection (5) —

(i) a person against or in respect of whom the offence is alleged to have been committed; or

(ii) a person who is alleged to have been a witness to the commission of the offence,

except that paragraph (b)(i) does not include a person in relation to whom section 468 (Restriction on reporting of identity) applies in connection with the offence.

(5) The matters relating to a person in relation to which the restrictions imposed by subsection (2) apply (if their inclusion in any publication is likely to have the result mentioned in that subsection) include in particular —

(a) the person's name;

(b) the person's address;

(c) the identity of any school or other educational establishment attended by the person;

(d) the identity of any place where the person works; and

(e) any still or moving picture of the person.

(6) Subject to subsection (7), the court may by order dispense, to the extent specified in the order, with the restrictions imposed by subsection (2) in relation to a person if it is satisfied that it is necessary in the interests of justice to do so.

(7) When deciding whether to make an order under subsection (6) dispensing (to any extent) with the restrictions imposed by subsection (2) in relation to a person, the court must have regard to the welfare of that person.

(8) If the Magistrate's Court or the Summary Court makes or refuses to make an order under subsection (6), any person who was a party to the proceedings on the application for the order may, in accordance with relevant criminal procedure rules, appeal to the Supreme Court against that decision and appear or be represented at the hearing of the appeal.

(9) In this section —

(a) "offence" includes an act or omission outside the Falkland Islands which, if committed in the Falkland Islands, would be an offence against the law of the Falkland Islands;

(b) any reference to a criminal investigation, in relation to an alleged offence, is to an investigation conducted by police officers, or other persons charged with the duty of investigating offences, with a view to ascertaining whether a person should be charged with the offence.

[CJ (Evidence) Ord. s.31; UK Youth Justice and Criminal Evidence Act 1999 s.44]

459. Power to restrict reporting of criminal proceedings involving youths

(1) This section applies in relation to any criminal proceedings in any Falkland Islands court, including proceedings on appeal.

(2) The court may direct that no matter relating to any person concerned in the proceedings may, while he or she is a youth, be included in any publication if it is likely to lead members of the public to identify him or her as a person concerned in the proceedings.

(3) The court may by direction ("an excepting direction") dispense, to any extent specified in that direction, with the restrictions imposed by a direction under subsection (2) if it is satisfied that it is necessary in the interests of justice to do so.

(4) The court may also by an excepting direction dispense, to any extent specified in that direction, with the restrictions imposed by a direction under subsection (2) if it is satisfied that —

(a) their effect is to impose a substantial and unreasonable restriction on the reporting of the proceedings; and

(b) it is in the public interest to remove or relax that restriction.

(5) No excepting direction may be given under subsection (4) by reason only of the fact that the proceedings have been determined in any way or have been abandoned.

(6) When deciding whether to make —

(a) a direction under subsection (2) in relation to a person; or

(b) an excepting direction under subsection (3) or (4) by virtue of which the restrictions imposed by a direction under subsection (2) would be dispensed with (to any extent) in relation to a person,

the court must have regard to the welfare of that person.

(7) For the purposes of subsection (2), any reference to a person concerned in the proceedings is to a person —

(a) against or in respect of whom the proceedings are taken; or

(b) who is a witness in the proceedings.

(8) The matters relating to a person in relation to which the restrictions imposed by a direction under subsection (2) apply (if their inclusion in any publication is likely to have the result mentioned in that subsection) include in particular —

(a) the person's name;

(b) the person's address;

(c) the identity of any school or other educational establishment attended by the person;

(d) the identity of any place where the person works; and

(e) any still or moving picture of the person.

(9) A direction under subsection (2) may be revoked by the court.

(10) An excepting direction —

(a) may be given at the time the direction under subsection (2) is given or subsequently; and

(b) may be varied or revoked by the court.

[CJ (Evidence) Ord. s.32; UK Youth Justice and Criminal Evidence Act 1999 s.45]

460. Power to restrict reports about certain adult witnesses in criminal proceedings

(1) This section applies if in any criminal proceedings in any Falkland Islands court, including proceedings on appeal, a party to the proceedings makes an application for the court to give a reporting direction in relation to a witness in the proceedings (other than the defendant) who has attained the age of 18.

(2) If the court determines that —

(a) the witness is eligible for protection; and

(b) giving a reporting direction in relation to the witness is likely to improve —

(i) the quality of evidence given by the witness; or

(ii) the level of co-operation given by the witness to any party to the proceedings in connection with that party's preparation of its case,

the court may give a reporting direction in relation to the witness.

(3) For the purposes of this section a witness is eligible for protection if the court is satisfied —

(a) that the quality of evidence given by the witness; or

(b) the level of co-operation given by the witness to any party to the proceedings in connection with that party's preparation of its case,

is likely to be diminished by reason of fear or distress on the part of the witness in connection with being identified by members of the public as a witness in the proceedings.

(4) In determining whether a witness is eligible for protection the court must take into account, in particular —

(a) the nature and alleged circumstances of the offence to which the proceedings relate;

(b) the age of the witness;

(c) such of the following matters as appear to the court to be relevant, namely —

(i) the social and cultural background and ethnic origins of the witness;

(ii) the domestic and employment circumstances of the witness; and

(iii) any religious beliefs or political opinions of the witness;

(d) any behaviour towards the witness on the part of —

(i) the defendant;

(ii) members of the family or associates of the defendant; or

(iii) any other person who is likely to be a defendant or a witness in the proceedings.

(5) In determining that question the court must in addition consider any views expressed by the witness.

(6) For the purposes of this section a reporting direction in relation to a witness is a direction that no matter relating to the witness may during the witness's lifetime be included in any publication if it is likely to lead members of the public to identify him or her as being a witness in the proceedings.

(7) The matters relating to a witness in relation to which the restrictions imposed by a reporting direction apply (if their inclusion in any publication is likely to have the result mentioned in subsection (6)) include in particular —

(a) the witness's name;

(b) the witness's address;

(c) the identity of any educational establishment attended by the witness;

(d) the identity of any place where the witness works; and

(e) any still or moving picture of the witness.

(8) In determining whether to give a reporting direction the court must consider —

(a) whether it would be in the interests of justice to do so; and

(b) the public interest in avoiding the imposition of a substantial and unreasonable restriction on the reporting of the proceedings.

(9) The court may by direction ("an excepting direction") dispense, to any extent specified in that direction, with the restrictions imposed by a reporting direction if it is —

(a) satisfied that it is necessary in the interests of justice to do so; or

(b) satisfied that —

(i) the effect of those restrictions is to impose a substantial and unreasonable restriction on the reporting of the proceedings; and

(ii) it is in the public interest to remove or relax that restriction,

but no excepting direction may be given under paragraph (b) by reason only of the fact that the proceedings have been determined in any way or have been abandoned.

(10) A reporting direction may be revoked by the court.

(11) An excepting direction —

(a) may be given at the time the reporting direction is given or subsequently; and

(b) may be varied or revoked by the court.

(12) In this section, references to the preparation of the case of a party to any proceedings include, if the party is the prosecution, the carrying out of investigations into any offence at any time charged in the proceedings.
[CJ (Evidence) Ord. s.33; UK Youth Justice and Criminal Evidence Act 1999 s.46]

461. Restrictions on reporting directions given under this Part
(1) Except as provided by this section, no publication may include a report of a matter falling within subsection (2).

(2) The matters falling within this subsection are —

(a) a direction under section 429, 447 or 451, or an order discharging, or in the case of a

direction under section 429, varying, such a direction;

(b) proceedings —

(i) on an application for such a direction or order; or

(ii) if the court acts on its own initiative to determine whether to give or make any such direction or order.

(3) The court dealing with a matter falling within subsection (2) may order that subsection (1) is not to apply, or is not to apply to a specified extent, to a report of that matter.

(4) If —

(a) there is only one defendant in the relevant proceedings; and

(b) he or she objects to the making of an order under subsection (3),

then —

(c) the court must make the order if (and only if) satisfied, after hearing the representations of the defendant, that it is in the interests of justice to do so; and

(d) if the order is made it does not apply to the extent that a report deals with any such objections or representations.

(5) If —

(a) there are 2 or more defendants in the relevant proceedings; and

(b) one or more of them object to the making of an order under subsection (3),

then —

(c) the court must make the order if (and only if) satisfied after hearing the representations of each of the defendant that it is in the interests of justice to do so; and

(d) if the order is made it does not apply to the extent that a report deals with any such objections or representations.

(6) Subsection (1) does not apply to the inclusion in a publication of a report of matters after the relevant proceedings are either —

(a) determined (by acquittal, conviction or otherwise); or

(b) abandoned, in relation to the defendant or (if there is more than one) in relation to each of

the defendants.

(7) In this section "the relevant proceedings" means the proceedings to which any such direction as is mentioned in subsection (2) relates or would relate.

(8) Nothing in this section affects any prohibition or restriction by virtue of any other enactment on the inclusion of matter in a publication.
[CJ (Evidence) Ord. s.34; UK Youth Justice and Criminal Evidence Act 1999 s.47 am. by Police & Justice Act 2006 s.52]

462. Offences relating to reporting
(1) This section applies if a publication —

(a) includes any matter in contravention of section 458(2) or of a direction under section 459(2) or 460(2); or

(b) includes a report in contravention of section 461.

(2) If the publication is a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical commits an offence.
Penalty: A fine at level 5 on the standard scale.

(3) If the publication is included in a programme service —

(a) any body corporate engaged in providing the service in which the publication is included; and

(b) any person having functions in relation to the service corresponding to those of an editor of a newspaper,

commits an offence.
Penalty: A fine at level 5 on the standard scale.

(4) In the case of any other publication, any person publishing it commits an offence.
Penalty: A fine at level 5 on the standard scale.

(5) Proceedings for an offence under this section in respect of a publication falling within subsection (1)(b) may not be commenced except by, or with the consent of, the Attorney General.
[CJ (Evidence) Ord. s.36; UK Youth Justice and Criminal Evidence Act 1999 s.49]

463. Defences relating to reporting
(1) If a person is charged with an offence under section 462, it is a defence to prove that at the time of the alleged offence the person was not aware, and neither suspected nor had reason to suspect, that the publication included the matter or report in question.

(2) If —

(a) a person is charged with an offence under section 462; and

(b) the offence relates to the inclusion of any matter in a publication in contravention of section 462(2),

it is a defence to prove that at the time of the alleged offence the person was not aware, and neither suspected nor had reason to suspect, that the criminal investigation in question had begun.

(3) If —

(a) subsection (2) applies; and

(b) the contravention of section 462(2) does not relate to either —

(i) the person by whom the offence mentioned in that provision is alleged to have been committed; or

(ii) (if the offence is one in relation to which section 465 applies) a person who is alleged to be a witness to the commission of the offence,

it is a defence to show to the satisfaction of the court that the inclusion in the publication of the matter in question was in the public interest on the ground that, to the extent that they operated to prevent that matter from being so included, the effect of the restrictions imposed by section 462(2) was to impose a substantial and unreasonable restriction on the reporting of matters connected with that offence.

(4) Subsection (5) applies if —

(a) subsection (2) applies; and

(b) the contravention of section 462(2) relates to a person who is neither —

(i) the person mentioned in subsection (3)(b)(i); nor

(ii) a person within subsection (3)(b)(ii) who is under the age of 16.

(5) In a case mentioned in subsection (4), it is a defence, subject to subsection (6), to prove —

(a) that written consent to the inclusion of the matter in question in the publication had been given —

(i) by an appropriate person, if at the time when the consent was given the protected person was under the age of 16; or

(ii) by the protected person, if that person was aged 16 or 17 at that time; and

(b) if the consent was given by an appropriate person - that written notice had been previously given to that person drawing to his or her attention the need to consider the welfare of the protected person when deciding whether to give consent.

(6) The defence provided by subsection (5) is not available if —

(a) the consent was given by an appropriate person and it is proved that written or other notice withdrawing the consent —

(i) was given to the appropriate recipient by any other appropriate person or by the protected person; and

(ii) was so given in sufficient time to enable the inclusion in the publication of the matter in question to be prevented; or

(b) subsection (8) applies.

(7) If —

(a) a person is charged with an offence under section 462; and

(b) the offence relates to the inclusion of any matter in a publication in contravention of a direction under section 460(2),

it is a defence, unless subsection (8) applies, to prove that the person in relation to whom the direction was given had given written consent to the inclusion of that matter in the publication.

(8) Written consent is not a defence if it is proved that any person interfered —

(a) with the peace or comfort of the person giving the consent; or

(b) if the consent was given by an appropriate person - with the peace or comfort of either that person or the protected person,

with intent to obtain the consent.

(9) In this section —

“appropriate person” means (subject to subsections (10) and (11)) a person who is a parent or guardian of the protected person;

“guardian”, in relation to the protected person, means any person who is not a parent of the protected person but who has parental responsibility for the protected person;

"protected person" means a person in respect of whom publication is an offence under section 462.

(10) If the protected person is a child who is looked after by the Crown, "an appropriate person" means a person who is —

(a) a representative of the Crown; or

(b) a parent or guardian of the protected person with whom the protected person is allowed to live.

(11) No person by whom the offence mentioned in section 458(2) is alleged to have been committed is, by virtue of subsections (9) or (10), an appropriate person for the purposes of this section.

(12) In this section "appropriate recipient", in relation to a notice under subsection (6)(a), means—

(a) the person to whom the notice giving consent was given;

(b) the person by whom the matter in question was published (if different); or

(c) any other person exercising, on behalf of the person mentioned in paragraph (b), any responsibility in relation to the publication of that matter,

and for this purpose "person" includes a body of persons and a partnership.
[CJ (Evidence) Ord. s.37; UK Youth Justice and Criminal Evidence Act 1999 s.50]

464. Decisions as to public interest in relation to reporting
(1) If for the purposes of sections 458 to 461 it falls to a court to decide whether anything is (or, as the case may be, was) in the public interest, the court must have regard, in particular, to the matters referred to in subsection (2) (so far as relevant).

(2) Those matters are —

(a) the interest in —

(i) the open reporting of crime;

(ii) the open reporting of matters relating to human health or safety; and

(iii) the prevention and exposure of miscarriages of justice;

(b) the welfare of any person in relation to whom the relevant restrictions imposed by or under any of sections 458 to 461 apply or would apply (or, as the case may be, applied); and

(c) any views expressed —

(i) by an appropriate person on behalf of a person within paragraph (b) who is under the age of 18 ("the protected person"); or

(ii) by a person within that paragraph who has attained that age.

(3) In subsection (2) "appropriate person", in relation to the protected person, has the same meaning as it has for the purposes of section 463.
[CJ (Evidence) Ord. s.40; UK Youth Justice and Criminal Evidence Act 1999 s.52]

Reporting restrictions: Identity of victims

465. Restriction on reporting of identity of victims of certain offences
(1) If an allegation has been made that a sexual offence has been committed against a person, no matter relating to that person may, during that person's lifetime, be included in any publication, if it is likely to lead members of the public to identify that person as the person against whom the offence is alleged to have been committed.

(2) If a person is accused of an offence to which this section applies, no matter likely to lead members of the public to identify a person as the person against whom the offence is alleged to have been committed ("the complainant") may during the complainant's lifetime be included in any publication.

(3) This section —

(a) does not apply in relation to a person by virtue of subsection (1) at any time after a person has been defendant of the offence; and

(b) in its application in relation to a person by virtue of subsection (2), has effect subject to any direction given under section 470.

(4) The matters relating to a person in relation to which the restrictions imposed by subsection (1) or (2) apply, if their inclusion in any publication is likely to have the result mentioned in that subsection, include in particular —

(a) the person's name;

(b) the person's address;

(c) the identity of any school or other educational establishment attended by the person;

(d) the identity of any place where the person works; and

(e) any still or moving picture of the person.

(5) Nothing in this section prohibits the inclusion in a publication of matter consisting only of a report of criminal proceedings other than proceedings at, or intended to lead to, or on an appeal arising out of, a trial at which the defendant is charged with the offence.
[UK Sexual Offences (Amendment) Act 1992 ss.1 and 2]

466. Power to displace section 465

(1) If, before the commencement of a trial at which a person is charged with an offence to which section 468 applies, that person or another person against whom the complainant may be expected to give evidence at the trial applies to the judicial officer for a direction under this subsection and satisfies the judicial officer —

(a) that the direction is required for the purpose of inducing persons who are likely to be needed as witnesses at the trial to come forward; and

(b) that the conduct of the applicant's defence at the trial is likely to be substantially prejudiced if the direction is not given,

the judicial officer must direct that section 465 does not, by virtue of the accusation alleging the offence in question, apply in relation to the complainant.

(2) An application under subsection (1) must be heard and disposed of in private.

(3) If at a trial the judicial officer is satisfied —

(a) that the effect of section 465 is to impose a substantial and unreasonable restriction upon the reporting of proceedings at the trial; and

(b) that it is in the public interest to remove or relax the restriction,

the judicial officer must direct that that section does not apply to any matter specified in the direction.

(4) A direction must not be given under subsection (2) by reason only of the outcome of the trial.

(5) If a person who has been convicted of an offence and has given notice of appeal against the conviction, or notice of an application for leave so to appeal, applies to an appellate court for a direction under this subsection and satisfies the court —

(a) that the direction is required for the purpose of obtaining evidence in support of the appeal; and

(b) that the applicant is likely to suffer substantial injustice if the direction is not given,

the appellate court must direct that section 465 does not, by virtue of an accusation which alleges an offence to which that section applies and is specified in the direction, apply in relation to a complainant so specified.

(6) A direction given under this section does not affect the operation of section 468 before the direction is given.

(7) In this section, "judicial officer" means —

(a) in the case of an offence which is to be tried summarily – the Senior Magistrate, or 3 justices of the peace sitting together (but not in open court);

(b) in any other case - a judge of the Supreme Court.

(8) If, after the commencement of a trial at which a person is charged with an offence to which section 468 applies, a new trial of the person for that offence is ordered, the commencement of any previous trial is to be disregarded for the purposes of subsection (1).
[UK Sexual Offences (Amendment) Act 1992 s.3]

467. Offences relating to reporting of identity of victims

(1) If any matter is included in a publication in contravention of section 465, the following persons commit an offence —

(a) if the publication is a newspaper or periodical - any proprietor, any editor and any publisher of the newspaper or periodical;

(b) if the publication is included in a programme service —

(i) any body corporate engaged in providing the service in which the publication is included; and

(ii) any person having functions in relation to the service corresponding to those of an editor of a newspaper;

(c) in the case of any other publication - any person publishing it.

Penalty: The statutory maximum fine.

(2) If a person is charged with an offence under this section in respect of the inclusion of any matter in a publication, it is a defence, subject to subsection (3), to prove that the publication in which the matter appeared was one in respect of which the person against whom the offence mentioned in section 468 is alleged to have been committed had given written consent to the appearance of matter of that description.

(3) Written consent is not a defence if it is proved that any person interfered unreasonably with the peace or comfort of the person giving the consent, with intent to obtain it, or that that person was under the age of 18 at the time when it was given.

(4) Proceedings for an offence under this section may not be commenced except by or with the consent of the Attorney General.

(5) If a person is charged with an offence under this section it is a defence to prove that at the time of the alleged offence the person was not aware, and neither suspected nor had reason to suspect, that the publication included the matter in question.

(6) If —

(a) a person is charged with an offence under this section; and

(b) the offence relates to the inclusion of any matter in a publication in contravention of section 468,

it is a defence to prove that at the time of the alleged offence the person was not aware, and neither suspected nor had reason to suspect, that the allegation in question had been made.
[UK Sexual Offences (Amendment) Act 1992 s.5]

Anonymity of witnesses

468. Abolition of common law rule
(1) The following provisions of this Part provide for the making of witness anonymity orders in relation to witnesses in criminal proceedings.

(2) The common law rules relating to the power of a court to make an order for securing that the identity of a witness in criminal proceedings is withheld from the defendant (or, on a defence application, from other defendants) are abolished.
[UK Criminal Evidence (Witness Anonymity) Act 2008 s.1]

469. Witness anonymity orders
(1) In this Part, a "witness anonymity order" is an order made by a court requiring specified measures to be taken in relation to a witness in criminal proceedings that the court considers appropriate to ensure that the identity of the witness is not disclosed in or in connection with the proceedings.

(2) The kinds of measures that may be required to be taken in relation to a witness include —

(a) the witness's name and other identifying details may be —

(i) withheld; or

(ii) removed from materials disclosed to any party to the proceedings;

(b) the witness may use a pseudonym;

(c) the witness is not asked questions of any specified description that might lead to the identification of the witness;

(d) the witness is screened to any specified extent; or

(e) the witness's voice is subjected to modulation to any specified extent.

(3) Subsection (2) does not affect the generality of subsection (1).

(4) Nothing in this section authorises the court to require —

(a) the witness to be screened to such an extent that the witness cannot be seen by —

(i) the judicial officer (as defined in section 466(7);

(ii) the jury (if there is one); or

(iii) any interpreter or other person appointed by the court to assist the witness;

(b) the witness's voice to be modulated to such an extent that the witness's natural voice cannot be heard by any persons within paragraph (a)(i) to (iii).

(5) In this section "specified" means specified in the witness anonymity order concerned.
[UK Coroners and Justice Act 2009 s.86]

470. Applications for orders

(1) An application for a witness anonymity order to be made in relation to a witness in criminal proceedings may be made to the court by the prosecutor or the defendant.

(2) If the application is made by the prosecutor, the prosecutor —

(a) must (unless the court directs otherwise) inform the court of the identity of the witness; but

(b) need not disclose in connection with the application ——

(i) the identity of the witness; or

(ii) any information that might enable the witness to be identified,

to any other party to the proceedings or that party's legal practitioner.

(3) If the application is made by the defendant, the defendant —

(a) must inform the court and the prosecutor of the identity of the witness; but

(b) (if there is more than one defendant) need not disclose in connection with the application—

(i) the identity of the witness; or

(ii) any information that might enable the witness to be identified,

to any other defendant or that defendant's legal practitioner.

(4) If the prosecutor or the defendant proposes to make an application under this section in respect of a witness, any relevant material which is disclosed by or on behalf of that party before the determination of the application may be disclosed in such a way as to prevent —

(a) the identity of the witness; or

(b) any information that might enable the witness to be identified,

from being disclosed except as required by subsection (2)(a) or (3)(a).

(5) In subsection (4), "relevant material" means any document or other material which falls to be disclosed, or is sought to be relied on, by or on behalf of the party concerned in connection with the proceedings or proceedings preliminary to them.

(6) The court must give every party to the proceedings the opportunity to be heard on an application under this section.

(7) Subsection (6) does not prevent the court from hearing one or more parties in the absence of a defendant and his or her legal practitioner, if it appears to the court to be appropriate to do so in the circumstances of the case.
[UK Coroners and Justice Act 2009 s.87]

471. Conditions for making an order
(1) This section applies when an application is made for a witness anonymity order to be made in relation to a witness in criminal proceedings.

(2) The court may make such an order only if it is satisfied that Conditions A to C below are met.

(3) Condition A is that the measures to be specified in the order are necessary to —

(a) protect the safety of the witness or another person or to prevent any serious damage to property; or

(b) prevent real harm to the public interest, whether affecting the carrying on of any activities in the public interest or the safety of a person involved in carrying on such activities, or otherwise.

(4) Condition B is that, having regard to all the circumstances, the taking of those measures would be consistent with the defendant receiving a fair trial.

(5) Condition C is that the importance of the witness's oral evidence is such that in the interests of justice the witness ought to testify and —

(a) the witness would not testify if the proposed order were not made; or

(b) there would be real harm to the public interest if the witness were to testify without the proposed order being made.

(6) In determining whether the measures to be specified in the order are necessary for the purpose mentioned in subsection (3)(a), the court must have regard (in particular) to any reasonable fear on the part of the witness that —

(a) the witness or another person would suffer death or injury; or

(b) there would be serious damage to property,

if the witness were to be identified.
[UK Coroners and Justice Act 2009 s.88]

472. Relevant considerations
(1) When deciding whether Conditions A to C in section 471 are met in the case of an application for a witness anonymity order, the court must have regard to —

(a) the considerations mentioned in subsection (2) of this section; and

(b) any other matters the court considers relevant.

(2) The considerations are —

(a) the general right of a defendant in criminal proceedings to know the identity of a witness in the proceedings;

(b) the extent to which the credibility of the witness concerned would be a relevant factor when the weight of his or her evidence comes to be assessed;

(c) whether evidence given by the witness might be the sole or decisive evidence implicating the defendant;

(d) whether the witness's evidence could be properly tested (whether on grounds of credibility or otherwise) without his or her identity being disclosed;

(e) whether there is any reason to believe that the witness —

(i) has a tendency to be dishonest; or

(ii) has any motive to be dishonest in the circumstances of the case,

having regard (in particular) to any previous convictions of the witness and to any relationship between the witness and the defendant or any associates of the defendant;

(f) whether it would be reasonably practicable to protect the witness's identity by any means other than by making a witness anonymity order specifying the measures that are under consideration by the court.

[UK Coroners and Justice Act 2009 s.89]

473. Warning to jury

(1) Subsection (2) applies if, on a trial on indictment, any evidence has been given by a witness at a time when a witness anonymity order applied to the witness.

(2) The judge must give the jury such warning as the judge considers appropriate to ensure that the fact that the order was made in relation to the witness does not prejudice the defendant.

(3) In a case being heard without a jury, the court must direct itself as in subsection (2).

[UK Coroners and Justice Act 2009 s.90]

474. Discharge or variation of order generally

(1) A court that has made a witness anonymity order in relation to any criminal proceedings may subsequently discharge or vary (or further vary) the order if it appears to the court to be appropriate to do so in view of the provisions of sections 471 and 472 that applied to the making of the order.

(2) The court may discharge or vary a witness anonymity order —

(a) on an application made by a party to the proceedings if there has been a material change of circumstances since the relevant time; or

(b) on its own initiative.

(3) The court must give every party to the proceedings the opportunity to be heard —

(a) before determining an application made to it under subsection (2);

(b) before discharging or varying the order on its own initiative.

(4) Subsection (3) does not prevent the court hearing one or more of the parties to the proceedings in the absence of a defendant in the proceedings and his or her legal practitioner, if it appears to the court to be appropriate to do so in the circumstances of the case.

(5) In subsection (2), "relevant time" means —

(a) the time when the order was made; or

(b) if a previous application has been made under subsection (2) - the time when the application (or the last application) was made.

[UK Coroners and Justice Act 2009 s.91]

475. Discharge or variation of order after proceedings or on appeal

(1) When —

(a) a court has made a witness anonymity order in relation to a witness in criminal proceedings ("the old proceedings"), and

(b) the old proceedings have come to an end,

the court that made the order may discharge or vary (or further vary) the order if it appears to the court to be appropriate to do so in view of —

(i) the provisions of sections 471 and 472 that apply to the making of a witness anonymity order; and

(ii) any other matters the court considers relevant.

(2) The court may exercise the power under subsection (1) —

(a) on an application made by a party to the old proceedings if there has been a material change of circumstances since the relevant time; or

(b) on an application made by the witness if there has been a material change of circumstances since the relevant time.

(3) The court may not determine an application made to it under subsection (2) unless in the case of each of the parties to the old proceedings and the witness —

(a) it has given the person the opportunity to be heard; or

(b) it is satisfied that it is not reasonably practicable to communicate with the person.

(4) Subsection (3) does not prevent the court hearing one or more of the persons mentioned in that subsection in the absence of a person who was a defendant in the old proceedings and his or her legal practitioner, if it appears to the court to be appropriate to do so in the circumstances of the case.

(5) Subsection (6) applies when —

(a) a court has made a witness anonymity order in relation to a witness in criminal proceedings ("the trial proceedings"); and

(b) a defendant in the trial proceedings has in those proceedings been —

(i) convicted;

(ii) found not guilty by reason of mental disorder; or

(iii) found to be under a disability and to have done the act charged in respect of an offence.

(6) If this subsection applies, the appellate court may in proceedings on or in connection with an appeal by the defendant from the trial proceedings discharge or vary (or further vary) the order if it appears to the court to be appropriate to do so in view of —

(a) the provisions of sections 471 and 472 that apply to the making of a witness anonymity order; and

(b) any other matters the court considers relevant.

(7) The appellate court may not discharge or vary an order under subsection (6) unless in the case of each party to the trial proceedings it —

(a) has given the person the opportunity to be heard; or

(b) is satisfied that it is not reasonably practicable to communicate with the person.

(8) Subsection (7) does not prevent the appeal court hearing one or more of the parties to the trial proceedings in the absence of a person who was a defendant in the trial proceedings and his or her legal practitioner, if it appears to the court to be appropriate to do so in the circumstances of the case.

(9) In this section —

(a) "the relevant time" means —

(i) the time when the old proceedings came to an end; or

(ii) if a previous application has been made under subsection (3) - the time when the application (or the last application) was made;

(b) a reference to the doing of an act includes a reference to a failure to act.
[UK Coroners and Justice Act 2009 ss.92 and 93]

Savings

476. Savings for other powers and rules
(1) Except as expressly provided in this Part, nothing in this Part affects —

(a) any power of a court to make an order, give directions or give leave of any description in relation to any witness (including a defendant);

(b) the operation of any rule of law relating to evidence in criminal proceedings;

(c) any power of a court to exclude evidence at its discretion (whether by preventing questions being put or otherwise) which is exercisable apart from this Part; or

(d) any prohibition or restriction imposed by or under this Ordinance or any other enactment upon a publication or upon matter included in a programme service.

(2) Nothing in this Part affects any power of a court to make an order or give leave of any description, in the exercise of its inherent jurisdiction or otherwise —

(a) in relation to a witness who is not an eligible witness; or

(b) in relation to an eligible witness if the order is made or the leave is given otherwise than by reason of the fact that the witness is an eligible witness.

(3) Nothing in this Part affects the common law rules as to the withholding of information on the grounds of public interest immunity.
[CJ (Evidence) Ord. s.7 (part); UK Youth Justice and Criminal Evidence Act 1999 ss.33C & 63]

CHAPTER 8 – SENTENCING

PART 23 – SENTENCING: GENERAL PRINCIPLES
Principles for sentencing

477. Purposes of sentencing
(1) A court dealing with an offender in respect of an offence must have regard to the following purposes of sentencing —

(a) the punishment of offenders;

(b) the reduction of crime (including its reduction by deterrence);

(c) the reform and rehabilitation of offenders;

(d) the protection of the public; and

(e) the making of reparation by offenders to persons affected by their offences.

(2) Subsection (1) does not apply —

(a) in relation to offenders who are aged under 18 at the time of conviction (as to whom Part 33 (Young Offenders and Youth Protection) applies;

(b) to an offence the sentence for which is fixed by law; or

(c) in relation to the making of an order for a person's custody or detention in a hospital or approved medical centre under the Mental Health Ordinance.

(3) This section does not affect —

(a) any other principle or requirement about sentencing contained in this Ordinance in relation to particular offences or particular offenders; nor

(b) the duty to consider making a compensation order when imposing a sentence, as required by section 608.

[UK Criminal Justice Act 2003 s.142 adapted]

478. Determining the seriousness of an offence

(1) In considering the seriousness of any offence, the court must consider the offender's culpability in committing the offence and any harm which the offence caused, was intended to cause or might forseeably have caused.

(2) In considering the seriousness of an offence ("the current offence") committed by an offender who has one or more previous convictions, the court must treat each previous conviction as an aggravating factor if (in the case of that conviction) the court considers that it can reasonably be so treated having regard, in particular, to —

(a) the nature of the offence to which the conviction relates and its relevance to the current offence; and

(b) the time that has elapsed since the conviction.

(3) In considering the seriousness of any offence committed while the offender was on bail, the court must treat the fact that it was committed in those circumstances as an aggravating factor.

(4) Any reference in subsection (2) to a previous conviction is to be read as a reference to a previous conviction by a court in the Falkland Islands.

(5) Subsections (2) and (4) do not prevent the court from treating a previous conviction by a court outside the Falkland Islands as an aggravating factor in any case where the court considers it appropriate to do so.

(6) If —

(a) a court is considering the seriousness of an offence other than one under any of sections 555 to 559 of the Crimes Ordinance 2014, (racially or religiously aggravated assaults, etc.); and

(b) the offence was racially or religiously aggravated, the court must —

(i) treat that fact as an aggravating factor; and

(ii) state in open court that the offence was so aggravated.

(7) If the court is considering the seriousness of an offence committed in any of the circumstances mentioned in subsection (8) the court must —

(a) treat the fact that the offence was committed in any of those circumstances as an aggravating factor; and

(b) state in open court that the offence was committed in such circumstances.

(8) Those circumstances are —

(a) that, at the time of committing the offence, or immediately before or after doing so, the offender demonstrated towards the victim of the offence hostility based on —

(i) the sexual orientation (or presumed sexual orientation) of the victim; or

(ii) a disability (or presumed disability) of the victim; or

(b) that the offence is motivated (wholly or partly) by hostility towards persons —

(i) who are of a particular sexual orientation; or

(ii) who have a disability or a particular disability,

whether or not the offender's hostility is also based, to any extent, on any other factor.

(9) In this section —

"disability" means any physical or mental impairment;

"racially or religiously aggravated" has the same meaning as in section 555 of the Crimes Ordinance 2014.
[UK Criminal Justice Act 2003 ss.143, 145 and 146]

479. Reduction in sentences for guilty pleas
(1) In determining what sentence to pass on an offender who has pleaded guilty to an offence in criminal proceedings before that or another court, a court must take into account —

(a) the stage in the proceedings for the offence at which the offender indicated an intention to plead guilty; and

(b) the circumstances in which this indication was given.

(2) If, as a result of taking into account any matter referred to in subsection (1) above, the court imposes a punishment on the offender which is less severe than the punishment it would otherwise have imposed, it must state in open court that it has done so.

[UK Criminal Justice Act 2003 s.144 (part); Powers of Criminal Courts (Sentencing) Act 2000 s.152 (part)]

480. Sentencing powers: General

(1) Subject to any maximum penalty prescribed for an offence, and subject to other provisions of this Ordinance limiting sentencing powers —

(a) the Supreme Court may impose imprisonment for any period, or a fine of any amount, or both;

(b) the Magistrate's Court may impose imprisonment for any period, or a fine of any amount, or both if the penalty provision so provides;

(c) the Summary Court may impose a sentence of imprisonment up to the limit prescribed by section 178, or a fine up to the limit prescribed by section 589, or both if the penalty provision so provides;

(d) the Magistrate's Court or the Summary Court when sitting as a Youth Court may impose a custodial sentence or a fine (up to the limits prescribed in Part 33), or both if the penalty provision so provides.

(2) In imposing a sentence a court must have regard to —

(a) the relative seriousness of the offence as indicated by the maximum sentence that can be imposed for the offence on conviction;

(b) any matter that, in the opinion of the court, is relevant in mitigation of sentence as provided by section 481;

(c) any sentencing guidelines issued under section 482.

(3) If in any written law of the Falkland Islands a penalty is prescribed for an offence under that law, the provision implies —

(a) that the offence is punishable upon conviction by a penalty not exceeding the penalty prescribed; and

(b) if the amount of the fine is unspecified, that the offence, without affecting any law against excessive or unreasonable fines or assessments, is punishable by a fine of any amount.

(4) If in any written law of the Falkland Islands —

(a) a penalty is set out at the foot of any section or subsection, any contravention of that provision is an offence under that law punishable upon conviction by a penalty not exceeding the penalty so set out;

(b) more than one penalty is prescribed for an offence, the use of the word "and" means that the penalties may be inflicted alternatively or cumulatively.

(5) If under any law an offender sentenced, on summary conviction, to imprisonment or a fine is required to enter into a recognisance with or without sureties to keep the peace or observe any other condition, the court convicting the person may dispense with or modify the requirement.

(6) A court may in imposing a sentence for an offence combine different types of sentence, whether custodial or non-custodial, provided the effective total sentence does not exceed the maximum prescribed for the offence, and for this purpose a period of a community sentence counts as a period of imprisonment.

(7) The imposition of a penalty or fine by or under any written law of the Falkland Islands does not relieve any person from liability to answer in damages to a person injured.
[Criminal Justice Ord. ss.5 to 8; UK Magistrate's Courts Act 1980 s.34 adapted]

481. Power to mitigate sentences

(1) Unless a provision of this Ordinance otherwise provides, a court may mitigate an offender's sentence by taking into account any such matters as, in the opinion of the court, are relevant in mitigation of sentence.

(2) The court may, on application by or for the defendant made in private, if it considers it necessary for the fair administration of justice, order that all or part of a submission in mitigation of sentence be heard in private.

(3) In subsection (2), "in private" means excluding the public generally, but not the witnesses or the parties or their legal practitioners.

(4) Documents adduced in support of a plea in mitigation may be put before the court without being read aloud, provided the parties and their legal practitioners are informed of the contents and have an opportunity to make submissions on them.

(5) A court, after taking into account any matters such matters as are mentioned in subsection (1), may pass a community sentence even though it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that a community sentence would not normally be justified for the offence.

(6) A court may —

(a) mitigate any penalty included in an offender's sentence by taking into account any other penalty included in that sentence; and

(b) in the case of an offender who is convicted of one or more other offences, mitigate the sentence by applying any rule of law as to the totality of sentences.

(7) A court may reduce the sentence that it would otherwise impose to take account of any assistance given (or offered to be given) by the offender to the prosecutor or investigator of an offence either before or after the person was charged with the offence.

(8) Subsections (6) and (7) do not limit subsection (1).

(9) Nothing in this Ordinance —

(a) requires a court to pass a custodial sentence, or any particular custodial sentence, on a mentally disordered offender; or

(b) restricts any power which enables a court to deal with such an offender in the manner it considers to be most appropriate in all the circumstances.

[UK Criminal Justice Act 2003 s.166 adapted]

482. Sentencing guidelines

(1) The Criminal Justice Council, on the recommendation of the Sentencing Guidelines Committee given after consulting as required by Part 'B' of Schedule 13, must publish guidelines relating to the sentencing of offenders ("sentencing guidelines"), which may be general in nature or limited to a particular category of offence or offenders.

(2) The sentencing guidelines must have regard to the principles set out in Part 'B' of Schedule 13 and to —

(a) the need to promote consistency in sentencing;

(b) the sentences imposed by courts in other common law jurisdictions for offences to which the guidelines relate;

(c) the cost of different sentences and their relative effectiveness in preventing re-offending;

(d) the need to promote public confidence in the criminal justice system; and

(e) any views communicated to the Council in writing on the subject of sentencing.

(3) Every court must in sentencing an offender have regard to any sentencing guidelines which are relevant to the offender's case, and must follow those guidelines unless satisfied it would be contrary to the interests of justice to do so.

(4) If and to the extent that sentencing guidelines have not been published under subsection (1), and subject to any common law provision, a court may have regard to the guidelines issued by the Sentencing Guidelines Council and by the Sentencing Council for England and Wales as amended or replaced from time to time.

[UK Criminal Justice Act 2003 ss. 171, 172, replaced by Coroners & Justice Act 2009 ss.120, 125 and 135 and adapted]

483. Duty to give reasons for, and explain effect of, sentence

(1) Subject to subsection (4), a court passing sentence on an offender must —

(a) state in open court, in ordinary language and in general terms, its reasons for deciding on the sentence passed; and

(b) explain to the offender in ordinary language —

(i) the effect of the sentence;

(ii) if the offender is required to comply with any order of the court forming part of the sentence - the effects of non-compliance with the order;

(iii) any power of the court, on the application of the offender or any other person, to vary or review any order of the court forming part of the sentence; and

(iv) if the sentence consists of or includes a fine - the effects of failure to pay the fine.

(2) In complying with subsection (1)(a), the court must —

(a) if applicable sentencing guidelines indicate that a sentence of a particular kind, or within a particular range, would normally be appropriate for the offence and the sentence is of a different kind, or is outside that range – state the court's reasons for deciding on a sentence of a different kind or outside that range;

(b) if the sentence is a custodial sentence and the duty in subsection (2) of section 558 is not excluded by subsection (3) of that section - state that it is of the opinion referred to in section 558(2) and why it is of that opinion;

(c) if the sentence is a community sentence - state that it is of the opinion that section 551 applies and why it is of that opinion;

(d) in every case, mention any aggravating or mitigating factors which the court has regarded as being of particular importance.

(3) The court must identify any sentencing guidelines relevant to the offender's case and —

(a) explain how the court discharged any duty imposed on it by section 482(3) to observe the guidelines, unless satisfied it would be contrary to the interests of justice to do so;

(b) if the court was satisfied it would be contrary to the interests of justice to follow the guidelines, state why.

(4) If, as a result of taking into account any matter referred to in section 479, the court imposes a punishment on the offender which is less severe than the punishment it would otherwise have imposed, the court must state that fact.

(5) If a court passes a custodial sentence, it must cause any reason stated by virtue of subsection (2)(b) to be specified in the warrant of commitment and entered on the court records.

(6) Subsections (1) to (5) do not apply to an offence the sentence for which is fixed by law.

(7) The Chief Justice may by criminal procedure rules make provision —

(a) prescribing cases in which the duties under this section do not apply, and

(b) providing how an explanation under subsection (4) is to be given.

[UK Criminal Justice Act 2003 s.174 as replaced by s.64 of the LASPOA 2012 and adapted]

Derogatory assertions

484. Orders in respect of certain assertions

(1) This section applies when a person has been convicted of an offence and a speech in mitigation is made by the person or on the person's behalf before —

(a) a court deciding what sentence should be passed on the person in respect of the offence; or

(b) the Summary Court deciding whether the person should be committed to the Magistrate's Court for sentence.

(2) This section also applies when a sentence has been passed on a person in respect of an offence and a submission relating to the sentence is made by the person or on the person's behalf before —

(a) a court hearing an appeal against or reviewing the sentence; or

(b) a court deciding whether to grant leave to appeal against the sentence.

(3) If it appears to the court that there is a real possibility that an order under subsection (8) will be made in relation to the assertion, the court may make an order under subsection (7) in relation to the assertion.

(4) If there are substantial grounds for believing —

(a) that an assertion forming part of the speech or submission is derogatory to a person's character (for instance, because it suggests that the person's conduct is or has been criminal, immoral or improper); and

(b) that the assertion is false or that the facts asserted are irrelevant to the sentence,

the court may make an order under subsection (8) in relation to the assertion.

(5) An order under subsection (7) or (8) must not be made in relation to an assertion if it appears to the court that the assertion was previously made —

(a) at the trial at which the person was convicted of the offence; or

(b) during any other proceedings relating to the offence.

(6) Sections 485 and 486 have effect if a court makes an order under subsection (7) or (8).

(7) An order under this subsection —

(a) may be made at any time before the court has made a decision with regard to sentencing;

(b) may be revoked at any time by the court;

(c) subject to paragraph (b), ceases to have effect when the court makes a decision with regard to sentencing.

(8) An order under this subsection —

(a) may be made after the court has made a decision with regard to sentencing, but only if it is made as soon as is reasonably practicable after the making of the decision;

(b) may be revoked at any time by the court;

(c) subject to paragraph (b), ceases to have effect after 12 months;

(d) may be made whether or not an order has been made under subsection (7) with regard to the case concerned.

(9) For the purposes of subsections (7) and (8) the court makes a decision with regard to sentencing —

(a) when it decides what sentence should be passed (if this section applies by virtue of subsection (1)(a));

(b) when it decides whether the person should be committed to the Magistrate's Court for sentence (if this section applies by virtue of subsection (1)(b));

(c) when it decides what the sentence should be (if this section applies by virtue of subsection (2)(a));

(d) when it decides whether to grant leave to appeal (if this section applies by virtue of subsection (2)(b)).

[UK Criminal Procedure & Investigations Act 1996 s.58]

485. Restriction on reporting of assertions

(1) If a court makes an order under section 484(7) or (8) in relation to any assertion, at any time when the order has effect the assertion must not be —

(a) published in the Falkland Islands in a written publication available to the public; or

(b) included in a relevant programme for reception in the Falkland Islands.

(2) For the purposes of this section an assertion is published or included in a programme if the material published or included —

(a) names the person about whom the assertion is made or, without naming the person, contains enough information to make it likely that members of the public will identify the person as the person about whom the assertion is made; and

(b) reproduces the actual wording of the matter asserted or contains its substance.

[UK Criminal Procedure & Investigations Act 1996 s.59]

486. Reporting of assertions: Offences

(1) If an assertion is published or included in a relevant programme in contravention of section 485, each of the following commits an offence —

(a) in the case of publication in a newspaper or periodical - any proprietor, editor or publisher of the newspaper or periodical;

(b) in the case of publication in any other form - the person who publishes the assertion;

(c) in the case of an assertion included in a relevant programme - any person, whether an individual or a corporate body, engaged in providing the service in which the programme is included and any person who has functions in relation to the programme corresponding to those of an editor of a newspaper.

Penalty: The statutory maximum fine.

(2) If a person is charged with an offence under this section it is a defence to prove that at the time of the alleged offence the person —

(a) was not aware, and neither suspected nor had reason to suspect, that an order under section 484(7) or (8) had effect at that time; or

(b) was not aware, and neither suspected nor had reason to suspect, that the publication or programme in question was of, or (as the case may be) included, the assertion in question.

(3) Subsection (2) of section 485 applies for the purposes of this section as it applies for the purposes of that section.

[UK Criminal Procedure & Investigations Act 1996 s.60]

Commencement and alteration of sentence

487. Commencement of sentence

(1) A sentence imposed, or other order made, by a court when dealing with an offender takes effect from the beginning of the day on which it is imposed, unless the court otherwise directs.

(2) The power to give a direction under subsection (1) has effect subject to any restriction on consecutive sentences for released prisoners.

(3) If a sentence is varied under section 488, in this section "sentence" means a sentence as so varied.

[UK Powers of Criminal Courts (Sentencing) Act 2000 s.154 adapted]

488. Alteration of Supreme Court sentence

(1) Subject to the following provisions of this section, a sentence imposed, or other order made, by the Supreme Court when dealing with an offender may be varied or rescinded by the Supreme Court within the period of 28 days beginning with the day on which the sentence or other order was imposed or made or, if subsection (2) applies, within the time allowed by that subsection.

(2) If 2 or more persons are jointly tried on an indictment, then, subject to the following provisions of this section, a sentence imposed, or other order made, by the Supreme Court on conviction of any of those persons on the indictment may be varied or rescinded by the Supreme Court not later than —

(a) 28 days after the conclusion of the joint trial; or

(b) 56 days after the sentence or other order was imposed or made,

whichever is the earlier.

(3) For the purposes of subsection (2), the joint trial is concluded when any of the persons jointly tried is sentenced or is acquitted or when a special verdict is brought in, whichever is the later.

(4) A sentence or other order must not be varied or rescinded under this section except by the court constituted as it was when the sentence or other order was imposed or made.

(5) Subject to subsection (6), if a sentence or other order is varied under this section the sentence or other order, as so varied, takes effect from the beginning of the day on which it was originally imposed or made, unless the court otherwise directs.

(6) For the purposes of an appeal to the Court of Appeal, the sentence or other order is to be regarded as imposed or made on the day on which it is varied under this section.

(7) The Chief Justice may by criminal procedure rules —

(a) in relation to cases in which 2 or more persons are tried separately on the same or related facts alleged in one or more indictments, provide for extending the period fixed by subsection (1);

(b) subject to this section, prescribe the cases and circumstances in which, and the time within which, any order or other decision made by the Supreme Court may be varied or rescinded by that court.

(8) In this section, "sentence" includes a recommendation for deportation made under section 501.
[UK Powers of Criminal Courts (Sentencing) Act 2000 s.155 adapted]

Deferment of sentence

489. Power to defer sentence
(1) Subject to this section, a court may defer passing sentence on a person for the purpose of enabling the court, or any other court to which it falls to deal with the person, to have regard in dealing with the person to —

(a) the person's conduct after conviction; or

(b) any change in the person's circumstances.

(2) Without limiting subsection (1), the matters to which the court to which it falls to deal with the person may have regard by virtue of paragraph (a) of that subsection include the extent to which the offender has complied with any requirements imposed under subsection (3)(b).

(3) The power conferred by subsection (1) is exercisable only if —

(a) the offender consents;

(b) the person undertakes to comply with any requirements as to the person's conduct during the period of the deferment that the court considers it appropriate to impose; and

(c) the court is satisfied, having regard to the nature of the offence and the character and circumstances of the offender, that it would be in the interests of justice to exercise the power.

(4) Any deferment under this section —

(a) must be until a date not later than 6 months after the date on which the deferment is announced by the court;

(b) can only be done once, unless the person is committed for sentence to the Supreme Court.

(5) If sentence is deferred under subsection (1), the probation officer must —

(a) monitor the offender's compliance with the requirements; and

(b) provide to the court to which it falls to deal with the offender in respect of the offence in question any information the court requires relating to the offender's compliance with the requirements.

(6) If a court has under this section deferred passing sentence on an offender, it must forthwith give a copy of the order deferring the passing of sentence and setting out any requirements imposed under subsection (3)(b) to —

(a) the offender; and

(b) the probation officer.

(7) A court which under this section defers passing sentence on an offender must not on the same occasion remand the person.

(8) If —

(a) a court which under this section has deferred passing sentence on a person proposes to deal with the person on the date originally specified by the court, or by virtue of section 488(1), before that date;

(b) the person does not appear on the day so specified,

the court may issue a summons requiring the person to appear before the court at a time and place specified in the summons, or may issue a warrant to arrest the person and bring him or her before the court at a time and place specified in the warrant.
[Criminal Justice Ord. s.17 (part); UK Powers of Criminal Courts (Sentencing) Act 2000 ss.1 and 2 replaced by Criminal Justice Act 2003 s.278]

490. Breach of undertakings
(1) A court which under section 489 has deferred passing sentence on a person may deal with the person before the end of the period of deferment if —

(a) the person appears or is brought before the court under subsection (3); and

(b) the court is satisfied that he or she has failed to comply with one or more requirements imposed under section 489(3)(b) in connection with the deferment.

(2) Subsection (3) applies if —

(a) a court has under section 489 deferred passing sentence on an offender;

(b) the offender undertook to comply with one or more requirements imposed under paragraph (3)(b) of that section in connection with the deferment; and

(c) the probation officer has reported to the court that the offender has failed to comply with one or more of those requirements.

(3) If this subsection applies, the court may issue —

(a) a summons requiring the offender to appear before the court at a time and place specified in the summons; or

(b) a warrant to arrest the offender and bring him or her before the court at a time and place specified in the warrant.

[Criminal Justice Ord. s.17 (part); UK Powers of Criminal Courts (Sentencing) Act 2000 s.1B ins. by Criminal Justice Act 2003]

491. Conviction of offence during period of deferment

(1) A court which under section 489 has deferred passing sentence on a person may deal with the person before the end of the period of deferment if during that period he or she is convicted in the Falkland Islands of any offence.

(2) Subsection (3) applies if a court has under section 489 deferred passing sentence on a person in respect of one or more offences and during the period of deferment the person is convicted in the Falkland Islands of any offence ("the later offence").

(3) If this subsection applies, then (without affecting subsection (1) and whether or not the person is sentenced for the later offence during the period of deferment), the court which passes sentence on the person for the later offence may also, if this has not already been done, deal with the person for the offence or offences for which passing of sentence has been deferred, except that —

(a) the power conferred by this subsection may not be exercised by the Magistrate's Court if the court which deferred passing sentence was the Supreme Court, nor by the Summary Court if the court which deferred passing sentence was the Supreme Court or the Magistrate's Court;

(b) the Supreme Court, in exercising that power in a case in which the court which deferred passing sentence was the Magistrate's Court or the Summary Court, may not pass any sentence which could not have been passed by the Magistrate's Court or Summary Court in exercising that power.

(4) If a court which under section 489 has deferred passing sentence on a person proposes to deal with the person by virtue of subsection (1) of this section before the end of the period of deferment, the court may issue —

(a) a summons requiring the person to appear before the court at a time and place specified in the summons; or

(b) a warrant to arrest the person and bring the person before the court at a time and place specified in the warrant.

[Criminal Justice Ord. s.17 (part); UK Powers of Criminal Courts (Sentencing) Act 2000 s.1C ins. by Criminal Justice Act 2003]

492. Deferment of sentence: Supplementary

(1) In deferring the passing of sentence under section 489 a court is to be regarded as exercising a power of adjourning the trial and accordingly any provisions about non-appearance of the defendant apply if the offender does not appear on the date specified under section 491(4), but without affecting section 489(8).

(2) If the passing of sentence on a person has been deferred by a court ("the original court") under section 489, the power of that court under that section to deal with the person at the end of the period of deferment and any power of that court under section 490(1) or 491(1), or of any court under section 491(3), to deal with the person —

(a) is power to deal with the person, in respect of the offence for which passing of sentence has been deferred, in any way in which the original court could have dealt with the person if it had not deferred passing sentence; and

(b) without limiting paragraph (a), in the case of the Magistrate's Court or Summary Court includes the power to commit the person to the Supreme Court for sentence.

(3) If —

(a) the passing of sentence on a person in respect of one or more offences has been deferred under section 489; and

(b) the Magistrate's Court or the Summary Court deals with the person in respect of the offence or any of the offences by committing the person to the Supreme Court,

the power of the Supreme Court to deal with the person includes the same power to defer passing sentence on the person as if the person had just been convicted of the offence or offences on indictment before the court.

(4) Nothing in this section or section 489 or 491 affects —

(a) the power of any court to bind over an offender to come up for judgment when called upon; or

(b) the power of any court to defer passing sentence for any purpose for which it may lawfully do so apart from this section.

[Criminal Justice Ord. s.17 (part); UK Powers of Criminal Courts (Sentencing) Act 2000 s.1D ins. by Criminal Justice Act 2003 adapted]

Information before sentence passed

493. Pre-sentence reports

(1) The court, before passing any sentence, must make such inquiries as it thinks fit, in order to inform itself as to the appropriate sentence to be passed.

(2) For the purpose of subsection (1), the court may inquire into the character and antecedents of the offender, either at the request of the prosecution or the offender, and may require a pre-sentence report from the probation officer or any other appropriate person.

(3) If a court requires a pre-sentence report it may remand the defendant in custody after conviction for the purpose of the report being prepared for up to 28 days.

(4) The offender must be given an opportunity to confirm, deny or explain any adverse statement made about the offender in a pre-sentence report and in any case of doubt the court must in the absence of legal proof of such a statement ignore it.

(5) No sentence shall be invalidated by the failure of a court to consider a pre-sentence report, but an appellate court on appeal from that court must consider such a report in determining whether a different sentence should be passed on the applicant from the sentence passed by the court below.

[Criminal Justice Ord. s.61; UK Criminal Justice Act 2003 s.156 (part); Magistrates Courts Act 1980 s,.10(3)]

494. Taking previous offences into account

(1) In assessing the proper sentence to be passed, the court must take into consideration the offender's character and antecedents, including any other offences committed by the offender, which the offender admits, whether or not the offender has been convicted of those offences.

(2) No offence of which the offender has not been convicted may be taken into consideration in assessing the proper sentence unless the offender specifically agrees that the offence should be taken into consideration and details of the request have been recorded in the proceedings.

(3) If for any reason the sentence passed by the court is set aside, the offender is not entitled to plead *autrefois convict* in respect of any offence taken into consideration in assessing the sentence that was set aside.

(4) If an offender has committed a series of offences over a period of time, and has been convicted upon an indictment charging the offender with having committed one or more of those offences —

(a) the court may pass a sentence which is appropriate to the whole of the offender's involvement in that series of offences; but.

(b) the court may take into account any such series of offences only to the extent (if any) to which the offender admits guilt.

[UK Criminal Justice Act 2003 s.156 (part) and s.158]

495. Additional requirements in case of mentally disordered offender

(1) Subject to subsection (2), in any case where the offender is or appears to be mentally disordered, the court must obtain and consider a medical report before passing a custodial sentence other than one fixed by law.

(2) Subsection (1) does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a medical report.

(3) Before passing a custodial sentence other than one fixed by law on a person who is or appears to be mentally disordered, a court must consider —

(a) any information before it which relates to the person's mental condition (whether given in a medical report, a pre-sentence report or otherwise); and

(b) the likely effect of such a sentence on that condition and on any treatment which may be available for it.

(4) No custodial sentence which is passed in a case to which subsection (1) applies is invalidated by the failure of a court to comply with that subsection, but any court on an appeal against such a sentence must —

(a) obtain a medical report if none was obtained by the court below; and

(b) consider any such report obtained by it or by that court.

(5) In this section, "medical report" means a report as to a person's mental condition made or submitted orally or in writing by a medical practitioner or the Chief Medical Officer as defined in the Mental Health Ordinance.

(6) If the court considers that a medical report is required, it may remand the offender for the purpose in accordance with section 48 of the Mental Health Ordinance (remand for report on defendant's mental condition).

[UK Criminal Justice Act 2003 s.157 adapted]

496. Disclosure of pre-sentence reports

(1) This section applies if the court obtains a pre-sentence report (including a medical report obtained pursuant to section 495) if the report is not given orally in open court.

(2) Subject to subsections (3) and (4), the court must give a copy of the report —

(a) to the offender or the offender's legal practitioner;

(b) if the offender is aged under 18 - to any parent or guardian of the offender, or other person having parental responsibility for the offender, who is present in court; and

(c) to the person having the conduct of the proceedings in respect of the offence

(3) If the offender is aged under 18 and it appears to the court that the disclosure to the offender or to his or her parent or guardian of any information contained in the report would be likely to create a risk of significant harm to the offender, a complete copy of the report need not be given to the offender or, as the case may be, to that parent or guardian.

(4) No information obtained by virtue of subsection (2)(c) may be used or disclosed otherwise than for the purpose of —

(a) determining whether representations as to matters contained in the report need to be made to the court; or

(b) making such representations to the court.

(5) In relation to an offender aged under 18 for whom the Crown has responsibility and who —

(a) is in the care of the Crown; or

(b) is provided with accommodation by the Crown,

references in this section to the offender's parent or guardian are to be read as references to the Crown.
[Criminal Justice Ord. s.62; UK Criminal Justice Act 2003 s.159]

497. Pre-sentence drug testing
(1) If a person aged 14 or over is convicted of an offence and the court is considering passing a community sentence or a suspended sentence, it may make an order under subsection (2) for the purpose of ascertaining whether the offender has any controlled drug in his or her body.

(2) The order requires the offender to provide, in accordance with the order, samples of any description specified in the order.

(3) If the offender has not attained the age of 18, the order must provide for the samples to be provided in the presence of an appropriate adult.

(4) If it is proved to the satisfaction of the court that the offender has, without reasonable excuse, failed to comply with the order it may impose on the offender a fine at level 4 on the standard scale.
[UK Criminal Justice Act 2003 s.161]

Impact statements

498. Victim Personal Statements
(1) For purposes of this section —

(a) a Victim Personal Statement ("VPS") is a written statement made by a person who was the victim of an offence as to how the offence has affected the person;

(b) the statement may include information to identify whether the person has a particular need for information, support and protection;

(c) the statement should not include any opinion as to the appropriate sentence;

(d) the statement may be made by relatives of a victim, for example if the victim has died as a result of the relevant criminal conduct, or if the victim is a youth when the statement is made;

(e) the statement must be made in the form of a witness statement or an expert statement as provided by or under this Ordinance.

(2) A court when determining sentence for an offence must take into account any VPS made in relation to it, and any supporting documents. Unless inferences can properly be drawn from the nature of or circumstances surrounding the offence, a sentencing court must not make assumptions unsupported by evidence about the effects of an offence on the victim.

(3) A VPS must be made before sentence is considered, but may be updated between sentence and appeal if appropriate, for example if the victim was injured and the final prognosis was not available at the date of sentence.

(4) Any VPS made in relation to an offence must be served on the defendant or the defendant's legal practitioner, if any, in sufficient time before sentencing for the defence to prepare a response to it.

(5) If a VPS has been made in relation to an offence —

(a) it must be referred to in the course of sentencing;

(b) subject to the court's discretion, the contents of the VPS may be summarised and in an appropriate case read out in open court.

(6) The Chief Justice, after consulting the Criminal Justice Council, must issue a code of practice and may issue associated guidelines for the making of VPSs by victims of criminal offences, specifying among other things —

(a) the offences to which such statements can relate;

(b) the persons who can make them;

(c) the time, manner and form of making them;

(d) the duties of the police and other public officers in relation to them; and

(e) the rights of victims of crime generally.
[UK Practice Direction (Crim Proc) 2009 para. III.28 and Code of Practice for Victims of Crime Oct 2013]

499. Community Impact Statements
(1) For purposes of this section —

(a) a Community Impact Statement ("CIS") is a written statement made by a police officer of the rank of inspector or above in relation to an offence for which a court is due to determine sentence;

(b) the purpose of the statement is to make the court aware of particular crime trends in the local area and the impact of them on the local community;

(c) the statement should not include any opinion as to the appropriate sentence;

(d) the statement must be made in the form of a witness statement or an expert statement as provided by or under this Ordinance.

(2) A court when determining sentence for an offence must take into account any CIS made in relation to it, so far as the court considers it appropriate. Unless inferences can properly be drawn from the nature of or circumstances surrounding the offence, a sentencing court must not make assumptions unsupported by evidence about the effects of an offence on the local community.

(3) Any CIS made in relation to an offence must be served on the defendant or the defendant's legal practitioner, if any, in sufficient time before sentencing for the defence to prepare a response to it.

(4) If a CIS has been made in relation to an offence —

(a) it must be referred to in the course of sentencing;

(b) subject to the court's discretion, the contents of the CIS may be summarised and in an appropriate case read out in open court.

(5) The Chief Justice, after consulting the Criminal Justice Council, must issue a code of practice and may issue associated guidelines for the making of CISs by police officers.
[UK Practice Direction (Crim Proc) 2009 para. III.28]

500. Family impact measures
(1) The Chief Justice, after consulting the Criminal Justice Council, may issue a code of practice and associated guidelines for the making of statements by the family members of a deceased victim of an offence resulting in death, in addition to or in place of a VPS made by relatives of a deceased victim as provided by section 498(1)(d).

(2) The code may specify the manner, form and time for the making of such a statement, including whether it can be made orally in court, and the persons who should assist the family members in making such a statement.

(3) To the extent compatible with family members' roles as witnesses, the court should consider the following measures in relation to the family of a deceased victim of an offence resulting in death —

(a) seating for family members in the courtroom in an area away from the public gallery;

(b) warning being given to families if the evidence on a certain day is expected to be particularly distressing;

(c) providing a written copy of the sentencing remarks to the family after sentence has been passed.

[UK Practice Direction (Crim Proc) 2009 para. III.28 and CJ's Protocol May 2006]

Deportation

501. Power to recommend deportation

(1) Subject to this section, if a person who does not have Falkland Islands status within the meaning of section 22(5) of the Constitution and who has attained the age of 18 years is convicted in the Falkland Islands of an offence for which the person is punishable with imprisonment, the court when sentencing the person for that offence may, unless it commits the person to be sentenced or further dealt with for that offence by another court, recommend, in addition to so sentencing the person, that the person be deported from the Falkland Islands.

(2) A court must not under this section recommend a person for deportation unless the person has been given not less than 7 days notice of the court's intention to do so, but the court may after convicting an offender adjourn the case for the purpose of enabling a notice to be given to the person under this section or, if a notice was given to the person less than 7 days previously, for the purpose of enabling the necessary 7 days to elapse.

(3) For the purposes of this section —

(a) a person is deemed to have attained the age of 18 years at the time of his or her conviction if, on consideration of any available evidence, the person appears to the court making or considering a recommendation for deportation to have attained that age;

(b) the question whether an offence is one for which a person is punishable with imprisonment must be decided without regard to any enactment restricting the imprisonment of young offenders or first offenders; and

(c) if a person who on being charged with an offence is found to have committed it, the person is, despite any enactment to the contrary and even if the court does not proceed to

conviction, to be regarded as a person convicted of the offence, and references to conviction must be construed accordingly.

(4) If a court recommends or purports to recommend a person for deportation, the validity of the recommendation is not to be called in question except on an appeal against the recommendation or against the conviction on which it is made, but the recommendation is to be treated as a sentence for the purpose of any enactment providing an appeal against sentence.

(5) The powers under this section are in addition to and do not affect the power of the Governor to order deportation under Part II of the Immigration Ordinance.
[UK Immigration Act 1971 ss.3, 7, 8 etc. adapted]

PART 24 – ABSOLUTE OR CONDITIONAL DISCHARGES

502. Absolute or conditional discharge

(1) If a court by or before which a person is convicted of an offence (not being an offence the sentence for which is fixed by law) is of the opinion, having regard to the circumstances, including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment, the court may make an order discharging the person —

(a) absolutely; or

(b) subject to the condition that the person commits no offence during a period, not exceeding 3 years from the date of the order, specified in the order.

(2) An order discharging a person subject to a condition as mentioned in subsection (1)(b)is in this Part referred to as "an order for conditional discharge" and the period specified in any such order as "the period of conditional discharge".

(3) Before making an order for conditional discharge the court must explain to the offender in ordinary language that if he or she commits another offence during the period of conditional discharge he or she will be liable to be sentenced for the original offence.

(4) If, under the following provisions of this Part, a person conditionally discharged under this section is sentenced for the offence in respect of which the order for conditional discharge was made, that order ceases to have effect.

(5) If an order for conditional discharge has been made on appeal, for the purposes of this Part the order is deemed —

(a) if made on an appeal from the Magistrate's Court or the Summary Court – to have been made by that court;

(b) if made on an appeal from the Supreme Court or from the Court of Appeal - to have been made by the Supreme Court.

[Criminal Justice Ord. s.24; UK Powers of Criminal Courts (Sentencing) Act 2000 ss.12 and 150 adapted]

503. Substitution of conditional discharge for community sentence

(1) If on an application made by a person subject to a community sentence or by the probation officer it appears to the court having power to discharge a community sentence that the community sentence is no longer appropriate (for reasons other than the person's own conduct), the court may, subject to subsection (2), make an order for conditional discharge in respect of the original offence, in substitution for the community sentence imposed for that offence.

(2) The period of conditional discharge in an order made under subsection (1) must not extend beyond the period of the community sentence originally imposed.

(3) No application may be made under subsection (1) while an appeal against the community sentence is pending.

(4) A person in respect of whom an order is made under this section must, while the condition mentioned in section 502(1)(b) continues in force, be treated in all respects as if the original order had been an order for conditional discharge made by the court which imposed the community sentence.

(5) If an application under this section is made by the probation officer, it may be heard in the absence of the person on whom the community sentence was imposed if the officer produces to the court a statement by the offender that he or she —

(a) understands the effect of an order made under this section; and

(b) consents to the application being made.

(6) On the making of an order under this section the appropriate officer of the court must forthwith give copies of the order to the probation officer, who must give a copy to the person in respect of whom the order is made and to the person in charge of any institution in which that person was required by the community sentence to reside.
[Criminal Justice Ord. s.27]

504. Commission of further offence by person conditionally discharged

(1) If it is proved to the satisfaction of the court by which an order for conditional discharge was made that the person in whose case the order was made has been convicted of an offence committed during the period of conditional discharge, the court may deal with the person for the offence for which the order was made, in any manner in which it could deal with the person if he or she had just been convicted by or before that court of that offence.

(2) If a person in whose case an order for conditional discharge has been made by the Supreme Court is convicted by the Magistrate's Court or the Summary Court of an offence committed during the period of conditional discharge, the Magistrate's Court or the Summary Court must —

(a) commit the person in custody or on bail to appear before the Supreme Court; and.

(b) send to the Supreme Court a copy of the minute or memorandum of the conviction entered in the register, signed by the Clerk of the court.

(3) If a person in whose case an order for conditional discharge has been made by the Summary Court or the Magistrate's Court is convicted before the Supreme Court of an offence committed during the period of conditional discharge, the Supreme Court may deal with the person, for the offence for which the order was made, in any manner in which the court which made the order for conditional discharge could deal with the person if it had just convicted the person of that offence.

(4) If the person in whose case an order for conditional discharge has been made by the Summary Court is —

(a) convicted by the Magistrate's Court of an offence committed during the period of conditional discharge; or

(b) dealt with by the Magistrate's Court for any such offence in respect of which the person was committed for sentence to the Magistrate's Court,

the Magistrate's Court may deal with the person, for the offence for which the order was made, in any manner in which the Summary Court could deal with the person if it had just convicted the person of that offence.

(5) If the person in whose case an order for conditional discharge has been made by the Magistrate's Court is convicted by the Summary Court of an offence committed during the period of conditional discharge, the Summary Court must —

(a) commit the person in custody or on bail to appear before the Magistrate's Court; and

(b) send to the Magistrate's Court a copy of the minute or memorandum of the conviction entered in the register, signed by the Clerk of the court.

(6) A reference in this section to a person having been convicted of an offence committed during the period of conditional discharge is a reference to the person having been so convicted by a court in the Falkland Islands.
[Criminal Justice Ord. s.25 modified; UK Powers of Criminal Courts (Sentencing) Act 2000 s.13 adapted]

505. Effect of discharge
(1) Without affecting section 503, and subject to subsections (2), (3) and (5) below, a conviction of an offence for which an order is made under this Part discharging the offender absolutely or conditionally is not a conviction for any purpose other than the purposes of —

(a) the proceedings in which the order is made; and

(b) any subsequent proceedings which may be taken against the offender under the preceding provisions of this Part.

(2) If the offender was aged 18 or over at the time of his or her conviction of the offence in question and is subsequently sentenced under this Part for that offence, subsection (1) does not apply to the conviction.

(3) Without affecting subsections (1) and (2), the conviction of an offender who is discharged absolutely or conditionally under this Part is to be disregarded for the purposes of any law which—

(a) imposes any disqualification, forfeiture or other disability upon convicted persons; or

(b) authorises or requires the imposition of any such disqualification, forfeiture or disability.

(4) Subsections (1) to (3) do not affect —

(a) any right of an offender discharged absolutely or conditionally under this Part to rely on the conviction in bar of any subsequent proceedings for the same offence;

(b) any right of any such offender to appeal against the conviction or otherwise; or

(c) the restoration of any property in consequence of the conviction of any such offender.

(5) An absolute discharge may be adduced as evidence of bad character, as provided by section 372(2).
[Criminal Justice Ord. s.29; UK Powers of Criminal Courts (Sentencing) Act 2000 s.14 adapted]

506. Breach of conditional discharge by young offender
If an order for conditional discharge has been made by a court in the case of an offender under 18 years of age, the powers exercisable by that or any other court after the offender has attained the age of 18 years in the event of any breach of the order are those which would be exercisable if the person had attained the age of 18 years at the time of the commission of the offence in respect of which the order for conditional discharge was made.
[Criminal Justice Ord. s.26]

507. Further provisions as to discharge
(1) A court that makes an order for conditional discharge under this Part may, if it thinks it will help the reformation of the offender, allow any person who consents to do so to give security for the good behaviour of the offender.

(2) For the purposes of this Ordinance, except section 503, if an order for conditional discharge has been made on appeal, the order is deemed to have been made by the court from which the appeal was brought.

(3) In criminal proceedings before the Supreme Court, any question whether a person in whose case an order for conditional discharge has been made has been convicted of an offence

committed during the period of conditional discharge, is to be determined by the court and not by the verdict of a jury.

(4) Nothing in this Part takes away any power of the court, on discharging an offender absolutely or conditionally, to order the offender to pay costs or compensation or to order forfeiture.

(5) A sentence imposed by a court on a breach of a conditional discharge by virtue of section 504 may be the subject of an appeal as if imposed upon conviction.
[Criminal Justice Ord. s.28; UK Powers of Criminal Courts (Sentencing) Act 2000 s.15 adapted]

PART 25 – COMMUNITY SENTENCES

508. Interpretation of Part

(1) In this Part, unless the contrary intention appears —

"community order" means an order imposed on a person under section 509;

"community sentence" means a sentence which consists of or includes —

(a) a community order; or

(b) a youth rehabilitation order;

"drug" means a controlled drug as defined in the Misuse of Drugs Ordinance;

"relevant order" means —

(a) a community order; or

(b) a youth rehabilitation order;

"review hearing" means a hearing as described in section 521(1)(b);

"treatment provider" means a person specified in a requirement as a person with the necessary qualifications or experience to provide treatment in response to the requirement;

"youth rehabilitation order" means an order imposed on a person under section 528.

(2) In this Part, "the appropriate court" means —

(a) in relation to any relevant order imposing a drug rehabilitation requirement which is subject to review - the court responsible for the order;

(b) in relation to any relevant order which was made by the Supreme Court and does not include any direction that any failure to comply with the requirements of the order is to be dealt with by the Magistrate's Court or the Summary Court - the Supreme Court; and

(c) in relation to any other relevant order - the court that made the order.

(3) If the Crown has parental responsibility for an offender who is in its care or provided with accommodation by it, any reference in this Part to the offender's parent or guardian is to be read as a reference to the Crown.
[UK Criminal Justice Act 2003 s.147; Criminal Justice & Immigration Act 2008 s.7]

Community orders

509. Community orders
(1) If an adult individual is convicted of an offence punishable with imprisonment, not being an offence for which the sentence is fixed by law, the court by or before which the person is convicted may make an order (a "community order") imposing on the person any one or more of the following requirements —

(a) an unpaid work requirement;

(b) an activity requirement;

(c) a programme requirement;

(d) a prohibited activity requirement;

(e) a curfew requirement;

(f) an exclusion requirement;

(g) a residence requirement;

(h) a foreign travel prohibition requirement;

(i) a mental health treatment requirement;

(j) a drug rehabilitation requirement;

(k) an alcohol treatment requirement;

(l) an alcohol abstinence and monitoring requirement;

(m) an intoxicating substance treatment requirement

(n) a supervision requirement;

(o) an electronic monitoring requirement.

(2) Subsection (1) has effect subject to the provisions of this Part relating to particular requirements.

(3) A community order must specify a date, not more than 3 years after the date of the order, by which all the requirements in it must have been complied with (in this Part called the "end date").

(4) If a community order imposes 2 or more different requirements falling within subsection (1), the order may also specify a date by which each of those requirements must have been complied with; and the last of those dates must be the same as the end date.

(5) Subject to section 510(6), a community order ends on the end date.

(6) A community order which imposes 2 or more requirements under subsection (1) may also specify an earlier date or dates in relation to compliance with any one or more of them.

(7) Before making a community order imposing 2 or more different requirements falling under subsection (1), the court must consider whether, in the circumstances of the case, the requirements are compatible with each other.
[UK Criminal Justice Act 2003 s.177]

510. Unpaid work requirement
(1) In this Part "unpaid work requirement" means a requirement that the offender must perform unpaid work in accordance with this section.

(2) The number of hours which a person may be required to work under an unpaid work requirement must be specified in the relevant order and must be in aggregate not less than 40 and not more than 300.

(3) A court may not impose an unpaid work requirement in respect of an offender unless —

(a) after considering any recommendations of the probation officer, the court is satisfied that the offender is a suitable person to perform work under such a requirement; and

(b) the court is satisfied that provision for the offender to work under such a requirement can be made.

(4) An offender in respect of whom an unpaid work requirement of a relevant order is in force must perform for the number of hours specified in the order such work at such times as he or she is instructed by the probation officer.

(5) Subject to section 547(1)(Extension of unpaid work requirement), the work required to be performed under an unpaid work requirement must be performed during a period of 12 months.

(6) Unless revoked, a relevant order imposing an unpaid work requirement remains in force until the offender has worked under it for the number of hours specified in it.
[UK Criminal Justice Act 2003 ss.199 and 200]

511. Activity requirement
(1) In this Part "activity requirement" means a requirement that the offender must do either or both of the following —

(a) present himself or herself to a person or persons specified in the relevant order at a place or places so specified on the number of days so specified;

(b) participate in activities specified in the order on the number of days so specified.

(2) The specified activities may consist of or include activities whose purpose is that of reparation, such as activities involving contact between offenders and persons affected by their offences.

(3) A court may not include an activity requirement in a relevant order unless the court —

(a) has consulted the probation officer;

(b) is satisfied that it is feasible to ensure compliance with the requirement; and

(c) is satisfied that provision for the offender to participate in the activities proposed to be specified in the order can be made.

(4) A court may not include an activity requirement in a relevant order if compliance with that requirement would involve the co-operation of a person other than the offender and the probation officer, unless that other person consents to its inclusion.

(5) The aggregate number of days specified under subsection (1)(a) and (b) must not exceed 60.

(6) The requirement mentioned in subsection (1)(a) means that the offender must —

(a) in accordance with instructions given by the probation officer, present himself or herself at a place or places on the number of days specified in the relevant order; and

(b) while at any place, comply with instructions given by, or under the authority of, the person in charge of that place or activity.

(7) The requirement mentioned in subsection (1)(b) means that the offender must —

(a) in accordance with instructions given by the probation officer, participate in activities on the number of days specified in the relevant order; and

(b) while participating, comply with instructions given by, or under the authority of, the person in charge of the activities.

[UK Criminal Justice Act 2003 s.201]

512. Programme requirement

(1) In this Part "programme requirement" means a requirement that the offender must participate in a systematic set of activities specified in the relevant order at a place so specified on the number of days so specified.

(2) A court may not include a programme requirement in a relevant order unless —

(a) the programme which the court proposes to specify in the order has been recommended to the court by the probation officer as being suitable for the offender; and

(b) the court is satisfied that the programme is available at the place proposed to be specified.

(3) A court may not include a programme requirement in a relevant order if compliance with that requirement would involve the co-operation of a person other than the offender and the probation officer, unless that other person consents to its inclusion.

(4) A requirement to participate in a programme means that the offender must —

(a) in accordance with instructions given by the probation officer, participate in the programme at the place specified in the relevant order on the number of days specified in the order; and

(b) while at that place, comply with any instructions given by, or under the authority of, the person in charge of the programme.

[UK Criminal Justice Act 2003 s.202]

513. Prohibited activity requirement

(1) In this Part "prohibited activity requirement" means a requirement that the offender must refrain from participating in activities specified in the relevant order —

(a) on a day or days so specified; or

(b) during a period so specified.

(2) A court may not include a prohibited activity requirement in a relevant order unless it has consulted the probation officer.

(3) The requirements that may by virtue of this section be included in an order include a requirement that the offender does not possess, use or carry a firearm within the meaning of the Firearms and Ammunition Ordinance.

[UK Criminal Justice Act 2003 s.203]

514. Curfew requirement
(1) In this Part "curfew requirement" means a requirement that the offender must remain, for periods specified in the relevant order, at a place so specified.

(2) A relevant order imposing a curfew requirement may specify different places or different periods for different days, but may not specify periods which amount to less than 2 hours or more than 12 hours in any day.

(3) A relevant order which imposes a curfew requirement may not specify periods which fall outside the period of 6 months beginning with the day on which it is made.

(4) Before making a relevant order imposing a curfew requirement, the court must obtain and consider information about the place proposed to be specified in the order, including information as to the attitude of persons likely to be affected by the enforced presence of the offender.
[UK Criminal Justice Act 2003 s.204; Powers of Criminal Courts (Sentencing) Act 2000 s.37]

515. Exclusion requirement
(1) In this Part "exclusion requirement" means a provision prohibiting the offender from entering a place specified in the relevant order for a period so specified.

(2) An exclusion requirement may —

(a) provide for the prohibition to operate only during the periods specified in the relevant order; and

(b) specify different places for different periods or days.

(3) The period specified in a community order must be no more than 2 years.
[UK Criminal Justice Act 2003 s.205]

516. Residence requirement
(1) In this Part, "residence requirement" means a requirement that, during a period specified in the relevant order, the offender must reside at a place specified in the order.

(2) If the relevant order so provides, a residence requirement does not prohibit the offender from residing, with the prior approval of the probation officer, at a place other than that specified in the order.

(3) Before making a relevant order containing a residence requirement, the court must consider the home surroundings of the offender.

(4) A court may not specify a hostel or other institution as the place where the offender must reside, except on the recommendation of the probation officer.

(5) A court may not by virtue of subsection (1)(b) include in a relevant order a requirement that the offender reside with an individual unless that individual has consented to the requirement.

[UK Criminal Justice Act 2003 s.206]

517. Foreign travel prohibition requirement

(1) In this Part "foreign travel prohibition requirement" means a requirement prohibiting the offender from travelling, on a day or days specified in the relevant order, or for a period so specified —

(a) to any country or territory outside the Falkland Islands specified or described in the order;

(b) to any country or territory outside the Falkland Islands other than a country or territory specified or described in the order; or

(c) to any country or territory outside the Falkland Islands.

(2) A day specified under subsection (1) may not fall outside the period of 12 months beginning with the day on which the relevant order is made.

(3) A period specified under that subsection may not exceed 12 months beginning with the day on which the relevant order is made.
[UK Criminal Justice Act 2003 s.206A ins. by s.72 LASPO Act 2012]

518. Mental health treatment requirement

(1) In this Part, "mental health treatment requirement" means a requirement that the offender must submit, during a period or periods specified in the relevant order, to treatment by or under the direction of a registered medical practitioner with a view to the improvement of the offender's mental condition.

(2) The treatment required may be provided as a resident or non-resident patient at any hospital or medical centre as defined by the Mental Health Ordinance.

(3) A court may not by virtue of this section include a mental health treatment requirement in a relevant order unless —

(a) the court is satisfied, on the evidence of an approved doctor, in terms of the Mental Health Ordinance, that the mental condition of the offender —

(i) is such as requires and may be susceptible to treatment; and

(ii) is not such as to justify the offender being detained under any provision of the Mental Health Ordinance;

(b) the court is also satisfied that arrangements have been or can be made for the treatment intended to be specified in the order, including arrangements for the reception of the offender if he or she is required to submit to treatment as a patient; and

(c) the offender has expressed his or her willingness to comply with such a requirement.

(4) While the offender is under treatment as a patient pursuant to a mental health requirement of a relevant order, the probation officer must carry out the supervision of the offender only to the extent necessary for the purpose of the revocation or amendment of the order.

(5) Section 64 of the Mental Health Ordinance has effect with respect to proof of an offender's mental condition for the purposes of this section as it has effect with respect to proof of a person's mental condition for the purposes of that Ordinance.
[UK Criminal Justice Act 2003 s.207]

519. Mental health treatment at place other than as specified in order
(1) If the medical practitioner by whom or under whose direction an offender is being treated for a mental condition pursuant to a mental health treatment requirement is of the opinion that part of the treatment can be better or more conveniently given in or at an institution or place which —

(a) is not specified in the relevant order; and

(b) is one in or at which the treatment of the offender will be given by or under the direction of a registered medical practitioner,

the medical practitioner may, with the consent of the offender, make arrangements for the offender to be treated accordingly.

(2) The arrangements mentioned in subsection (1) may provide for the offender to receive part of his or her treatment as a resident patient in or at an institution or place even if it is not one which could have been specified for that purpose in the relevant order.

(3) If arrangements as mentioned in subsection (1) are made for the treatment of an offender —

(a) the medical practitioner by whom the arrangements are made must give notice in writing to the probation officer, specifying the institution or place in or at which the treatment is to be carried out; and

(b) the treatment provided for by the arrangements are deemed to be treatment to which he or she is required to submit pursuant to the relevant order.

(4) Arrangements made pursuant to subsection (1) may include treatment outside the Falkland Islands, in which case Part 9 of the Mental Health Ordinance applies to the extent appropriate.
[UK Criminal Justice Act 2003 s.208 adapted]

520. Drug rehabilitation requirement
(1) In this Part "drug rehabilitation requirement" means a requirement that during a period specified in a relevant order ("the treatment and testing period") the offender —

(a) must submit to treatment by or under the direction of a specified treatment provider with a view to reducing or eliminating the offender's dependency on or propensity to misuse controlled drugs; and

(b) for the purpose of ascertaining whether the offender has any controlled drug in his or her body during that period, must provide samples of a description, and at times or in circumstances (subject to the provisions of the order) decided by the probation officer or by the treatment provider.

(2) A court may not impose a drug rehabilitation requirement unless —

(a) it is satisfied —

(i) that the offender is dependent on, or has a propensity to misuse, controlled drugs; and

(ii) that the dependency or propensity is such as requires and may be susceptible to treatment;

(b) it is also satisfied that arrangements have been or can be made for the treatment intended to be specified in the relevant order, including arrangements for the reception of the offender if he or she is to be required to submit to treatment as a resident;

(c) the requirement has been recommended to the court as being suitable for the offender by the probation officer; and

(d) the offender expresses his or her willingness to comply with the requirement.

(3) The treatment and testing period must be at least 6 months, unless it appears to the court that the treatment provider is likely to leave the Falkland Islands within 6 months from the date of imposing the requirement, in which case the period can be for less than 6 months.

(4) The required treatment for any particular period may be —

(a) treatment as a resident in or at an institution or place specified in the relevant order; or

(b) treatment as a non-resident in or at an institution or place, and at intervals, so specified,

but the nature of the treatment is not to be specified in the order except as mentioned in paragraph (a) or (b).

(5) A relevant order imposing a drug rehabilitation requirement —

(a) must specify for each month the minimum number of occasions on which samples are to be provided; and

(b) may specify —

(i) times at which and circumstances in which the probation officer or treatment provider may require samples to be provided; and

(ii) descriptions of the samples that may be so required.

(6) The results of drug tests carried out pursuant to a drug rehabilitation requirement in a relevant order otherwise than by the probation officer must be communicated to the probation officer.
[UK Criminal Justice Act 2003 s.209; Criminal Justice & Immigration Act 2008 Schedule 1 para.2 etc.]

521. Drug rehabilitation requirement: Provision for review by court
(1) A relevant order imposing a drug rehabilitation requirement may, and must if the treatment and testing period is for more than 12 months —

(a) provide for the requirement to be reviewed periodically at intervals of not less than one month;

(b) provide for each review of the requirement to be made, subject to section 522(5), at a hearing held for the purpose by the court responsible for the order;

(c) require the offender to attend each review hearing;

(d) provide for the probation officer to make to the court responsible for the order, before each review, a report in writing on the offender's progress under the requirement; and

(e) provide for each such report to include the test results communicated to the probation officer under section 520(5).

(2) In this section a reference to the court responsible for a relevant order imposing a drug rehabilitation requirement is a reference to the court by which the order is made.

(3) If a relevant order imposing a drug rehabilitation requirement has been made on an appeal from the Supreme Court or from the Court of Appeal, for the purposes of subsection (2), it is to be taken to have been made by the Supreme Court.
[UK Criminal Justice Act 2003 s.210]

522. Periodic review of drug rehabilitation requirement
(1) At a review hearing the court may, after considering the probation officer's report referred to in that subsection, amend the relevant order, so far as it relates to the drug rehabilitation requirement.

(2) The court —

(a) may not amend the drug rehabilitation requirement unless the offender expresses his or her willingness to comply with the requirement as amended;

(b) may not amend any provision of the relevant order so as to reduce the period for which the drug rehabilitation requirement has effect below the minimum specified in section 520(3); and

(c) except with the consent of the offender, may not amend any requirement or provision of the order while an appeal against the order is pending.

(3) If the offender fails to express his or her willingness to comply with the drug rehabilitation requirement as proposed to be amended by the court, the court may —

(a) revoke the relevant order; and

(b) deal with the offender, for the offence in respect of which the order was made, in any way in which he or she could have been dealt with for that offence by the court which made the order if the order had not been made.

(4) In dealing with the offender under subsection (3)(b), the court must take into account the extent to which the offender has complied with the requirements of the relevant order.

(5) If at a review hearing the court, after considering the probation officer's report, is of the opinion that the offender's progress under the requirement is satisfactory, the court may amend the relevant order so as to provide for each subsequent review to be made by the court without a hearing.

(6) If at a review without a hearing the court, after considering the probation officer's report, is of the opinion that the offender's progress under the requirement is no longer satisfactory, the court may require the offender to attend a hearing of the court at a specified time and place.

(7) At that hearing the court, after considering that report, may —

(a) exercise the powers conferred by this section as if the hearing were a review hearing; and

(b) so amend the relevant order as to provide for each subsequent review to be made at a review hearing.

(8) In this section a reference to the court, in relation to a review without a hearing, is to be read in the case of —

(a) the Supreme Court - as a reference to a judge of the court;

(b) the Magistrate's Court - as a reference to the Senior Magistrate;

(c) the Summary Court - as a reference to two justices of the peace.

[UK Criminal Justice Act 2003 s.211]

523. Alcohol treatment requirement

(1) In this Part "alcohol treatment requirement" means a requirement that the offender must submit, during a period specified in the relevant order, to treatment by or under the direction of a specified treatment provider, with a view to the reduction or elimination of the offender's dependency on alcohol.

(2) A court may not impose an alcohol treatment requirement in respect of an offender unless it is satisfied that —

(a) he or she is dependent on alcohol;

(b) the dependency is such as requires and may be susceptible to treatment; and

(c) arrangements have been or can be made for the treatment intended to be specified in the order, including arrangements for the reception of the offender if he or she is required to submit to treatment as a resident.

(3) A court may not impose an alcohol treatment requirement unless the offender expresses his or her willingness to comply with its requirements.

(4) The treatment period must be at least 6 months, unless it appears to the court that the offender or the treatment provider is likely to leave the Falkland Islands within 6 months from the date of imposing the requirement, in which case the period can be for less than 6 months.
[UK Criminal Justice Act 2003 s.212 am. by LASPO Act 2012 s.75]

524. Alcohol abstinence and monitoring requirement
(1) In this Part "alcohol abstinence and monitoring requirement" means a requirement —

(a) that, subject to any exceptions specified in the relevant order the offender —

(i) must abstain from consuming any alcohol throughout a period of 6 months; or

(ii) must not consume alcohol so that at any time during that period there is more than 35 microgrammes of alcohol in 100 millilitres of the offender's breath; and

(b) that the offender must, for the purpose of ascertaining whether the offender is complying with provision under paragraph (a) or (b) submit during the period of 120 days to monitoring in accordance with the directions of the probation officer.

(2) The directions of the probation officer under subsection (1)(b) may include —

(a) a breathalyser test administered by the police force or by any other body that has the necessary equipment and knowledge;

(b) arrangements for monitoring by electronic means of testing.

(3) A court may not include an alcohol abstinence and monitoring requirement in a relevant order unless the following conditions are met.

(4) The first condition is that —

(a) the consumption of alcohol by the offender is an element of the offence for which the relevant order is to be imposed or an associated offence; or

(b) the court is satisfied that the consumption of alcohol by the offender was a factor that contributed to the commission of that offence or an associated offence.

(5) The second condition is that the court is satisfied that the offender is not dependent on alcohol.

(6) The third condition is that the court does not include an alcohol treatment requirement in the relevant order.

(7) In this section, "alcohol" includes anything containing alcohol.

(8) An electronic monitoring requirement (if included in a relevant order) may not be included for the purposes of securing the electronic monitoring of the offender's compliance with an alcohol abstinence and monitoring requirement unless so provided by directions under subsection (2).

(9) The Governor in Council, after consulting the Criminal Justice Council, may by order amend the figures in subsection (1).

(10) The power to impose an alcohol abstinence and monitoring requirement under this section is in addition to and does not affect the power under section 76 of the Licensing Ordinance to make a prohibition order, but only one of these 2 types of order can be in effect in respect of the same person at any given time.
[UK Criminal Justice Act 2003 s.212A ins. by LASPO Act 2012 s.76 and adapted]

525. Intoxicating substance treatment requirement
(1) A court that imposes a relevant order may include in the order an "intoxicating substance treatment requirement", that is to say, a requirement that the offender must submit, during a period or periods specified in the order, to treatment, by or under the direction of a person so specified who has the necessary qualifications or experience, with a view to the reduction or elimination of the offender's dependency on or propensity to misuse intoxicating substances.

(2) A court may not include an intoxicating substance treatment requirement in a relevant rehabilitation order unless it is satisfied that —

(a) the offender is dependent on, or has propensity to misuse, intoxicating substances; and

(b) the offender's dependency or propensity is such as requires and may be susceptible to treatment.

(3) The treatment required during a period specified under subsection (1) must be —

(a) treatment as a resident in or at an institution or place specified in the order;

(b) treatment as a non-resident in or at an institution or place, and at intervals, as so specified; or

(c) treatment by or under the direction of a person with the necessary qualification or experience as so specified,

but the nature of the treatment must not be specified in the relevant order except as mentioned in paragraph (a), (b) or (c).

(4) A court may not include an intoxicating substance treatment requirement in a relevant order unless —

(a) the requirement has been recommended to the court as suitable to the offender by the probation officer;

(b) the offender has expressed his or her willingness to comply with the requirement; and

(c) the court is satisfied that arrangements have been or can be made for the treatment intended to be specified in the order, including arrangements for the reception of the offender if he or she is required to submit to treatment as a resident.

(5) In this section "intoxicating substance" means any substance or product (other than a controlled drug or alcohol) which is, or the fumes of which are, capable of being inhaled or otherwise used for the purpose of causing intoxication.
[UK Criminal Justice & Immigration Act 2008 Sched.1 para.24]

526. Supervision requirement
(1) In this Part "supervision requirement" means a requirement that, during the period for which the relevant order remains in force, the offender must attend appointments with the probation officer or another person decided by the probation officer, at a time and place decided by the probation officer.

(2) The purpose for which a supervision requirement may be imposed is that of promoting the offender's rehabilitation.
[UK Criminal Justice Act 2003 s.213 am. by LASPO Act 2012 ss.68 and 89]

527. Electronic monitoring requirement
(1) In this Part "electronic monitoring requirement" means a requirement for securing the electronic monitoring of the offender's compliance with other requirements imposed by a relevant order during a period specified in the order, or determined by the probation officer in accordance with the relevant order.

(2) If —

(a) it is proposed to include in a relevant order a requirement for securing electronic monitoring in accordance with this section; but

(b) there is a person (other than the offender) without whose co-operation it will not be practicable to secure the monitoring,

the requirement may not be included in the order without that person's consent.

(3) A relevant order which includes an electronic monitoring requirement must include provision for making the Chief Police Officer, the probation officer or some other public officer responsible for electronic monitoring in any particular case.

(4) If an electronic monitoring requirement is required to take effect during a period determined by the probation officer in accordance with the relevant order, the probation officer must, before the beginning of that period, notify —

(a) the offender;

(b) the person responsible for the monitoring; and

(c) any person falling within subsection (2)(b),

of the time when the period is to begin.

(5) Electronic monitoring may be ordered by the court only if the court is satisfied that the requisite equipment is available in the Falkland Islands at the date of the sentencing hearing
[UK Criminal Justice Act 2003 s.215]

Youth rehabilitation orders

528. Youth rehabilitation orders
(1) This section applies if a person under the age of 18 but over the age of 10 years is convicted of an offence punishable with imprisonment, not being an offence for which the sentence is fixed by law.

(2) If this section applies, the court by or before which the person is convicted may make an order (a "youth rehabilitation order") imposing on the person any one or more of the requirements as described in the preceding sections, but as varied by section 529.

(3) Subsections (1) and (2) have effect subject to the provisions of this Part relating to particular requirements.

(4) The provisions of section 509(3) to (7) apply to a youth rehabilitation order is if for references to a community order there were substituted references to a youth rehabilitation order.

(5) Before making a youth rehabilitation order, the court must obtain from the probation officer and give due consideration to information about the offender's family circumstances and the likely effect of such an order on those circumstances.
[UK Criminal Justice & Immigration Act 2008 s.1 and Sched.1]

529. Variation of requirements for youths
(1) An unpaid work requirement can only be imposed on a youth aged 16 or 17 at the time of conviction.

(2) The number of hours which a person aged 16 or 17 at the date of conviction may be required to work under an unpaid work requirement must be in aggregate not less than 40 and not more than 240.

(3) The period specified in an exclusion requirement in relation to a youth must be no more than 3 months.

(4) A residence requirement included in a youth rehabilitation order must require the youth to reside with an individual specified in the order.
[UK Criminal Justice & Immigration Act 2008 Schedule 1 para.2 adapted]

Further provisions about relevant orders

530. Relevant order made by Supreme Court: Direction in relation to further proceedings
(1) If the Supreme Court imposes a relevant order under this Part, it may include in the order a direction that further proceedings relating to the sentence, including any review, are to be in the Magistrate's Court, but subject to section 557.

(2) If a direction is given under subsection (1), and the Magistrate's Court would be required, or has the power, to deal with the offender in one of the ways mentioned in section 542, the court may instead —

(a) commit the offender in custody; or

(b) release the offender on bail,

until the offender can be brought or appear before the Supreme Court.

(3) If the Magistrate's Court deals with the case under subsection (2) it must send to the Supreme Court —

(a) a certificate signed by a justice of the peace certifying that the offender has failed to comply with the community sentence in the respect specified in the certificate; and

(b) any other particulars of the case that are appropriate,

and a certificate purporting to be so signed is admissible as evidence of the failure before the Supreme Court.

(4) In subsection (1), "further proceedings", in relation to a relevant order, means proceedings —

(a) for any failure to comply with the order; or

(b) on any application for amendment or revocation of the order.
[UK Criminal Justice & Immigration Act 2008 Sched.1 para.36; Sched.2 para.7]

531. Relevant orders made on appeal
If a relevant order has been made on appeal, for the purposes of this Part it is to be treated —

(a) if it was made on appeal from the Magistrate's Court or the Summary Court - as having been made by the respective court;

(b) if it was made on an appeal brought from the Supreme Court or the Court of Appeal - as having been made by the Supreme Court.
[UK Criminal Justice & Immigration Act 2008 Sched.2 para.2]

532. Duties of probation officer
(1) When a relevant order has effect, it is the duty of the probation officer —

(a) to make any arrangements that are necessary in connection with the requirements imposed by the order;

(b) to promote the offender's compliance with those requirements; and

(c) where appropriate, to take steps to enforce those requirements.

(2) The probation officer is responsible for monitoring the implementation of the requirements of a relevant order, and for informing the court that made the order, in accordance with this Part, if the offender is in breach of them.
[UK Criminal Justice Act 2003 s.198]

533. Requirement must avoid conflict with religious beliefs, etc.
The court must ensure, as far as practicable, that any requirement imposed by a relevant order is such as to avoid —

(a) any conflict with the offender's religious beliefs; and

(b) any interference with the times, if any, at which he or she normally works or attends school or any other educational establishment.
[UK Criminal Justice Act 2003 s.217]

534. Provision of copies of relevant orders
(1) The appropriate officer of the court by which any relevant order is made must provide copies of the order —

(a) to the offender;

(b) if the offender is a youth - to the offender's parent or guardian; and

(c) to the probation officer.

(2) If an order imposes any of the following requirements, the court by which the relevant order is made must also provide the person specified in relation to that requirement with a copy of so much of the order as relates to that requirement —

(a) an activity requirement - the person specified in section 511(1)(a);

(b) an exclusion requirement imposed for the purpose (or partly for the purpose) of protecting a person from being approached by the offender - the person intended to be protected;

(c) a residence requirement requiring residence with an individual - the individual specified in section 516(1)(b);

(d) a residence requirement relating to residence in an institution - the person in charge of the institution;

(e) a mental health treatment requirement - the person in charge of the institution or place where the offender is to receive treatment as a patient;

(f) a drug rehabilitation requirement - the person in charge of the institution or place specified under section 520(4)(a) or (b);

(g) an alcohol treatment requirement - the person specified under section 523(1);

(h) an intoxicating substance treatment requirement - the person specified in section 525(3)(c).

(3) On the making of an order revoking or amending a relevant order, the appropriate officer of the court must —

(a) provide copies of the revoking or amending order to —

(i) the offender;

(ii) if the offender is a youth - the offender's parent or guardian; and

(iii) the probation officer;

(b) in the case of an amending order which imposes or amends a requirement specified in subsection (2)(a) to (h) - provide a copy of the revoking or amending order to the person specified in relation to that requirement.

[UK Criminal Justice Act 2003 s.219 and Sched.8 para.27]

535. Duty of offender to keep in touch with probation officer

(1) An offender in respect of whom a relevant order is in force must —

(a) keep in touch with the probation officer in accordance with any instructions that he or she is from time to time given by the officer; and

(b) notify the probation officer of any change of address.

(2) The obligation imposed by subsection (1) is enforceable as if it were a requirement imposed by the relevant order.

[UK Criminal Justice Act 2003 s.220]

Breach of requirement of community sentence

536. Breach of requirement of order

(1) If the probation officer is of the opinion that the offender has failed without reasonable excuse to comply with any of the requirements of a relevant order, and that the failure is unacceptable, the officer must report the failure by information on oath to the Clerk of the court.

(2) An information under this section must —

(a) describe the circumstances of the failure;

(b) mention any warning that has been given to the offender; and

(c) state that the failure is unacceptable

(3) The Clerk of the court must record an information sworn before him or her under this section.

(4) In relation to any relevant order which was made by the Supreme Court and does not include a direction that any failure to comply with the requirements of the order is to be dealt with by the Magistrate's Court, the references in subsection (1) and (3) to the Clerk of the court are to be read as references to the Registrar.

[UK Criminal Justice Act 2003 Sched.8 paras.5 and 6]

537. Issue of summons or warrant by the Magistrate's Court or the Summary Court

(1) This section applies to —

(a) a relevant order made by the Magistrate's Court or the Summary Court;

(b) a relevant order made by the Supreme Court which includes a direction that a failure to comply with the requirements of the order is to be dealt with by the Magistrate's Court, but subject to section 557.

(2) If at any time while a relevant order to which this section applies is in force it appears to the Senior Magistrate or a justice of the peace that the offender has failed to comply with any of the requirements of the order, the Senior Magistrate or justice may —

(a) issue a summons requiring the offender to appear at the place and time specified in it; or

(b) if the information is in writing and on oath - issue a warrant for his or her arrest.

(3) A summons or warrant issued under this section must direct the offender to appear or be brought before the court that imposed the relevant order or that is to deal with a failure to comply pursuant to subsection (1)(b).
[UK Criminal Justice Act 2003 Sched.8 para.7]

538. Issue of summons or warrant by Supreme Court
(1) This section applies to a relevant order made by the Supreme Court which does not include a direction that any failure to comply with the requirements of the order is to be dealt with by the Magistrate's Court, but subject to section 557.

(2) If at any time while an order to which this section applies is in force it appears to a judge of the Supreme Court that the offender has failed to comply with any of the requirements of the order, the judge may —

(a) issue a summons requiring the offender to appear at the place and time specified in it; or

(b) if the information is in writing and on oath - issue a warrant for his or her arrest.

(3) Any summons or warrant issued under this section must direct the offender to appear or be brought before the Supreme Court.

(4) If a summons issued under subsection (2)(a) requires the offender to appear before the Supreme Court and the offender does not appear in answer to the summons, the Supreme Court may issue a warrant for the arrest of the offender.
[UK Criminal Justice Act 2003 Sched.8 para.8]

539. Powers of Magistrate's Court or Summary Court on a breach
(1) If an offender appears or is brought before the Magistrate's Court or the Summary Court under section 535 and the court is satisfied that the offender has failed without reasonable excuse to comply with any of the requirements of a relevant order, the court must deal with the offender in respect of the failure in one of the following ways —

(a) subject to relevant requirements of this Part, by amending the terms of the order so as to impose more onerous requirements which the court could include if it were then making an order;

(b) if the order was made by the Magistrate's Court or the Summary Court - by dealing with the offender, for the offence in respect of which the order was made, in any way in which the court could deal with the offender if he or she had just been convicted by it of the offence; or

(c) if the order was made by the Supreme Court - by amending the terms of the order as provided by paragraph (a), or by committing the offender in custody or on bail to appear before the Supreme Court.

(2) In dealing with an offender under subsection (1), the Magistrate's Court or the Summary Court, as the case may be, must take into account the extent to which the offender has complied with the requirements of the relevant order.

(3) In dealing with an offender under subsection (1)(a), the court may extend the duration of particular requirements, subject to any limit imposed by this Part, but may only amend a relevant order to substitute a later date for that specified under section 509(3) in accordance with subsections (4) and (5) of this section.

(4) A date substituted under subsection (3) —

(a) may not fall outside the period of 6 months beginning with the date previously specified under section 509(3);

(b) subject to that, may fall more than 3 years after the date of the relevant order.

(5) The power under subsection (3) to substitute a date may not be exercised in relation to an order if that power or the power in section 540(3) to substitute a date has previously been exercised in relation to that power.

(6) A date substituted under subsection (3) is to be treated as having been specified in relation to the relevant order under section 509(3).

(7) If —

(a) the court is dealing with an offender under subsection (1)(a); and

(b) the relevant order does not contain an unpaid work requirement,

section 510(2)(a) applies in relation to the inclusion of such a requirement as if for "40" there were substituted "20".

(8) If the court deals with an offender under subsection (1)(b) it must first revoke the relevant order if it is still in force.

(9) If the Magistrate's Court or the Summary Court deals with an offender under subsection (1)(c) it must send to the Supreme Court —

(a) a certificate signed by the Senior Magistrate or a justice of the peace, as the case may be, certifying that the offender has failed to comply with the requirements of the relevant order in the respect specified in the certificate; and

(b) any other particulars of the case that the Senior Magistrate or justice of the peace considers appropriate,

and a certificate purporting to be so signed is admissible as evidence of the failure before the Supreme Court.

(10) A person sentenced under subsection (1)(b) for an offence may appeal to the Supreme Court against the sentence.
[UK Criminal Justice Act 2003 Sched.8 para.9 am. by LASPO Act 2012 s.66]

540. Powers of Supreme Court on breach
(1) If under section 538 or by virtue of section 539(1)(c) an offender appears before the Supreme Court and it is proved to the satisfaction of that court that he or she has failed without reasonable excuse to comply with any of the requirements of a relevant order, the Supreme Court must deal with the offender in respect of the failure in one of the following ways —

(a) subject to relevant requirements of this Part, amend the terms of the order so as to impose more onerous requirements which the Supreme Court could impose if it were then making the order; or

(b) deal with the offender, for the offence in respect of which the order was made, in any way in which he or she could have been dealt with for that offence by the court which made the order if the order had not been made.

(2) In dealing with an offender under subsection (1), the Supreme Court must take into account the extent to which the offender has complied with the requirements of the relevant order.

(3) In dealing with an offender under subsection (1)(a), the court may extend the duration of particular requirements, subject to any limit imposed by this Part, but may only amend the relevant order to substitute a later date for that specified under section 509(3) in accordance with subsections (4) and (5) of this section.

(4) A date substituted under subsection (3) —

(a) may not fall outside the period of 6 months beginning with the date previously specified under section 509(3);

(b) subject to that, may fall more than 3 years after the date of the relevant order.

(5) The power under subsection (3) to substitute a date may not be exercised in relation to a relevant order if that power or the power in section 539(3) to substitute a date has previously been exercised in relation to that power.

(6) A date substituted under subsection (3) is to be treated as having been specified in relation to the relevant order under section 509(3).

(7) If —

(a) the court is dealing with an offender under subsection (1)(a); and

(b) the relevant order does not contain an unpaid work requirement,

section 510(2)(a) applies in relation to the inclusion of such a requirement as if for "40" there were substituted "20".

(8) If the Supreme Court deals with an offender under subsection (1)(b), it must first revoke the relevant order if it is still in force.

(9) In proceedings before the Supreme Court under this section any question whether the offender has complied with the requirements of the relevant order is to be decided by the court and not by the verdict of the jury.
[UK Criminal Justice Act 2003 Sched.8 para.10 am. by LASPO Act 2012 s.66]

541. Restriction of powers when treatment required
(1) An offender who is required by any of the following requirements of an order —

(a) a mental health treatment requirement;

(b) a drug rehabilitation requirement;

(c) a drug treatment requirement;

(d) an alcohol treatment requirement; or

(e) an intoxicating substance treatment requirement,

to submit to treatment for his or her mental condition, or his or her dependency on or propensity to misuse drugs, alcohol, or any other intoxicating substance, must not be treated for the purposes of section 539 or 540 as having failed to comply with that requirement on the ground only that he or she had refused to undergo any surgical, electrical or other treatment if, in the opinion of the court, the refusal was reasonable having regard to all the circumstances.

(2) A court may not under section 539(1)(a) or 540(1)(a) amend a mental health treatment requirement, a drug rehabilitation requirement, an alcohol treatment requirement or an intoxicating substance treatment requirement unless the offender expresses his or her willingness to comply with the requirement as amended.
[UK Criminal Justice Act 2003 Sched.8 para.11]

Revocation and amendment of relevant orders

542. Revocation of relevant order

(1) This section applies if a relevant order is in force and on the application of the offender or the probation officer it appears to the court that made the order, that, having regard to circumstances which have arisen since the order was made, it would be in the interests of justice —

(a) for the order to be revoked; or

(b) for the offender to be dealt with in some other way for the offence in respect of which the order was made.

(2) The court may —

(a) revoke the relevant order; or

(b) both —

(i) revoke the order; and

(ii) deal with the offender, for the offence in respect of which the order was made, in any way in which it could deal with the offender if he or she had just been convicted by the court of the offence.

(3) The circumstances in which a relevant order may be revoked under subsection (2) include the offender making good progress or responding satisfactorily to supervision or treatment, as the case requires.

(4) In dealing with an offender under subsection (2)(b), the court must take into account the extent to which the offender has complied with the requirements of the relevant order.

(5) A person sentenced by the Magistrate's Court or the Summary Court under subsection (2)(b) for an offence may appeal to the Supreme Court against the sentence.

(6) A person sentenced by the Supreme Court under subsection (2)(b) for an offence may appeal to the Court of Appeal against the sentence.

(7) If a court proposes to exercise its powers under subsection (2) on the application of the probation officer, it must summon the offender to appear before the court and, if the offender does not appear in answer to the summons, may issue a warrant for his or her arrest.
[UK Criminal Justice Act 2003 Sched.8 paras.13 and 14]

543. Amendment of requirements of a relevant order

(1) The appropriate court may, on the application of the offender or the probation officer, by order amend a relevant order —

(a) by cancelling any of the requirements of the order; or

(b) subject to relevant provisions of this Part, by replacing any of those requirements with a requirement of the same kind, which the court could include if it were then making the order.

(2) The court may not under this section amend a mental health treatment requirement, a drug rehabilitation requirement, an alcohol treatment requirement, an intoxicating substance treatment requirement or a drug treatment requirement unless the offender expresses his or her willingness to comply with the requirement as amended.

(3) If the offender fails to express his or her willingness to comply with one of those requirements as proposed to be amended by the court under this section, the court may —

(a) revoke the relevant order; and

(b) deal with the offender, for the offence in respect of which the order was made, in any way in which he or she could have been dealt with for that offence by the court which made the order if the order had not been made.

(4) In dealing with the offender under subsection (3)(b), the court must take into account the extent to which the offender has complied with the requirements of the relevant order.
[UK Criminal Justice Act 2003 Sched.8 para.17]

544. Amendment of treatment requirements
(1) If the medical practitioner or other person by whom or under whose direction an offender is, pursuant to a mental health treatment requirement, a drug rehabilitation requirement, an alcohol treatment requirement, an intoxicating substance treatment requirement or a drug treatment requirement, being treated for a mental condition or for dependency on or a propensity to misuse drugs, alcohol or any other intoxicating substance —

(a) is of the opinion mentioned in subsection (2); or

(b) is for any reason unwilling to continue to treat or direct the treatment of the offender,

the practitioner or other person must make a report in writing to that effect to the probation officer and that officer must apply under section 545 to the appropriate court for the variation or cancellation of the requirement.

(2) The opinion mentioned in subsection (1) is that —

(a) the treatment of the offender should be continued beyond the period specified in the relevant order;

(b) the offender needs different treatment;

(c) the offender is not susceptible to treatment; or

(d) the offender does not require further treatment.
[UK Criminal Justice Act 2003 Sched.8 para.18]

545. Amendment in relation to review of drug rehabilitation requirement
If the probation officer is of the opinion that a relevant order imposing a drug rehabilitation requirement which is subject to review should be so amended as to provide for each subsequent periodic review required by section 522 (Periodic review of drug rehabilitation requirement) to be made without a hearing instead of at a review hearing, or *vice versa*, the officer must apply under section 543 to the court responsible for the order for the variation of the order.
[UK Criminal Justice Act 2003 Sched.8 para.19]

546. Extension of order
(1) A court which imposes a community sentence may, on the application of the offender or the probation officer, amend the relevant order by substituting a later date for that specified under section 509(3).

(2) A date substituted under subsection (1) —

(a) may not fall outside the period of 6 months beginning with the date previously specified under section 509(3);

(b) subject to that, may fall more than 3 years after the date of the order.

(3) The power under subsection (1) may not be exercised in relation to an order if it has previously been exercised in relation to that order.

(4) A date substituted under subsection (1) is to be treated as having been specified in relation to the order under section 509(3).
[UK Criminal Justice Act 2003 Sched.8 para.19A ins. by LASPO Act 2012 s.66]

547. Extension of unpaid work requirement
If —

(a) a relevant order imposing an unpaid work requirement is in force in respect of any offender; and

(b) on the application of the offender or the probation officer, it appears to the appropriate court that it would be in the interests of justice to do so, having regard to circumstances which have arisen since the order was made,

the court may extend the period of 12 months specified in section 510.
[UK Criminal Justice Act 2003 Sched.8 para.20]

Powers of court following subsequent conviction

548. Powers of Magistrate's Court or Summary Court following subsequent conviction
(1) This paragraph applies if —

(a) an offender in respect of whom a relevant order made by the Magistrates' Court is in force is convicted of an offence by the Magistrate's Court; or

(b) an offender in respect of whom a relevant order made by the Summary Court is in force is convicted of an offence by the Summary Court; and

(c) it appears to either court that it would be in the interests of justice to exercise its powers under this section, having regard to circumstances which have arisen since the order was made.

(2) The respective court may —

(a) revoke the relevant order; or

(b) both —

(i) revoke the order; and

(ii) deal with the offender, for the offence in respect of which the order was made, in any way in which the offender could have been dealt with for that offence by the court which made the order if the order had not been made.

(3) In dealing with an offender under subsection (2)(b), the respective court must take into account the extent to which the offender has complied with the requirements of the order.

(4) A person sentenced under subsection (2)(b) for an offence may appeal to the Supreme Court against the sentence.
[UK Criminal Justice Act 2003 Sched.8 para.21]

549. Powers when relevant order made by Supreme Court
(1) If an offender in respect of whom a relevant order made by the Supreme Court is in force is convicted of an offence by the Magistrate's Court or the Summary Court, that court may commit the offender in custody or on bail to appear before the Supreme Court.

(2) If the Magistrate's Court or the Summary Court deals with an offender under subsection (1), it must send to the Supreme Court all particulars of the case that the Senior Magistrate considers appropriate, or (as the case may be) that the justices of the peace consider appropriate.
[UK Criminal Justice Act 2003 Sched.8 para.22]

550. Powers of Supreme Court following subsequent conviction
(1) This section applies if —

(a) an offender in respect of whom a relevant order is in force —

(i) is convicted of an offence by the Supreme Court; or

(ii) appears before the Supreme Court by virtue of section 549; and

(b) it appears to the Supreme Court that it would be in the interests of justice to exercise its powers under this section, having regard to circumstances which have arisen since the order was made.

(2) The Supreme Court may —

(a) revoke the relevant order; or

(b) both —

(i) revoke the order; and

(ii) deal with the offender, for the offence in respect of which the order was made, in any way in which the offender could have been dealt with for that offence by the court which made the order if the order had not been made.

(3) In dealing with an offender under subsection (2)(b), the Supreme Court must take into account the extent to which the offender has complied with the requirements of the order.
[UK Criminal Justice Act 2003 Sched.8 para.23]

Supplementary

551. Restrictions on imposing community sentences
(1) A court must not pass a community sentence on an offender unless it is of the opinion that for the offence, or the combination of the offence and one or more offences associated with it, a community sentence is the most appropriate sentence in the circumstances of the case.

(2) If a court imposes a relevant order —

(a) the particular requirement or requirements forming part of the order must be such as, in the opinion of the court, is, or taken together are, the most suitable for the offender; and

(b) the restrictions on liberty imposed by the order must be such as in the opinion of the court are commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it.

(3) In determining the restrictions on liberty to be imposed by a relevant order in respect of an offence, the court may have regard to any period for which the offender has been remanded in custody in connection with the offence or any other offence the charge for which was founded on the same facts or evidence.

[UK Criminal Justice Act 2003 ss.148 and 149]

552. No relevant order to be made while appeal pending

(1) Subject to subsection (2), no application in respect of a relevant order may be made under any of sections 542 to 547 while an appeal against the order is pending.

(2) Subsection (1) does not apply to an application under section 544 which —

(a) relates to a mental health treatment requirement, a drug rehabilitation requirement, an alcohol treatment requirement, an intoxicating substance treatment requirement or a drug treatment requirement; and

(b) is made by the probation officer with the consent of the offender.

[UK Criminal Justice Act 2003 Sched.8 para.24]

553. Issue of summons or warrant under certain sections

(1) Subject to subsection (2), if a court proposes to exercise its powers under any of sections 542 to 547 on the application of the probation officer, the court —

(a) must summon the offender to appear before the court; and

(b) if the offender does not appear in answer to the summons, may issue a warrant for his or her arrest.

(2) This section does not apply to an order cancelling a requirement of an order or reducing the period of any requirement, or substituting a new place for the one specified in the order.

[UK Criminal Justice Act 2003 Sched.8 para.25]

554. Regulations

(1) The Governor in Council,, after consulting the Criminal Justice Council, may by regulations provide for —

(a) the supervision of persons who are subject to relevant orders;

(b) without limiting paragraph (a), the functions of the probation officer in relation to offenders subject to a relevant order;

(c) the arrangements to be made by the probation officer or the Crown, as the case may be, for persons subject to unpaid work requirements to perform work and the performance of such work;

(d) the attendance of persons subject to activity requirements at the places at which they are required to attend, including hours of attendance, reckoning days of attendance and the keeping of attendance records.

(2) Regulations made under subsection (1)(c) may, in particular, make provision —

(a) limiting the number of hours of work to be done by a person on any one day;

(b) as to the reckoning of hours worked and the keeping of work records; and

(c) for the payment of travelling and other expenses in connection with the performance of work.

[UK Criminal Justice Act 2003 s.222]

555. Hearing by Magistrate's Court or Summary Court

(1) This section applies to any hearing held by the Magistrate's Court or the Summary Court in relation to an offender in proceedings under this Part.

(2) The court may adjourn the hearing, and if it does so may —

(a) direct that the offender be released forthwith; or

(b) remand the offender.

(3) If the court remands the offender under subsection (2) —

(a) it must fix the time and place at which the hearing is to be resumed; and

(b) that time and place must be the time and place at which the offender is required to appear before the court by virtue of the remand.

(4) If the court adjourns the hearing under subsection (2) but does not remand the offender —

(a) it may fix the time and place at which the hearing is to be resumed;

(b) if it does not do so, it must not resume the hearing unless it is satisfied that the offender, the probation officer and, if the offender is a youth, a parent or guardian of the offender, have had adequate notice of the time and place for the resumed hearing.

[UK Criminal Justice Act 2003 Sched.8 para.25A]

556. Power to provide for court review of relevant orders

The Chief Justice may by criminal procedure rules make provision —

(a) enabling or requiring a court that makes a relevant order, or another court, to review the order periodically;

(b) enabling a court to amend a relevant order so as to include or remove a provision for review by a court; and

(c) for the timing and conduct of reviews and the powers of the court on a review.

[UK Criminal Justice Act 2003 s.178]

557. Summary Court to deal with cases if Senior Magistrate absent, etc.
If under a provision of this Part the Supreme Court has ordered that a case is to be dealt with by the Magistrate's Court, the Summary Court may deal with the case if the Senior Magistrate is absent from the Falkland Islands or indisposed or for any other reason unable to deal with the case.

PART 26 – CUSTODIAL SENTENCES
Restrictions on custodial sentences

558. General restrictions on imposing discretionary custodial sentences
(1) This section applies if a person is convicted of an offence punishable with a custodial sentence other than one fixed by law.

(2) The court must not pass a custodial sentence unless it is of the opinion —

(a) that the offence, or the combination of the offence and one or more offences associated with it, was so serious that only such a sentence can be justified for the offence; or

(b) if the offence is a violent or sexual offence - that only such a sentence would be adequate to protect the public from serious harm from the offender.

(3) Nothing in subsection (2) prevents the court from passing a custodial sentence on an offender who fails to express willingness to comply with a requirement which is proposed by the court to be included in a non-custodial sentence and which requires an expression of such willingness.

(4) If a court passes a custodial sentence, it must —

(a) in a case not falling within subsection (3) - state in open court that it is of the opinion that subsection (2) applies and why it is of that opinion; and

(b) in any case - explain to the offender in open court and in ordinary language why it is passing a custodial sentence on him or her.

(5) The Magistrate's Court or the Summary Court, as the case may be, must cause a reason stated by it under subsection (4) to be specified in the warrant of commitment and to be entered in the register.

(6) This section and section 559 are in addition to and do not derogate from the provisions of Part 33 as regards custodial sentences on persons under 21.
[Criminal Justice Ord. s.31 (part); UK Powers of Criminal Courts (Sentencing) Act 2000 s.79; Criminal Justice Act 2003 s.152]

559. Restriction on imposing custodial sentences on unrepresented first offenders
(1) A court must not pass a sentence of imprisonment on a person who was of or over 21 years of age at the date of conviction —

(a) on whom such a sentence has not previously been passed by a court in the Falkland Islands; and

(b) who is not legally represented,

unless the court is of the opinion that no other method of dealing with the person is appropriate.

(2) For the purpose of determining whether any other method of dealing with any such person is appropriate the court must obtain and consider information about the circumstances, and must take into account any information before the court which is relevant to the person's character and physical and mental condition.

(3) If the Magistrate's Court or the Summary Court passes a sentence of imprisonment on any such person as is mentioned in subsection (1), the court must —

(a) state the reason for its opinion that no other method of dealing with the person is appropriate; and

(b) cause the reason to be specified in the warrant of commitment and to be recorded on the court file relating to the proceedings in question.

(4) For the purposes of this section —

(a) a previous sentence of imprisonment which has been suspended and which has not taken effect under section 568 must be disregarded;

(b) "sentence of imprisonment" does not include a committal or attachment for contempt of court; and

(c) "legally represented" in relation to a person includes a person who is represented by a legal practitioner after conviction and before being sentenced, or who declined to apply for or accept legal aid for that purpose, or who had legal aid withdrawn because of his or her conduct.

(5) Subsection (1) does not affect the power of the court to pass sentence on any person for an offence the sentence for which is fixed by law.
[Criminal Justice Ord. s.3; UK Powers of Criminal Courts (Sentencing) Act 2000 s.83 adapted]

560. Pre-sentence report for purposes of section 559

(1) Subject to subsection (2), the court must wherever reasonably practicable obtain a pre-sentence report for the purpose of determining under section 559(1) whether there is any appropriate method of dealing with an offender other than imprisonment.

(2) Subsection (1) does not apply if in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a pre-sentence report.

(3) If a court, without first obtaining a pre-sentence report, passes a sentence of imprisonment on a person to whom section 559(1) applies, it must state in open court the reason why it was not reasonably practicable or it was unnecessary to obtain such a report.

(4) A court which states a reason as required by subsection (3) must cause that reason to be specified in the warrant of commitment and in the court file relating to the proceedings.

(5) A sentence is not invalidated by the failure of a court to comply with subsection (1), but an appellate court on appeal from that court must obtain a pre-sentence report if it is reasonably practicable to do so and if none was obtained by the court below, unless the appellate court is of the opinion that in the circumstances of the case it is unnecessary to do so.

(6) In determining whether it should deal with the offender otherwise than by passing a sentence of imprisonment, the appellate court must consider any pre-sentence report obtained by it or by the court below.
[Criminal Justice Ord. s.32; UK Criminal Justice Act 2003 s.156 (part)]]

561. Length of discretionary custodial sentences
If a court passes a custodial sentence other than one fixed by law, the custodial sentence must be for the shortest term (not exceeding the permitted maximum) that in the opinion of the court is commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it.
[UK Criminal Justice Act 2003 s.153]

562. Liability to imprisonment if period not specified
(1) If a person is convicted of an offence against any enactment and is for that offence liable to be sentenced to imprisonment, but the sentence is not by any enactment either limited to a specified term or expressed to extend to imprisonment for life, the person so convicted is liable to imprisonment for not more than 2 years.

(2) If a person is convicted of an offence contrary to common law, the person so convicted is liable to imprisonment for a term not exceeding 2 years or to a fine not exceeding the maximum of level 6 on the standard scale or to both such imprisonment and fine.

(3) A person shall, for the purposes of this section, be deemed not to have been convicted of an offence contrary to common law unless the person was convicted on a charge, summons, information or indictment alleging that the person committed that offence contrary to common law.
[Criminal Justice Ord. s.30; UK Powers of Criminal Courts (Sentencing) Act 2000 s.77 adapted]

Duration of sentences

563. Duration of sentences of imprisonment
(1) Subject to this Part and any other enactment to the contrary, every sentence of imprisonment is deemed to commence from and to include the whole of the day on which it was pronounced.

(2) If a sentence of imprisonment for an offence is passed on a person who has been in custody under an order of a court made in connection with the proceedings for that offence, the length of the sentence is to be reduced by the period during which the person was in custody.

(3) The length of sentence is also to be reduced by the time for which the offender was in police detention in connection with the offence.

(4) If a sentence of imprisonment for an offence is passed on a person who was previously subject to a probation order, an order for conditional discharge or a suspended sentence in respect of that offence, any period of custody falling before the order was made or suspended sentence passed is to be disregarded for the purposes of this section.

(5) For the purposes of this section, but subject to subsections (6) and (7) as regards partly suspended sentences, a suspended sentence is to be treated as a sentence of imprisonment when it takes effect under section 568 and as being imposed by the order under which it takes effect.

(6) If a person is sentenced to imprisonment with an order under section 566(1), subsection (4) of this section —

(a) operates to reduce the part of the sentence required to be served in prison;

(b) operates to reduce the whole period of the sentence for the purposes of section 566(6); but

(c) does not operate to reduce any part of the sentence which is ordered under section 566(1) to be held in suspense.

(7) If —

(a) an offender has been sentenced to imprisonment with an order under section 566(1) and has been released from prison after serving part of the sentence; and

(b) an order is subsequently made restoring part of the sentence,

the restored part –

(i) is for the purposes of this section deemed to be a sentence of imprisonment imposed by the order restoring it; but

(ii) is not to be reduced by a period spent in custody by the offender before the original sentence was passed.

(8) A reference in this Ordinance or any other enactment to the length of any sentence of imprisonment is, unless the context otherwise requires, a reference to the sentence pronounced by the court and not the sentence as reduced by this section.
[Criminal Justice Ord. s.95; UK Criminal Justice Act 2003 ss.240 to 242 adapted]

564. Time in custody pending appeal

(1) If on appeal the Court of Appeal or the Supreme Court, as the case may be, makes an order which has the effect of requiring a person to commence or resume a sentence of imprisonment —

(a) any time during which the person has been at liberty, whether on bail or otherwise, after the sentence was first passed does not count as part of the sentence;

(b) the sentence is deemed to commence or, if the person has already served part of the sentence, to be resumed on the day on which the person is first received into prison after the making of the order.

(2) Subsection (1) is in addition to, and does not derogate from, the any provision of this Ordinance relating to bail on an appeal.

(3) The time during which an appellant is in custody pending the determination of his or her appeal to the Supreme Court or to the Court of Appeal is, subject to any direction to the contrary by the court hearing the appeal, to be reckoned as part of the term of any sentence to which he or she is for the time being subject.

(4) The Supreme Court or Court of Appeal respectively must not give a contrary direction under subsection (3) if the court has granted a certificate under section 3 of the Court of Appeal Ordinance or has given leave to appeal under that section.

(5) If a court gives a contrary direction under subsection (3) it must state its reasons.
[Gibraltar Criminal Procedure Act s.178 adapted; SH CPE Bill]

Suspended sentences

565. Suspended sentences of imprisonment

(1) A court which passes a sentence of imprisonment, or a sentence of detention on a young offender, for a term of not more than 2 years for an offence may order that the sentence or any part of it is not to take effect unless —

(a) during the period specified in the order, being at least one year but not more than 2 years from the date of the order (in this Part referred to as "the operational period"), the offender commits in the Falkland Islands another offence punishable with imprisonment; and

(b) thereafter a court having power to do so under section 569 orders under section 568 that the original sentence is to take effect.

(2) A court must not deal with an offender by means of a suspended sentence unless the case appears to the court to be one in which a sentence of imprisonment would have been appropriate in the absence of any power to suspend such a sentence by an order under subsection (1).

(3) On passing a suspended sentence the court must explain to the offender in ordinary language his or her liability under section 568 if during the operational period he or she commits an offence punishable with imprisonment.

(4) Subject to any provision to the contrary contained in this or any other Ordinance, a suspended sentence which has not taken effect under section 568 is to be treated as a sentence of imprisonment for the purposes of all enactments, except any enactment which provides for disqualification for or loss of office, or forfeiture of pensions, of persons sentenced to imprisonment.
[Criminal Justice Ord. s.45 (part); Powers of Criminal Courts (Sentencing) Act 2000 s.118]

566. Partly suspended sentences
(1) Subject to subsection (2), if a court passes on an adult a sentence of imprisonment for a term of not less than 3 months and not more than 2 years, it may order that, after the person has served part of the sentence in prison, the remainder of it is to be held in suspense.

(2) A court must not make an order under subsection (1) unless the case appears to the court to be one in which an order under section 565 would not be appropriate.

(3) Subsection (2) does not affect section 558 as regards restrictions on custodial sentences.

(4) The part of the sentence to be served in prison must be not less than 28 days and the part to be held in suspense must be not less than one-quarter of the whole term.

(5) The offender must not be required to serve the part of the sentence held in suspense unless it is restored under subsection (6); and this must be explained to the offender by the court, using ordinary language and stating the substantial effect of that subsection.

(6) If at any time after the making of the order the offender is convicted of an offence punishable with imprisonment and committed during the whole period of the original sentence, then, subject to subsections (7) and (8) a court which is competent under this subsection may restore the part of the sentence held in suspense and order the offender to serve it.

(7) If a court, considering the offender's case with a view to exercising the powers in subsection (6), is of opinion that (in view of all the circumstances, including the facts of the subsequent offence) it would be unjust to restore the part of the sentence held in suspense, it must either restore a lesser part or declare, with reasons given, its decision to make no order under that subsection.

(8) If an order restoring part of a sentence has been made under subsection (6), no order restoring any further part of it may be made.

(9) If a court restores part of a sentence under subsection (6), it may direct that the restored part of the original sentence is to take effect as a term to be served either immediately or on the expiration of another term of imprisonment passed on the offender by that or another court.
[Criminal Justice Ord. s.45 (part)]

567. Partly suspended sentences: Supplementary

(1) If an offender is convicted by the Magistrate's Court or by the Summary Court of an offence punishable with imprisonment and the court is satisfied that the offence was committed during the whole period of a sentence passed by the Supreme Court with an order under section 566(1)—

(a) the court may, if it thinks fit, commit the offender in custody or on bail to the Supreme Court; and

(b) if it does not, it must give written notice of the conviction to the Registrar.

(2) If it appears to a judge, the Senior Magistrate or a justice of the peace, respectively having jurisdiction under subsection (3), that —

(a) an offender has been convicted in the Falkland Islands of an offence punishable with imprisonment and committed during the whole period of a sentence passed with an order under section 566(1); and

(b) the offender has not been dealt with in respect of the part of the sentence held in suspense,

the judge, Senior Magistrate or justice, as the case may be, may issue a summons requiring the offender to appear at the place and time specified therein, or may issue a warrant for the arrest of the offender.

(3) Jurisdiction for the purposes of subsection (2) may be exercised —

(a) if the sentence was passed by the Supreme Court - by a judge or the Senior Magistrate;

(b) if it was passed by the Magistrate's Court or the Summary Court - by the Senior Magistrate or a justice of the peace.

(4) A summons or warrant issued under this section must direct the offender to appear or to be brought before the court by which the original sentence of imprisonment was passed.

(5) If the offender is before the Supreme Court with a view to the exercise by that court of its powers under section 566(6), any question whether and, if so, when the person has been convicted of an offence is to be determined by the judge and not by the verdict of a jury.

(6) If the offender has been before a court with a view to its exercising the powers under section 566(6), the appropriate officer must —

(a) if the court decided not to exercise the powers - record that fact; and

(b) whether or not it exercised them, notify the appropriate officer of the court which passed the original sentence as to the manner in which the offender was dealt with.

(7) For the purposes of any enactment conferring rights of appeal in criminal cases, the restoration by a court under section 566(6) of a part of a sentence held in suspense is to be treated as a sentence passed on the offender by that court for the original offence, that is to say the offence for which the original sentence was passed with an order under section 566(1).

(8) If a sentence of imprisonment is passed with an order under subsection (1) —

(a) the sentence is still to be regarded for all purposes as a sentence of imprisonment for the term stated by the court even though part of it is held in suspense by virtue of the order;

(b) a sentence of which part is held in suspense by virtue of such an order is not to be regarded as falling within the expression "suspended sentence" for the purposes of any legislation, instrument or document.

(9) If an offender is sentenced to imprisonment with an order under section 566(1) and, having served part of the sentence in prison, is discharged by virtue of having received remission for industry and good conduct, the remainder of the sentence being held in suspense, the sentence is not to be regarded as having expired.

(10) In this section and sections 563 and 566, "the whole period" of a sentence is the time which the offender would have had to serve in prison if —

(a) the sentence had been passed without an order under subsection (1); and

(b) the offender had no remission of imprisonment for good conduct in prison under the relevant law.

[Criminal Justice Ord. s.45 (part) and Schedule 2 (part)]

568. Powers of court on conviction for further offence

(1) If —

(a) a person is convicted of an offence punishable with imprisonment which was committed during the operational period of a suspended sentence; and

(b) the person is so convicted by or before a court having power under section 569 to deal with the person in respect of the suspended sentence, or subsequently appears or is brought before such a court,

that court must consider the case and, subject to subsection (2) order that the suspended sentence (or the part of it which has not already been served, as the case may be) is to take effect with the original term unaltered.

(2) If the court is of the opinion that, in view of all the circumstances which have arisen since the suspended sentence was passed, including the facts of the subsequent offence, it would be unjust to make an order referred to in subsection (1), the court must state its reasons for that opinion and may —

(a) order that the sentence is to take effect with the substitution of a lesser term for the original term;

(b) by order vary the original order made under section 565(1) by extending the operational period by a further period expiring not later than 2 years from the date of the variation; or

(c) make no order with respect to the suspended sentence.

(3) If a court orders that a suspended is to take effect, with or without any variation of the original term, the court may order that the sentence is to take effect immediately or that the is to commence at the expiration of another term of imprisonment passed on the offender by that or another court.

(4) In proceedings for dealing with an offender in respect of a suspended sentence which take place before the Supreme Court, any question whether the offender has been convicted of an offence punishable with imprisonment committed during the operational period of the suspended sentence must be determined by the judge and not by a jury.

(5) If a court deals with an offender under this section in respect of a suspended sentence, the appropriate officer of the court must notify the appropriate officer of the court which passed the sentence of the method adopted.

(6) If on consideration of the case of an offender a court makes no order with respect to a suspended sentence, the appropriate officer of the court must record that fact.

(7) For the purposes of any enactment conferring rights of appeal in criminal cases, an order made by a court with respect to a suspended sentence is to be treated as a sentence passed on the offender by that court for the offence for which the suspended sentence was passed.

(8) If a suspended sentence has taken effect under this section, the offender is to be treated as having been convicted on the date on which the period allowed for making an appeal against an order under this section expires or, if such an appeal is made, the date on which it is finally disposed of or abandoned or fails for non-prosecution.
[Criminal Justice Ord. s.46; Powers of Criminal Courts (Sentencing) Act 2000 s.119]

569. Court by which suspended sentence may be dealt with
(1) An offender may be dealt with in respect of a suspended sentence or a partly suspended sentence —

(a) by the Supreme Court, irrespective of the court by which the suspended sentence or partly suspended sentence was passed;

(b) by the Magistrate’s Court, if the suspended sentence or partly suspended sentence was passed by the Magistrate's Court or by the Summary Court;

(c) by the Summary Court if the suspended sentence or partly suspended sentence was passed by that court.

(2) If an offender is convicted by the Magistrate's Court or by the Summary Court of an offence punishable with imprisonment and the court is satisfied that the offence was committed during the operational period of a suspended sentence or partly suspended sentence passed by the Supreme Court, the court must commit the offender in custody or on bail to the Supreme Court.

(3) For the purposes of this section and of section 570 a suspended sentence passed on an offender on appeal is to be treated as having been passed by the court by which the person was originally sentenced.
[Criminal Justice Ord. s.47 and Schedule 2 (part); Powers of Criminal Courts (Sentencing) Act 2000 s.120 adapted]

570. Procedure if convicting court does not deal with suspended sentence
(1) If it appears to a judge, the Senior Magistrate or a justice of the peace that an offender —

(a) has been convicted in the Falkland Islands of an offence punishable with imprisonment committed during the operational period of a suspended sentence; and

(b) has not been dealt with in respect of the suspended sentence,

the judge, Senior Magistrate or justice may, subject to the following subsections, issue a summons requiring the offender to appear at the place and time specified in the summons, or may issue a warrant for the arrest of the offender.

(2) A justice of the peace must not —

(a) issue a summons under this section except on information;

(b) issue a warrant under this section except on information in writing and on oath.

(3) A summons or warrant issued under this section must direct the offender to appear or to be brought before the court by which the suspended sentence was passed.
[Criminal Justice Ord. s.48 simplified; Powers of Criminal Courts (Sentencing) Act 2000 s.121 adapted]

571. Suspended sentence supervision orders
(1) If a court passes on an offender a suspended sentence for a term of more than 6 months for a single offence, the court may make a suspended sentence supervision order (in this Part referred to as a "supervision order") placing the offender under the supervision of a probation officer for a period specified in the order, being a period not exceeding the operational period of the suspended sentence.

(2) A supervision order may require the offender to comply during the whole or any part of the supervision period with conditions that the court, having regard to the circumstances of the case,

considers necessary or appropriate for promoting the rehabilitation of the offender, securing his or her good conduct and preventing a repetition by the offender of the same offence or the commission of other offences.

(3) The conditions that may be attached to a supervision order include complying with one or more requirements falling within sections 510 to 527 and specified in the order.

(4) The conditions may include an electronic monitoring order only if the requirements for such an order as set out in section 527 are met.

(5) Sections 532 to 534 and 543 to 545 apply, with necessary modifications, to a supervision order made under this section as they apply to a community order made under section 509.

(6) An offender in respect of whom a supervision order is in force must —

(a) keep in touch with the probation officer in accordance with any instructions given from time to time by that officer;

(b) comply with any conditions imposed under subsection (2); and

(c) notify the probation officer of any change of address.

(7) The court by which a supervision order is made must on making the order give copies of it to the probation officer, who must give a copy to the offender.

(8) A supervision order ceases to have effect if before the end of the period specified in it —

(a) a court orders under section 568(3) that a suspended sentence passed in the proceedings in which the order was made is to have effect; or

(b) the order is discharged or replaced under the following provisions of this section.

(9) A supervision order may be discharged, on the application of the probation officer or the offender —

(a) if it was made by the Supreme Court and includes a direction reserving the power of discharging it to that court - by the Supreme Court;

(b) if it was made by the Supreme Court and does not include a direction of the kind referred to in paragraph (a) - by the Magistrate's Court;

(c) if it was made by the Magistrate's Court - by the Magistrate's Court;

(d) if it was made by the Summary Court - by the Summary Court.

(10) If under section 568(2) a court deals with an offender in respect of a suspended sentence by varying the operational period of the sentence or by making no order with respect to the sentence, the court may make a supervision order in respect of the offender —

(a) in place of any such order made when the suspended sentence was passed; or

(b) if the court which passed the sentence could have made such an order but did not do so.

(11) On making a supervision order the court must in ordinary language explain its effect to the offender.
[Criminal Justice Ord. s.49; Powers of Criminal Courts (Sentencing) Act 2000 s.122; Criminal Justice Act 2003 ss.189 and 190]

572. Breach of suspended sentence supervision order
(1) If it appears to a judge, the Senior Magistrate or a justice of the peace that at any time while a supervision order is in force in respect of an offender the offender has failed to comply with any of the requirements of section 571(3), the judge, Senior Magistrate or justice may, subject to the following subsections, issue a summons requiring the offender to appear at the place and time specified in it, or may issue a warrant for the arrest of the offender.

(2) A justice of the peace must not —

(a) issue a summons under this section except on information;

(b) issue a warrant under this section except on information in writing and on oath.

(3) A summons or warrant issued under this section must direct the offender to appear or to be brought before the court by which the suspended sentence was passed.

(4) If it is proved to the satisfaction of the court before which an offender appears or is brought under this section that the offender has failed without reasonable cause to comply with any of the requirements of section 571(3), the court may deal with the offender as if he or she were in breach of a relevant order under section 539 or 540, as the case may be, but subject to section 541 and with necessary modifications.
[Criminal Justice Ord. s.50; Powers of Criminal Courts (Sentencing) Act 2000 s.123 and Sched.8 by analogy]

Consecutive sentences

573. Consecutive sentences: General
(1) If a court imposes 2 or more custodial sentences for 2 or more offences on the same indictment or information, the court may order the sentences to run concurrently or consecutively.

(2) If a court imposes a custodial sentence on a person who is already serving a custodial sentence for another offence, the court may order the sentence for the subsequent offence to

commence at the expiration of the first sentence, even if the total term of a custodial sentence exceeds the term for which the person can be sentenced for either offence on its own.

(3) In deciding whether to impose a consecutive sentence, the court must have regard to the following principles —

(a) consecutive sentences should not normally be imposed in respect of offences arising out of the same event;

(b) the total custodial sentence must not be excessive, having regard to the nature of the offences and the circumstances of the offender;

(c) a custodial sentence on a person under 21 must not exceed 24 months in total, as provided by section 726(4);

(d) life imprisonment should not run consecutively to an existing determinate sentence;

(e) consecutive sentences will be treated a separate sentences for the purpose of release on licence.

(4) A court in deciding whether to impose concurrent or consecutive sentences must also have regard to any limit upon sentencing imposed on the Summary Court by Part 11 (Criminal Jurisdiction), to any sentencing guidelines published under section 485 and to any practice direction issued by the Chief Justice in that regard.
[Gibraltar Criminal Procedure Act s.174; SH CPE Bill; Common law]

574. Consecutive sentences: Partly suspended sentences
(1) This section applies if —

(a) an offender is serving consecutive sentences of imprisonment; and

(b) at least one of the sentences was passed with an order under section 566(1).

(2) Where this paragraph applies the offender must, so far as the consecutive sentences are concerned, be treated for the purposes of —

(a) computing the date when he or she should be released from prison; and

(b) calculating the term of imprisonment liable to be restored under section 566(6),

as if the offender had been sentenced to a single term of imprisonment with an order under section 566(1) of which the part which the offender is immediately required to serve in prison were the aggregate —

(i) of the part which the offender is required to serve in prison of any consecutive sentence passed with an order under section 566(1); and

(ii) of the whole term of any other consecutive sentences,

and of which the part which is held in suspense were the aggregate of all parts of the sentences which were ordered to be held in suspense under that section.

(3) Section 567(10) has effect, in relation to any consecutive sentence passed with an order under section 566(1), as if for the words following the word "prison" there were substituted the words "if —

(a) none of the sentences to which the offender is subject had been passed with an order under section 566(1); and

(b) the offender had not had, in respect of any sentence passed with such an order, any remission for industry and good conduct in prison."

(4) In this section "a consecutive sentence" means a sentence which is one of 2 or more sentences of imprisonment the terms of which have been ordered to run consecutively.
[Criminal Justice Ord. Schedule 2 (part)]

Extended sentences

575. Punishment of persistent offenders
(1) If —

(a) a person is convicted by the Supreme Court or by the Magistrate's Court of an offence punishable with imprisonment for a term of 2 years or more;

(b) the conditions specified in subsection (3) are satisfied; and

(c) the court is satisfied, because of the offender's previous conduct and the likelihood of his or her committing further offences, that it is expedient to protect the public from the offender for a substantial time,

the court may impose an extended term of imprisonment under this section.

(2) The extended term which may be imposed under this section for any offence —

(a) may exceed the maximum term authorised for the offence apart from this section if the maximum so authorised is less than 10 years; but

(b) must not exceed 10 years if the maximum so authorised is less than 10 years nor exceed 5 years if the maximum so authorised is less than 5 years.

(3) The conditions referred in subsection (1) are —

(a) the offence was committed before the expiration of 3 years from the previous conviction of an offence punishable with imprisonment for 2 years or more or from the offender's final release from prison after serving a sentence of imprisonment passed on such a conviction;

(b) the offender has been convicted on at least 3 previous occasions since attaining the age of 21 of offences punishable with imprisonment for 2 years or more; and

(c) the total length of the sentences of imprisonment to which the offender was sentenced on those occasions was not less than 5 years.

(4) If an extended term of imprisonment is imposed on an offender under this section, the court must issue a certificate (in this Part referred to as an "extended sentence certificate") stating that the term was so imposed.
[Criminal Justice Ord. s.51]

576. Persistent offenders: Supplementary
(1) For the purposes of section 575(3)(a) a certificate purporting to be signed by the Chief Police Officer to the effect —

(a) that a prisoner was finally released from prison on a date specified in the certificate after serving a sentence so specified; or

(b) that a prisoner had not been finally released from prison on a date so specified after serving a sentence so specified,

is evidence of the matter so certified.

(2) For the purposes of section 575(3)(b) a person who has been convicted by the Magistrate's Court or Summary Court of an offence punishable on conviction with imprisonment for 2 years or more and sentenced for that offence by the Supreme Court, or on appeal from the Supreme Court, to imprisonment, is to be treated as if convicted of that offence by the Supreme Court.

(3) For the purpose of determining whether the conditions specified in section 575(3) are satisfied in relation to an offender no account is to be taken of any previous conviction or sentence unless notice has been given to the offender at least 3 days before the later sentence is passed that it is intended to prove the previous conviction or sentence to the court.

(4) For the purposes of subsection (3) a certificate purporting to be signed by a police officer that a copy of a notice annexed to the certificate was given to an offender is evidence that it was so given and of the contents of the notice.

(5) In this section and in section 575 "final release" includes a release pursuant to the provisions of section 71(1) of the Constitution (Power of pardon, etc.), but does not include any temporary discharge from prison whether under section 71(1) of the Constitution or otherwise.
[Criminal Justice Ord. s.52]

Life sentences

577. Recommendation as to minimum term

(1) If a person is sentenced to a mandatory life sentence for an offence, the court must state the minimum term that the court recommends the person should serve in prison, by reference to the starting points specified in the following subsections.

(2) If —

(a) the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is exceptionally high; and

(b) the offender was aged 21 or over when he or she committed the offence,

the appropriate starting point is 40 years.

(3) Cases that would normally fall within subsection (2)(a) include —

(a) the murder of 2 or more persons, where each murder involves any of the following ——

(i) a substantial degree of premeditation or planning;

(ii) the abduction of the victim; or

(iii) sexual or sadistic conduct;

(b) the murder of a person under the age of 18 if it involves the abduction of the person or sexual or sadistic motivation;

(c) a murder done for the purpose of advancing a political, religious or ideological cause, or

(d) a murder by an offender previously convicted of murder.

(4) If —

(a) the case does not fall within subsection (3) but the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is particularly high; and

(b) the offender was aged 18 or over when he or she committed the offence,

the appropriate starting point, in determining the minimum term, is 30 years.

(5) Cases not falling within subsection (3) that would normally fall within subsection (4) include—

(a) the murder of a police officer or prison officer in the course of duty;

(b) a murder involving the use of a firearm or explosive;

(c) a murder done for gain (such as a murder done in the course or furtherance of robbery or burglary, done for payment or done in the expectation of gain as a result of the death);

(d) a murder intended to obstruct or interfere with the course of justice;

(e) a murder involving sexual or sadistic conduct;

(f) the murder of 2 or more persons;

(g) a murder that is racially or religiously aggravated; or

(h) a murder falling within subsection (3) committed by an offender who was aged under 21 when he or she committed the offence.

(6) If the offender was aged 18 or over when he or she committed the offence and the case does not fall within subsection (3) or (5), the appropriate starting point, in determining the minimum term, is 15 years.

(7) If the offender was aged under 18 when he or she committed the offence, the appropriate starting point, in determining the minimum term, is 12 years.

(8) In this section, "life sentence" means —

(a) a sentence of imprisonment for life; or

(b) a sentence of detention during Her Majesty's pleasure as provided in Part 33 (Young Offenders and Youth Protection).

[UK Criminal Justice Act 2003 s.269 adapted; s. 277 and Sched.21 (part)]

578. Aggravating and mitigating factors

(1) Once a court has chosen a starting point for a minimum term pursuant to section 577, the court must take into account any aggravating or mitigating factors, to the extent that it has not allowed for them in its choice of starting point.

(2) Detailed consideration of aggravating or mitigating factors may result in a minimum term of any length (whatever the starting point), or in the making of an order under section 577(2).

(3) Aggravating factors (additional to those mentioned in section 577(3) or (5)) that may be relevant to the offence of murder include —

(a) a significant degree of planning or premeditation;

(b) the fact that the victim was particularly vulnerable because of age or disability;

(c) mental or physical suffering inflicted on the victim before death;

(d) the abuse of a position of trust;

(e) the use of duress or threats against another person to facilitate the commission of the offence;

(f) the fact that the victim was providing a public service or performing a public duty, and

(g) concealment, destruction or dismemberment of the body.

(4) Mitigating factors that may be relevant to the offence of murder include —

(a) an intention to cause serious bodily harm rather than to kill;

(b) lack of premeditation;

(c) the fact that the offender suffered from any abnormality of mental functioning which, although not falling within section 48 of the Crimes Ordinance 2014, (Diminished responsibility) lowered his or her degree of culpability;

(d) the fact that the offender was provoked (for example, by prolonged stress);

(e) the fact that the offender acted to any extent in self-defence or in fear of violence;

(f) a belief by the offender that the murder was an act of mercy; and

(g) the age of the offender.

[UK Criminal Justice Act 2003 Sched.21 (part)]

579. Duty to give reasons

(1) A court making a recommendation under section 577 must state in open court, in ordinary language, its reasons for deciding on the order made.

(2) In stating its reasons the court must, in particular state —

(a) which of the starting points in that section it has chosen and its reasons for doing so; and

(b) its reasons for any departure from that starting point.

[UK Criminal Justice Act 2003 s.270 adapted]

Release of prisoners on licence

580. Advisory Committee's functions in relation to release of prisoners on licence

(1) In addition to its functions under section 71 of the Constitution, the Advisory Committee on the Prerogative of Mercy has the function of advising the Governor, if the Governor so requests or this Part so requires, about —

(a) the release of persons on licence under section 581 or 582, and the recall of persons under section 583;

(b) the conditions to be attached to any such licence and the variation or cancellation of any such conditions; and

(c) any other matter referred to it by the Governor relating to the release on licence or recall of persons pursuant to sections 581 to 584.

(2) If a case is referred to the Advisory Committee by the Governor, the Committee must deal with it on consideration of documents that are to be given to it by the Governor, any reports that it has called for, and any information whether oral or in writing that it has obtained.

(3) If in any particular case the Advisory Committee thinks it necessary to interview the person to whom the case relates before reaching a decision, the Committee —

(a) may request one of its members to interview the person; and

(b) must take into account the report of that interview by that member.

(4) The documents to be given by the Governor to the Advisory Committee under subsection (2) include —

(a) if the case is one of release under section 581 or 582 - any written representations made by the person to whom the case relates since his or her last interview;

(b) if the case relates to a person recalled under section 583 - any written representation made under that section.

(5) Without affecting subsections (2) to (4), the Governor, after consulting the Criminal Justice Council, may by rules provide for the exercise by the Advisory Committee of its functions under this Ordinance, including, but not limited to, provision authorising cases to be dealt with by a prescribed number of members of the Committee.
[Criminal Justice Ord. s.90 modified]

581. Release on licence of persons serving determinate sentences

(1) The Governor, after consulting the Advisory Committee, may release on licence a person serving a sentence of imprisonment, other than imprisonment for life, or serving a sentence of detention, after the person has served not less than one-third of the sentence or 12 months, whichever expires the later.

(2) If a sentence of imprisonment for an offence has been passed on a person with an order under section 566(1) (Partly suspended sentence) and the offender has not been released from prison since the sentence for the offence was passed, the only portion of that sentence that is to be taken into account for the purposes of subsection (1) of this section is any portion of it that the offender is required to serve in prison under section 566(1) or (6).

(3) If a sentence has been partly suspended and the offender is released from prison but part of the sentence for the offence is subsequently restored under section 566(6), the offender must be treated for the purpose of subsection (1) of this section as if the only sentence for the offence were the part of the sentence so restored.

(4) A person whose sentence falls to be reduced under section 582 is, for the purpose of determining under subsection (2) of this section whether the person has served one-third of the sentence, to be treated as if any period spent in custody and taken into account under that section were included in the sentence and as if the person had served that period as part of that sentence.

(5) Without affecting any earlier release under subsection (1) of this section, the Governor, after consulting the Advisory Committee, may direct that a person who is serving a sentence of imprisonment and in respect of whom an extended sentence certificate under section 575(4) was issued when the sentence was passed is, instead of being granted remission of any part of the sentence under the Prison Regulations made under the Prison Ordinance, to be released on licence at a specified time on or after the day on which the person could have been discharged from prison if the remission had been granted.

(6) A person subject to a licence granted under this section must comply with any conditions specified in the licence.

(7) Every custodial sentence of more than 12 months imposed on a person that is being served in the Falkland Islands must be brought up to the Governor for review under this section after the person has served one-third of the sentence.

(8) The Governor —

(a) must consult the Advisory Committee before including on the release of a person, or subsequently inserting, a condition in a licence relating to that person, or varying or cancelling any such condition;

(b) is deemed to have consulted the Advisory Committee on a proposal to include, insert, vary or cancel a condition in any case if the Governor has consulted that Committee on the implementation of proposals of that description generally or in that class of case.

(9) A licence granted to any person under this section, unless previously revoked under section 583, remains in force until a date specified in the licence being —

(a) in the case of a licence granted to a person in respect of whom an extended sentence certificate was issued under section 575(4) when sentence was passed - the date of the

expiration of the sentence; and

(b) in any other case - the remission date.

(10) In this section, "the remission date", in relation to a person released on licence under this section, means the date on which the person could have been discharged from prison on remission of part of his or her sentence under the Prison Regulations, if, after the date of the release on licence, the person has not forfeited remission on any part of the sentence under those Regulations.

(11) This section is in addition to, and does not derogate from, section 29 of the Prison Ordinance which provides for remission of sentence after the expiry of two-thirds of the period.
[Criminal Justice Ord.s.91 modified]

582. Release on licence of persons sentenced to imprisonment for life, etc.
(1) Subject to subsection (2), the Governor, after consulting the Advisory Committee, may release on licence a person serving a sentence of imprisonment for life or custody for life or a person detained under section 730.

(2) In the case of a person sentenced to life imprisonment for murder, or to detention during Her Majesty's pleasure or for life, the Governor must not release the person until after the minimum period recommended under section 577 has expired, and only after consulting the Advisory Committee.

(3) Subsections (5) to (10) of section 581 apply in relation to the release of a person on licence under this section as they apply in relation to the release of a person on licence under that section.

(4) A licence granted under this section to any person sentenced under Part 33 (Young Offenders and Youth protection) to be detained otherwise than for life, unless previously revoked under section 583, remains in force until a date specified in the licence, being the date of the expiration of the sentence.
[Criminal Justice Ord. s.92 modified]

583. Revocation of licences and recall of prisoners on licence
(1) The Governor may at any time revoke a licence granted to a person under section 581 or 582 and recall the person to prison.

(2) A person recalled to prison under subsection (1) —

(a) may make representations in writing in respect of the revocation, with the assistance of a legal practitioner at the person's own expense or with legal aid if provided; and

(b) must on return to prison be informed of the reasons for the recall and of the right to make such representations.

(3) If a person recalled to prison under subsection (1) makes representations under subsection (2)—

(a) the Governor must refer the case to the Advisory Committee; and

(b) if the Committee recommends the immediate release on licence of the person, the Governor must consider the recommendation and, if he or she considers it appropriate again to release the person under section 581(1), may do so.

(4) If a person subject to a licence under section 581 or 582 is convicted of any offence punishable on conviction by imprisonment for a period of 12 months or more, then, except in a case to which subsection (5) of this section applies, the court by which the person is convicted, or a court to which the person is committed for sentence, may, whether or not it passes any other sentence, revoke the licence.

(5) A licence under section 581 or 582 is deemed to be revoked if —

(a) the offender was —

(i) sentenced to imprisonment with an order under section 566(1) (Partly suspended sentence); and

(ii) released on licence before the expiration of any part of the sentence which the offender was required to serve in prison under section 566(1); and

(b) by virtue of section 566(6) a court restores any part of the sentence held in suspense,

and subsection (6) of this section applies to the offender accordingly.

(6) On the revocation of the licence of a person under this section, the person —

(a) is liable to be detained pursuant to the sentence; and

(b) if at large, is deemed to be unlawfully at large and may be arrested without warrant by any police officer and taken to the prison from which the person was released.

(7) If in the case of a person subject to a licence under section 581 a court revokes the licence under subsection (4) of this section, the Governor must not thereafter release the person under section 581(1) before the expiration of one year from the date of revocation or before the expiration of one-third of the period during which the licence would have remained in force, whichever is the later; but without affecting any power to release the person otherwise than under section 581(1).

(8) This section has effect, in its application to a sentence of detention on a young offender under Part 33 (Young Offenders and Youth Protection) as if for any reference to a prison there were a

reference to any place in which the offender was detained immediately before being released on licence.
[Criminal Justice Ord. s.93]

584. Provisions supplementary to sections 580 to 583
(1) When under any of the provisions of sections 580 to 583 the Governor is required to consult the Advisory Committee before exercising any power under any of those sections, or in fact does so, section 788 applies.

(2) If a person who is subject to a licence under section 581 or 582 is recalled to prison, the period during which the person was absent from prison pursuant to the licence counts as if the person had been imprisoned throughout that period, but does not count towards remission of the sentence under section 29 of the Prison Ordinance.

(3) The Governor, after consulting the Criminal Justice Council, must —

(a) establish criteria for the release prisoners on licence and for their recall;

(b) make rules governing applications for release, the revocation of licences, the recall of prisoners, the making of representations by or on behalf of prisoners and persons released on licence and other matters relating to the release of prisoners on licence, whether of a similar kind or not.

(4) Rules made under this section may, among other things —

(a) confer powers of arrest on police officers; and

(b) create offences carrying a maximum penalty of 3 months' imprisonment or a fine at level 5 on the standard scale, or both.

(5) Sections 580 to 583 apply to young offenders as provided by subsections (7) and (8) of section 728.
[Criminal Justice Ord. s.94 modified]

Miscellaneous provisions

585. Warrants for imprisonment
When a person has been sentenced to imprisonment by a court, a warrant under the hand of the person presiding at the trial ordering that the sentence is to be carried out in the prison is full authority to the Chief Police Officer and to all other persons for carrying into effect the sentence described in the warrant.
[SH and Gib precedents]

586. Place of imprisonment
A sentence of imprisonment imposed by a Falkland Islands court is to be served in the Falkland Islands unless the Governor, acting in his or her discretion, otherwise directs.
[SH and Gib precedents]

587. Exercise of powers of release

(1) Any power conferred by this Ordinance or any other enactment to release a person from a prison or other institution to which the Prison Ordinance applies, or from a place where a young offender is detained, may be exercised even if the person is not for the time being detained in that institution or place.

(2) A person released from a prison or other institution or place by virtue of this section is, after release, to be treated in all respects as if he or she had been released from that institution or place.

588. Warrants for arrest of escaped prisoners

(1) On an information in writing being laid before the Senior Magistrate or a justice of the peace and substantiated on oath, alleging that any person is an offender unlawfully at large from a prison or institution to which the Prison Ordinance applies, or from a place where a young offender is detained, in either case being a place in which the person is required to be detained after having been convicted of an offence, the Senior Magistrate or justice of the peace may issue a warrant to arrest the person and bring him or her before an appropriate court.

(2) For the purposes of this section "appropriate court" means —

(a) if the warrant was issued by the Senior Magistrate - the Magistrate's Court;

(b) if the warrant was issued by a justice of the peace - the Summary Court.

(3) If a person is brought before a court pursuant to a warrant of arrest under this section, the court must, if satisfied that the person is the person named in the warrant and as to the facts mentioned in the information, order the person to be returned to the prison or other institution or place where he or she is required to be detained.

PART 27 – FINES AND RECOGNISANCES

Imposing of fines

589. General power to impose a fine

(1) Subject to subsection (3), when a person is convicted of any offence, other than an offence or which the sentence is fixed by law, the court may impose a fine up to the limit, if any, prescribed in the penalty provision applicable to that offence, in addition to imposing any other punishment for the offence.

(2) If under any law the Magistrate's Court or the Summary Court has power to sentence an offender to imprisonment but not to a fine, the court may, unless the law expressly provides to the contrary, instead of sentencing the person to imprisonment, impose a fine —

(a) not exceeding level 3 on the standard scale; and

(b) not of such an amount as would subject the offender, in default of payment of the fine, to a longer term of imprisonment or detention than the term to which he or she is liable on conviction of the offence.

(3) Unless otherwise provided by any Ordinance, the Summary Court may not impose a fine on an adult exceeding £5,000.

(4) The Governor, after consulting the Criminal Justice Council, may by order amend the amount prescribed in subsection (3).

(5) The powers of a court to impose a fine on a youth are as provided in section 733.

(6) This section is subject to any enactment requiring the offender to be dealt with in a particular way.
[Criminal Justice Ord. ss.13 and 163; Admin. of Justice Ord. s.13]

590. Standard scale of fines – Schedule 8
(1) The standard scale of fines for offences is as set out in Part A of Schedule 8.

(2) The statutory maximum fine is the highest level of fine on the standard scale.

(3) Any provision in an enactment that provides —

(a) that a person convicted of an offence is liable on conviction to the statutory maximum fine, or a fine at a specified level on the standard scale; or

(b) confers power by subsidiary legislation to make a person liable on conviction of an offence to the statutory maximum fine, or a fine at a specified level on the standard scale,

is to be construed as referring respectively to the statutory maximum fine or the standard scale as set out in Schedule 8 from time to time.
[Criminal Justice Ord. s.11(1) to (4)]

591. Variation of level of fines
(1) The Governor in Council, after consulting the Criminal Justice Council, may by order amend any written law of the Falkland Islands which provides for a person convicted of an offence, other than an indictment-only offence, to be liable to a fine at a level on the standard scale prescribed in that provision, so as to vary the prescribed level.

(2) A variation in the prescribed level of fine effected by an order under subsection (1) does not apply in relation to an offence committed before the order is first published in the *Gazette.*
[Criminal Justice Ord. s.12]

592. Fixing of fines
(1) The amount of any fine fixed by a court must be such as, in the opinion of the court, reflects the seriousness of the offence.

(2) Before fixing the amount of any fine to be imposed on an offender who is an individual, a court must inquire into his or her financial circumstances as provided by section 593.

(3) In fixing the amount of any fine to be imposed on an offender (whether an individual or other person), a court must take into account the circumstances of the case including, among other things, the financial circumstances of the offender so far as they are known, or appear, to the court.

(4) Subsection (3) applies whether taking into account the financial circumstances of the offender has the effect of increasing or reducing the amount of the fine.

(5) If an individual offender has —

(a) been convicted in his or her absence;

(b) failed to comply with an order under section 593(1); or

(c) otherwise failed to co-operate with the court in its inquiry into his or her financial circumstances,

and the court considers that it has insufficient information to make a proper determination of the financial circumstances of the offender, it may make such determination as it thinks fit.
[UK Criminal Justice Act 2003 s.164]

593. Power to order statement as to offender's financial circumstances
(1) If an individual has been convicted of an offence, the court may, before sentencing him or her, make a financial circumstances order with respect to him or her.

(2) If the Magistrate's Court or the Summary Court has been notified that an individual desires to plead guilty without appearing before the court, the court may make a financial circumstances order with respect to that individual.

(3) In this section "a financial circumstances order" means, in relation to any individual, an order requiring the individual to give to the court, within a period specified in the order, such a statement of his or her financial circumstances as the court requires.

(4) An individual who without reasonable excuse fails to comply with a financial circumstances order commits an offence.
Penalty: A fine at level 3 on the standard scale.

(5) An individual who, in furnishing any statement for purposes of a financial circumstances order —

(a) makes a statement which he or she knows to be false in a material particular;

(b) recklessly furnishes a statement which is false in a material particular; or

(c) knowingly fails to disclose any material fact,

commits an offence.
Penalty: A fine at level 4 on the standard scale.

(6) Proceedings in respect of an offence under subsection (5) may, notwithstanding any rule about limitation of time, be commenced at any time within 2 years from the date of the commission of the offence or within 6 months from its first discovery by the prosecutor, whichever period expires the earlier.
[UK Criminal Justice Act 2003 s.162]

594. Remission of fines
(1) This section applies if a court has, in fixing the amount of a fine (but not any other pecuniary penalty), determined the offender's financial circumstances under section 592.

(2) If, on subsequently inquiring into the offender's financial circumstances, the court is satisfied that had it had the results of that inquiry when sentencing the offender it would —

(a) have fixed a smaller amount; or

(b) not have fined the offender,

it may remit the whole or part of the fine.

(3) If under this section the court remits the whole or part of a fine after a term of imprisonment has been fixed under section 599, it must reduce the term by the corresponding proportion.

(4) In calculating any reduction required by subsection (3), any fraction of a day is to be ignored.

(5) Neither the Magistrate's Court nor the Summary Court may remit any part of a fine imposed by, or sum due under a recognisance forfeited by —

(a) the Supreme Court;

(b) the Court of Appeal; or

(c) the Judicial Committee,

without the consent of the Supreme Court.
[UK Magistrate's Courts Act 1980 s.85 adapted; Criminal Justice Act 2003 s.165]

595. Power to allow time, etc.
(1) If a court imposes a fine on a person, or orders a person's recognisance to be forfeited, the court, on application by or on behalf of the person liable to make the payment, may make an order —

(a) allowing time for the payment of the fine or the amount due under the recognisance;

(b) directing payment of that amount by instalments of the amounts and on the dates specified in the order;

(c) in the case of a recognisance - discharging the recognisance or reducing the amount due under it.

(2) The court on ordering a person to pay a fine or recognisance must, unless a warrant of distress is issued under section 598, allow the person at least 7 days to pay the sum or the first instalment of the sum.

(3) If the court has allowed time for payment, the court may allow further time or order payment by instalments.

(4) If a court refuses to allow time for payment, it must state the reasons for not allowing the person time to pay.

(5) If time is allowed for payment, or payment by instalments is ordered, the court must not when convicting impose a term of imprisonment in the event of a future default in paying the sum unless the offender is present and the court decides that for special reason, whether having regard to the gravity of the offence, to the character of the offender or other special circumstances, it is expedient that in default of payment he or she should be imprisoned without further inquiry.

(6) If a court has ordered payment by instalments and default is made in the payment of any one instalment, proceedings may be taken as if the default had been made in the payment of all the instalments then remaining unpaid.

(7) The power conferred by this section to discharge a recognisance or reduce the amount due under it is in addition to the powers conferred by any other law relating to the discharge, cancellation, mitigation or reduction of recognisances or sums forfeited under them.

(8) This section does not apply to a fine imposed by the Supreme Court on appeal from a decision of the Magistrate's Court or the Summary Court.
[Criminal Justice Ord. s.14(1); UK Magistrate's Courts Act 1980 ss.75(3) and 85A; Powers of Criminal Courts (Sentencing) Act 2000 s.139 (part)]

Enforcement of fines and recognisances

596. Non-payment of fine, etc
(1) If it appears that a fine or other payment ordered to be made by a defendant has not been paid, the court must, on its own initiative, inquire into the circumstances and may make one or more of the orders mentioned in subsection (2).

(2) The orders which may be made under subsection (1) are —

(a) if there are exceptional circumstances in which the court judges it in the interests of justice to do so - remit the outstanding payment (or any part of it) and discharge the debtor from further liability in respect of it;

(b) make such fresh order as appears to be just as to the date by which or the instalments by which the outstanding amount is to be paid;

(c) in the case of a fine - revoke the original order for payment and substitute for it an alternative sentence that meets the justice of the case;

(d) make an attachment of earnings order in accordance with section 597;

(e) issue a distress warrant under section 598; or

(f) order the defendant to serve a term of imprisonment for non-payment in accordance with section 599.

(3) A justice of the peace may issue a summons or a warrant to secure the attendance of any person whose attendance before the court is necessary for the purposes of this section.

(4) If the original sentence or order was imposed by the Supreme Court, neither the Magistrate's Court nor the Summary Court may make an order under subsection (2)(d) but either court may commit the debtor, either in custody or on bail, to the Supreme Court.
[UK Magistrate's Courts Act 1980 s.75]

597. Attachment of earnings
(1) Without affecting any other power to enforce payment of money, the Supreme Court, the Magistrate's Court and the Summary Court may each make an attachment of earnings order to enforce the payment of any sum ordered to be paid by way of fine, costs, compensation or otherwise.

(2) In this section "attachment of earnings order" means an order directed to a person (in this section called "the employer") who appears to the court to be the employer of the person (in this section called "the debtor") ordered to pay the sum the payment of which is to be enforced.

(3) An attachment of earnings order is an order directing the employer to deduct from the salary or other remuneration of the debtor periodical sums as specified in the order, and to remit the sums to the proper officer of the court.

(4) The proper officer of the court for the purposes of subsection (3) is —

(a) in the case of the Supreme Court - the Registrar; and

(b) in the case of the Magistrate's Court or the Summary Court - the Clerk of the court.

(5) The Chief Justice may by criminal procedure rules prescribe the form and contents of an attachment of earnings order, and generally provide for the effective use of attachment of earnings orders.
[UK Courts Act 2003 Sched.5; Collection of Fines (Final Scheme) Order 2006]

598. Enforcement by distress
(1) Subject to the following provisions of this Part, if default is made in paying a fine or recognisance, the court may issue a warrant of distress for the purpose of paying the sum.

(2) A warrant of committal may be issued in respect of a person for failure to pay a fine or recognisance if it appears on the return to a warrant of distress that the money and goods of the person are insufficient to pay the fine or recognisance with the costs and charges of levying the sum.

(3) The period for which a person may be committed to prison under such a warrant must not, subject to the provisions of any other law, exceed the period applicable to the case under section 603(3).
[UK Magistrate's Courts Act 1980 s.76]

599. Imprisonment for non-payment of a fine – Schedule 9
(1) Subject to this section, if the court imposes a fine on any person or forfeits a person's recognisance, the court must, subject in the case of a young offender to section 731 make an order fixing a term of imprisonment or of detention for default which the person is to undergo if any sum which the person is liable to pay is not duly paid or recovered.

(2) A court must not commit a person to prison or order a person's detention pursuant to an order under subsection (1) unless —

(a) in the case of an imprisonable offence, the person appears to the court to have sufficient means to pay the sum forthwith;

(b) on being asked by the court whether he or she wishes to have time for payment, the person does not ask for time;

(c) the person asks the court to commit him or her to prison immediately;

(d) it appears to the court that the person is unlikely to remain long enough at a place of abode in the Falkland Islands to enable payment of the sum to be enforced by other methods;

(e) when the order is made the court sentences the person to immediate imprisonment, custody for life or detention for that or another offence, or so sentences the person for an offence in addition to forfeiting his or her recognisance, or the person is already serving a sentence of custody for life or a term of imprisonment or detention; or

(f) there are other special circumstances appearing to the court to justify immediate committal.

(3) The periods set out in the second column of Schedule 9 are the maximum periods of imprisonment or detention under subsection (1) applicable respectively to the amounts set out opposite them.

(4) If the amount due at the time imprisonment or detention is imposed is so much of any fine or forfeited recognisance as remains due after part payment, then, subject to subsection (5), the maximum period applicable to the amount is the period applicable to the whole sum reduced by the number of days that are proportionate to the total sum.

(5) In calculating the reduction required under subsection (4) —

(a) any fraction of a day is to be left out of account; and

(b) the maximum period must not be reduced to less than 5 days.

(6) If a person liable for the payment of a fine or a sum due under a recognisance to which this section applies is sentenced by a court to, or is serving or otherwise liable to serve, a term of imprisonment or a term of detention under any enactment creating a criminal offence, the court may order that any term of imprisonment or detention fixed under subsection (1) does not begin to run until after the end of the first-mentioned term.

(7) The power conferred by this section to discharge a recognisance or reduce the amount due under it is in addition to the powers conferred by any other enactment relating to the discharge, cancellation, mitigation or reduction of recognisances or sums forfeited under a recognisance.

(8) Subject to subsection (9), the powers conferred by this section are not restricted by any enactment about committal by any court to another court which authorises the court to which an offender is committed to deal with the offender in any way in which the court from which the offender was committed might have dealt with the offender.

(9) Any term fixed under subsection (1) in respect of a fine imposed pursuant to such an enactment, that is to say a fine which the court from which an offender is committed could have imposed, must not exceed the period applicable to that fine (if imposed by that court) under any provision of the Customs Ordinance.

(10) This section does not apply to a fine imposed by the Supreme Court on appeal against a decision of the Magistrate's Court or the Summary Court, but subsections (1) to (3) apply in relation to a fine imposed or recognisance forfeited by the Court of Appeal, or by the Judicial Committee on appeal from that court, as they apply in relation to a fine imposed or recognisance forfeited by a court.

(11) For the purposes of this section —

(a) in any reference to a term of imprisonment or other detention to which a person has been sentenced or which, or part of which, the person has served, consecutive terms and terms

which are wholly or partly concurrent are, unless the context otherwise requires, to be treated as a single term;

(b) a reference to a previous sentence is to be construed as a reference to a previous sentence passed by a court in the Falkland Islands.

[Criminal Justice Ord. s.14(2 to (11); UK Magistrate's Courts Act 1980 s.82 (part); Powers of Criminal Courts (Sentencing) Act 2000 s.139 (part)]

600. Enforcement of fines imposed and recognisances forfeited by Supreme Court

(1) Subject to subsection (5), a fine imposed or a recognisance forfeited by the Supreme Court is to be treated for the purposes of collection and enforcement of the fine or other sum as having been imposed or forfeited by the Magistrate's Court and, in the case of a fine, as having been so imposed on conviction by that court.

(2) Subsection (3) applies if the Magistrate's Court issues a warrant of commitment on a default in the payment of —

(a) a fine imposed by the Supreme Court; or

(b) a sum due under a recognisance forfeited by the Supreme Court.

(3) In such a case, the term of imprisonment or detention specified in the warrant of commitment as the term which the offender is liable to serve is —

(a) the term fixed by the Supreme Court under section 599(1); or

(b) if that term has been reduced under section 594, that term as so reduced.

(4) Subsections (1) to (3) apply in relation to a fine imposed or recognisance forfeited by the Court of Appeal, or by the Judicial Committee on appeal from that court, as they apply in relation to a fine imposed or recognisance forfeited by the Supreme Court.

[UK Powers of Criminal Courts (Sentencing) Act 2000 s.140]

601. Restriction on committal and means inquiry

(1) A court must not commit a person to prison for failing to pay a fine or recognisance or for want of sufficient distress to pay a fine or recognisance unless the court has inquired into the person's means in his or her presence.

(2) Subsection (1) does not apply if the person is in prison.

(3) The court may, for the purpose of enabling inquiry to be made under this section —

(a) issue a summons requiring the person to appear before the court at the time and place appointed in the summons; or

(b) issue a warrant to arrest the person and bring him or her before the court.

(4) On the failure of a person to appear before the court in answer to a summons under this section the court may issue a warrant to arrest the person and bring him or her before the court.

(5) A warrant issued under this section may be executed in like manner, and the like proceedings may be taken with a view to its execution, as if it had been issued under section 598.

(6) A warrant under this section ceases to have effect when the sum in respect of which the warrant is issued is paid to the police officer holding the warrant.
[UK Magistrate's Courts Act 1980 s.82 (part)]

602. Defect in distress warrant and irregularity in execution
(1) A warrant of distress issued for the purpose of paying a fine or recognisance must not, if it states that the fine or recognisance has been ordered to be paid, be held void by reason of any defect in the warrant.

(2) A person acting under a warrant of distress is not a trespasser *ab initio* by reason only of any irregularity in the execution of the warrant.

(3) Nothing in this section affects the claim of any person for special damages in respect of any loss caused by a defect in the warrant or irregularity in its execution.

(4) A person who removes any goods marked as articles impounded in the execution of a warrant of distress, or defaces or removes any such mark, commits an offence.
Penalty: A fine at level 1 on the standard scale.

(5) A person who has the duty of executing a warrant of distress and who —

(a) wilfully retains from the proceeds of a sale of the goods on which distress is levied;

(b) otherwise exacts any greater costs and charges than those properly payable; or

(c) makes any improper charge,

commits an offence.
Penalty: A fine at level 1 on the standard scale.
[UK Magistrate's Courts Act 1980 s.78]

603. Release from custody, etc. on payment
(1) If imprisonment or other detention has been imposed on any person by the order of the Magistrate's Court in default of payment of a fine or recognisance, or for want of sufficient distress to pay a fine or recognisance, then, on the payment of the fine or recognisance, together with the costs and charges, if any, of the commitment and distress —

(a) the order ceases to have effect; and

(b) if the person has been committed to custody the person must be released unless he or she is in custody for some other cause.

(2) If, after a period of imprisonment or other detention has been imposed on any person —

(a) in default of payment of a fine or recognisance; or

(b) for want of sufficient distress to pay a fine or recognisance,

payment is made of part of the fine or recognisance, the period of imprisonment or detention is to be reduced proportionately.

(3) In calculating the reduction required under subsection (2) any fraction of a day is to be ignored.
[UK Magistrate's Courts Act 1980 s.79]

604. Power of court to order search of person and application of money found
(1) If a court, on convicting a person, or on an appeal brought by any person —

(a) imposes a fine on a person or forfeits the person's recognisance;

(b) makes against a person any order for the payment of costs by a defendant; or

(c) makes a compensation order against a person,

then, if that person is before it, the court may order the person to be searched.

(2) Any money found —

(a) on a search under subsection (1); or

(b) on the arrest of a person ordered to pay a fine or recognisance; or

(c) on a person being taken to a prison or other place of detention in default of payment of the fine or recognisance,

may, unless the court otherwise directs, be applied towards payment of the fine or recognisance, and the balance, if any, must be returned to the person.

(3) The court must not allow the application of any money found on a person if it is satisfied that—

(a) the money does not belong to that person; or

(b) the loss of the money would be more injurious to the person's family than would be his or her detention.
[UK Magistrate's Courts Act 1980 s.80; Powers of Criminal Courts (Sentencing) Act 2000 s.142]

Miscellaneous

605. Disposal of fines and recognisances

(1) The Registrar or the Clerk of the respective court, as the case may be, must apply any moneys received on account of a sum ordered to be paid on a conviction as follows —

(a) firstly, in payment of any costs ordered on the conviction to be paid to the prosecutor;

(b) secondly, in payment of any damages or compensation so ordered to be paid to any person;

(c) thirdly in payment of any fine ordered to be paid by the defendant.

(2) Subject to any enactment relating to customs or excise, anything other than money forfeited on a conviction by a court, or the forfeiture of which may be enforced by the court, must be sold or otherwise disposed of in accordance with section 90 of the Interpretation and General Clauses Ordinance.

(3) Any fine imposed or recognisance forfeited by or under the authority of any enactment is to be paid into the Consolidated Fund.

[Criminal Justice Ord. s.16 modified; UK Magistrates Courts Act 1980 ss.139, 140 adapted]

606. Removal of limit on fines

(1) If, on or after the commencement of this Part, an offence would, apart from this subsection, be punishable on summary conviction by a maximum fine of £10,000 or more (however expressed), the offence is punishable on summary conviction on or after that day by a fine of any amount, but subject to section 733 (Limit on fines imposed in respect of youths).

(2) If, on or after the commencement of this Part, an enactment gives power to create an offence punishable on summary conviction by a maximum fine of £10,000 or more (however expressed), the power may be exercised to create an offence punishable on summary conviction by a fine of any amount.

[UK LASPO Act 2012 s.85]

PART 28 – COMPENSATION, RESTITUTION, DEPRIVATION, ETC.

Public compensation awards

607. Compensation and awards in relation to arrests

(1) A court by or before which a person ('A') is convicted of an imprisonable offence may recommend to the Legislative Assembly that the Assembly pay to any person ('B') who appears to the court to have been injured in endeavouring to arrest 'A' a sum specified in the recommendation, not exceeding £10,000.

(2) If before a recommendation is made under subsection (1) 'B' dies, the court may make a like recommendation for payment to the surviving spouse or children of 'B', not exceeding £50,000 if the death was a result of 'A' endeavouring to arrest 'B', or £10,000 in any other case.

(3) A court by or before which a person ('A') is convicted of an imprisonable offence may recommend to the Legislative Assembly that the Assembly pay to any person ('B') who appears to the court to have been active in or towards the arrest of ('B') a sum specified in the recommendation, not exceeding £1,000, to compensate 'B' for the expense, exertion, and loss of time involved in or towards the arrest.

(4) The Legislative Assembly must, if a court so recommends under subsection (1), (2) or (3), make to ('B'), or to the surviving spouse or children of B, if subsection (2) applies, a payment of money from the Consolidated Fund by way of compensation, in the amount recommended by the court in each case.
[Gibraltar & St Helena CPE Bill adapted]

Compensation orders

608. Compensation orders against convicted persons
(1) A court by or before which a person is convicted of an offence, instead of or in addition to dealing with the person in any other way, may, on application or otherwise, make an order (a "compensation order") requiring the person to —

(a) pay compensation for any personal injury, loss or damage resulting from that offence or any other offence which is taken into consideration by the court in determining sentence; or

(b) make payments for funeral expenses or bereavement in respect of a death resulting from any such offence, other than a death due to an accident arising out of the presence of a motor vehicle on a road,

subject to the following subsections and sections 609 and 610.

(2) A court must —

(a) consider making a compensation order in any case in which this section empowers it to do so; and

(b) give reasons, on passing sentence, for not making a compensation order if it does not make such an order in a case in which this section empowers it to do so.

(3) If the person is convicted of an offence the sentence for which is fixed by law, subsection (1) has have effect as if the words "instead of or" were omitted.

(4) If a person is convicted of any offence relating to property, the power conferred by subsection (1) includes a power to award compensation to any purchaser in good faith of any property in relation to which the offence was committed, for the loss of the property if the property is restored to the possession of the person entitled to it.
[Criminal Justice Ord. s.53 (part); UK Powers of Criminal Courts (Sentencing) Act 2000 s.130 (part) as amended by LASPOA 2012 s.63]

609. Compensation orders: Supplementary

(1) In the case of an offence under Part 12 (Theft and Fraud) of the Crimes Ordinance 2014, or under section 30 of the Road Traffic Ordinance, if the property in question is recovered, any damage to the property occurring while it was out of the owner's possession is to be treated for the purposes of section 608(1) as having resulted from the offence, however and by whomever the damage was caused.

(2) If a compensation order falls to be made in respect of injury, loss or damage (other than loss suffered by a person's dependants in consequence of the death) which was due to an accident arising out of the presence of a motor vehicle on a road —

(a) compensation is only payable for injury, loss or damage in respect of which the offender is uninsured in relation to the use of the vehicle;

(b) the amount to be paid may include an amount representing the whole or part of any loss of or reduction in preferential rates of insurance attributable to the accident.

(3) A vehicle, the use of which by or under the Road Traffic Ordinance is exempted from insurance is not uninsured for the purposes of subsection (2).

(4) If a compensation order is made in respect of injury, loss or damage due to an accident arising out of the presence of a motor vehicle on a road, the amount to be paid may include an amount representing the whole or part of any loss of or reduction in preferential rates of insurance attributable to the accident.

(5) A compensation order in respect of funeral expenses may be made for the benefit of anyone who incurred the expenses.

(6) If compensation is claimed in respect of bereavement —

(a) compensation is only payable for the benefit of a person for whose benefit a claim for damages for bereavement could be made under section 1A of the Fatal Accidents Act 1976 in its application to the Falkland Islands;

(b) the amount of compensation must not exceed the amount for the time being specified in section 1A(3) of that Act.

(7) A compensation order may be made against any person in respect of an offence taken into consideration under section 494(1) in determining the person's sentence.
[Criminal Justice Ord. s.53 (part); UK Powers of Criminal Courts (Sentencing) Act 2000 am. s.130 (part)]

610. Amount payable under a compensation order

(1) Subject to subsection (2), a compensation award under section 608 must be of an amount the court considers appropriate, having regard to any evidence and to any representations made by or on behalf of the defendant or the prosecutor.

(2) The compensation awarded by the Summary Court must not exceed £5,000.

(3) The compensation or total compensation payable under a compensation order or orders made by a court in respect of an offence or offences taken into consideration in determining sentence must not exceed the difference (if any) between the maximum amount specified in subsection (2) in respect of an offence or offences of which the offender has been convicted and the amount or total amounts (if any) which are in fact ordered to be paid in respect of that offence or those offences.

(4) Subject to subsection (3), the compensation payable under section 608 must be of an amount the court considers appropriate, having regard to any evidence and to any representations made by or on behalf of the defendant or the prosecutor.

(5) In deciding whether to make a compensation order against any person, and if so the amount to be paid by the person under the order, the court must have regard to the person's means so far as they appear or are known to the court.

(6) If the court considers that —

(a) it would be appropriate both to impose a fine and to make a compensation order; but

(b) the offender has insufficient means to pay both an appropriate fine and appropriate compensation,

the court must give priority to compensation, though it may impose a fine as well.
[Criminal Justice Ordinance s.53 (part); UK Powers of Criminal Courts (Sentencing) Act 2000 ss.130 (part), 131 and 141 adapted]

611. Compensation orders: Appeals
(1) The Supreme Court, on an appeal under Part 31 (Appeals to the Supreme Court) against conviction or sentence, may by order annul or vary any compensation order made by the Magistrate's Court or the Summary Court, as the case may be, whether or not the conviction is quashed or the sentence otherwise varied.

(2) The Court of Appeal, on an appeal against a conviction or sentence in the Supreme Court, may by order annul or vary any compensation order made by the Supreme Court, whether or not the conviction is quashed or the sentence otherwise varied.

(3) An appeal against a compensation order made on a conviction may be made, without appealing against the conviction or any other sentence imposed on the conviction, and the appellate court may by order annul or vary any compensation order made by the trial court.

(4) If the Supreme Court, on a revision of a case in the Magistrate's Court or the Summary Court under Part 31 restores a conviction, it may make any compensation order which the Magistrate's Court or the Summary Court, as the case may be, could have made at the trial.

(5) If the Court of Appeal on an appeal against an acquittal under the Court of Appeal Ordinance restores a conviction, it may make any compensation order which the Supreme Court could have made at the trial.

(6) There is no appeal from a compensation order made by the Supreme Court or the Court of Appeal in an appellate or revising capacity.

(7) A person in whose favour a compensation order is made is not entitled to receive the amount due to the person until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.

(8) The Chief Justice may by criminal procedure rules provide for the way in which a court is to deal with money paid in satisfaction of a compensation order while the entitlement of the person in whose favour it was made is suspended pending an appeal.

(9) If, as provided by section 609(7) a compensation order has been made against any person in respect of an offence taken into consideration under section 494(1) in determining the person's sentence —

(a) the order ceases to have effect if the person successfully appeals against the conviction of the offence or, if more than one, all the offences, of which the person was convicted in the proceedings in which the order was made;

(b) the person may appeal against the order as if it were part of the sentence imposed in respect of the offence or, if more than one, any of the offences, of which the person was so convicted.

[Criminal Justice Ord. s.54 (part); UK Powers of Criminal Courts (Sentencing) Act 2000 s.132]

612. Review of compensation orders

(1) At any time before a compensation order has been complied with or fully complied with, the court which made the order may, on the application of the person against whom it was made, discharge the order, or reduce the amount which remains to be paid, if it appears to the court—

(a) that the injury, loss or damage in respect of which the order was made has been held in civil proceedings to be less than was taken to be for the purposes of the order;

(b) in the case of an order in respect of the loss of any property - that the property has been recovered by the person in whose favour the order was made; or

(c) that the means of the person against whom the order was made are insufficient to satisfy in full both the order and a confiscation order under the Proceeds of Crime Ordinance made against the person in the same proceedings; or

(d) that the person against whom the compensation order was made has suffered a substantial reduction in means which was unexpected at the time when the order was made, and that the person's means seem unlikely to increase for a considerable period.

(2) The court may exercise a power conferred by subsection (1) only —

(a) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the compensation order could be varied or set aside; and

(b) before the person against whom the compensation order was made has paid into court the whole of the compensation which the order requires the person to pay.

(3) If the compensation order was made by the Supreme Court, neither the Magistrate's Court nor the Summary Court may exercise any power conferred by subsection (1) in a case where it is satisfied as mentioned in paragraph (c) or (d) of that subsection unless it has first obtained the consent of the Supreme Court.

(4) If a compensation order has been made on appeal, for the purposes of subsection (2) the order is deemed —

(a) if it was made on an appeal from the Magistrate's Court or the Summary Court – to have been made by that court;

(b) if it was made on an appeal from the Supreme Court or from the Court of Appeal - to have been made by the Supreme Court.

[Criminal Justice Ord. s.55; UK Powers of Criminal Courts (Sentencing) Act 2000 s.133]

613. Effect of compensation order on damages in civil proceedings

(1) This section has effect if a compensation order has been made in favour of any person in respect of any injury, loss or damage and a claim by the person in civil proceedings for damages in respect of the injury, loss or damage subsequently falls to be decided.

(2) The damages in the civil proceedings must be assessed without regard to the order; but the plaintiff may only recover an amount equal to the aggregate of —

(a) any amount by which the damages exceed the compensation; and

(b) a sum equal to any portion of the compensation which the plaintiff fails to recover,

and may not enforce the judgment, so far as it relates to a sum such as is mentioned in paragraph (b), without the leave of the court.

(3) If the whole or part of the amount awarded by the order remains unpaid and the court awards damages in the civil proceedings, then, unless the person against whom the order was made has ceased to be liable to pay the amount unpaid, the court must direct that the judgement —

(a) if it is for an amount not exceeding the amount unpaid under the order – is not to be enforced; or

(b) if it is for an amount exceeding the amount unpaid under the order – is not to be enforced as to a corresponding amount,

without the leave of the court.
[Criminal Justice Ord. s.56; UK Powers of Criminal Courts (Sentencing) Act 2000 s.134]

614. Enforcement of compensation orders
(1) An order under this Part for the payment of compensation by a defendant is enforceable under Part 27 (Fines and Recognisances) as if it were a fine imposed on a conviction.

(2) If a court making a compensation order considers that the period for which the person subject to the order is liable apart from this subsection to be committed to prison for default under the order is insufficient —

(a) the court may specify a longer period for that purpose, not exceeding 12 months in total;

(b) that period must be substituted as the maximum for which the person may be imprisoned for default in payment; and

(c) subsection (3) applies to reduce the specified period if, at the time of the person's imprisonment, he or she has made part payment under the order.

(3) If the amount due when imprisonment is imposed for failure to pay a sum due under a compensation order is the part remaining due after part payment, then, subject to subsection (4), the maximum period applicable to the amount is to be reduced proportionately to the amount already paid.

(4) In calculating the reduction required under subsection (3) —

(a) any fraction of a day is to be left out of account; and

(b) the maximum period must not be reduced to less than 5 days.

(5) A court may not specify under subsection (2) a period of imprisonment longer than that which it could order a person to undergo on imposing on the person a fine equal in amount to the sum required to be paid by the order.

(6) If a court makes an order against a person for the payment of costs or compensation, the court may —

(a) allow time for the payment of the sum due under the order;

(b) direct payment of that sum by instalments of amounts and on dates that the court specifies.

(7) If the person liable to pay is the person convicted, the court may direct that an order for compensation is to be paid out of any money taken from the person on arrest.

(8) No steps to enforce an order for compensation under this Part may be taken until the time for appealing against the award of compensation has passed or the person against whom the award was made has indicated that the person does not intend to appeal, or the appeal has been disposed of.
[Criminal Justice Ord. ss.15 and 57; UK Powers of Criminal Courts (Sentencing) Act 2000 s.14 adapted]

Restitution orders

615. Restitution orders
(1) This section applies if goods have been stolen, and either —

(a) a person is convicted of any offence with reference to the theft (whether or not the stealing is the gist of the offence); or

(b) a person is convicted of any other offence, but an offence as mentioned in paragraph (a) is taken into consideration in determining the person's sentence.

(2) If this section applies, the court by or before which the offender is convicted may on the conviction (whether or not the passing of sentence is in other respects deferred) —

(a) order anyone having possession or control of the stolen goods to restore them to any person entitled to recover them from then offender;

(b) on the application of a person entitled to recover from the person convicted any other goods directly or indirectly representing the stolen goods (as being the proceeds of any disposal or realisation of the whole or part of them or of goods so representing them) - order those other goods to be delivered or transferred to the applicant; or

(c) order that a sum not exceeding the value of the stolen goods is to be paid, out of any money of the person convicted which was taken out of the person's possession on his or her arrest, to any person who, if those goods were in the possession of the person convicted, would be entitled to recover them from the person.

(3) If the court has power on a person's conviction to make an order against the person both under paragraph (b) and under paragraph (c) of subsection (2) with reference to the stealing of the same goods, the court may make orders under both paragraphs provided that the person in whose favour the orders are made does not as a result recover more than the value of those goods.

(4) If the court on a person's conviction makes an order under subsection (2)(a) for the restoration of any goods, and it appears to the court that the person convicted —

(a) has sold the goods to a person acting in good faith; or

(b) has borrowed money on the security of them from a person so acting,

the court may order to be paid to the purchaser or lender, out of any money of the person convicted which was taken out of the person's possession on his or her arrest, a sum not exceeding the amount paid for the purchase by the purchaser or, as the case may be, the amount owed to the lender in respect of the loan.

(5) The court must not exercise the powers conferred by this section unless in the opinion of the court the relevant facts sufficiently appear from evidence given at the trial or the available documents, together with admissions made by or on behalf of any person in connection with any proposed exercise of the powers.

(6) In subsection (5) "the available documents" means —

(a) any written statements or admissions which were made for use, and would have been admissible, as evidence at the trial; and

(b) such written statements, depositions and other documents as were tendered by or on behalf of the prosecutor at any committal proceedings.

(7) Subject to subsection (8), references in this section to stealing are to be construed in accordance with Part 12 (Theft and Fraud) of the Crimes Ordinance 2014.
(8) In this section and section 616, "goods", unless the context otherwise requires, includes money and every other description of property (within the meaning of Part 12 of the Crimes Ordinance 2014) except land, and includes things severed from the land by stealing.

(9) An order may be made under this section in respect of money owed by the Government.

(10) The powers conferred by subsections (2)(c) and (4) are exercisable either on the court's own initiative or on the application of any person appearing to the court to be interested in the property concerned.
[UK Powers of Criminal Courts (Sentencing) Act 2000 ss.148 & 149 (part)]

616. Restitution orders: Appeals
(1) An appellate court may by order annul or vary a restitution order made by the trial court even if the conviction is not quashed, and the order, if annulled, does not take effect, and, if varied, takes effect as so varied.

(2) If a restitution order is made against any person in respect of an offence taken into consideration in determining the person's sentence —

(a) the order ceases to have effect if the person successfully appeals against the conviction of the offence or, if more than one, all the offences, of which the person was convicted in the proceedings in which the order was made;

(b) the person may appeal against the order as if it were part of the sentence imposed in respect of the offence or, if more than one, any of the offences, of which the person was so convicted.

(3) A restitution order made by any court must be suspended —

(a) in any case - until the end of the period for the time within which an appeal against conviction may be brought;

(b) if notice of appeal is given within that period - until the determination of the appeal.

(4) If the operation of a restitution order is suspended until the determination of an appeal, the order does not take effect as to the property in question if the conviction is quashed on appeal.

(5) Subsection (4) does not apply if the order is made under section 615(2)(a) or (b) and the court so directs, being of the opinion that the title to the goods to be restored or, as the case may be, delivered or transferred under the order is not in dispute.

(6) The Chief Justice may by criminal procedure rules provide for securing the safe custody of any property during the suspension of the operation of a restitution order.
[UK Powers of Criminal Courts (Sentencing) Act 2000 s.149 (part)]

Deprivation orders

617. Deprivation orders
(1) If a person is convicted of an offence and the court by or before which the person is convicted is satisfied that any property which has been lawfully seized from the person, or which was in the person's possession or under the person's control at the time when the person was apprehended for the offence or when a summons in respect of it was issued —

(a) has been used for the purpose of committing, or facilitating the commission of, any offence; or

(b) was intended by the person to be used for that purpose,

the court may (subject to subsection (6)) make an order under this section (a "deprivation order") in respect of that property.

(2) If a person is convicted of an offence and the offence, or an offence which the court has taken into consideration in determining the person's sentence, consists of unlawful possession of property which —

(a) has been lawfully seized from the person; or

(b) was in the person's possession or under the person's control at the time when the person was arrested for the offence of which he o she has been convicted or when a summons in respect of that offence was issued,

the court may (subject to subsection (6)) make a deprivation order in respect of that property.

(3) For the purposes of this section, facilitating the commission of an offence includes the taking of any steps after it has been committed for the purposes of disposing of any property to which it relates or avoiding arrest or detection.

(4) A deprivation order deprives the offender of all rights, if any, in the property to which it relates, and the property, if not already in police possession, must be taken into the possession of the police.

(5) Any power conferred on a court by subsection (1) or (2) may be exercised —

(a) whether or not the court also deals with the offender in any other way in respect of the offence of which the offender has been convicted; and

(b) without regard to any restrictions on deprivation or forfeiture in any other enactment.

(6) In considering whether to make a deprivation order in respect of any property, a court must have regard —

(a) to the value of the property; and

(b) to 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).

(7) If a person commits an offence to which this subsection applies by —

(a) driving, attempting to drive, or being in charge of a vehicle; or

(b) failing to comply with a requirement made under section 23 or 24 of the Road Traffic Ordinance (duty to give specimen of breath) in the course of an investigation into whether the offender had committed an offence while driving, attempting to drive or being in charge of a vehicle; or

(c) failing, as the driver of a vehicle, to comply with section 46 of the Road Traffic Ordinance (duty to give name and address, etc.),

the vehicle is to be regarded for the purposes of subsection (1) as used for the purpose of committing the offence or any offence of encouraging, or aiding and abetting the commission of the offence.

(8) Subsection (7) applies to —

(a) an offence under the Road Traffic Ordinance which is punishable with imprisonment; and

(b) an offence of manslaughter.

(9) Section 51 of the Police Ordinance 2000 applies, with the following modifications, to property which is in the possession of the police by virtue of this section —

(a) no application may be made under that section by any claimant of the property more than 6 months after the making of the order in respect of the property; and

(b) no such application will 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 for the purpose mentioned in subsection (1) of this section.

(10) Section 90 of the Interpretation and General Provisions Ordinance applies to the disposal of items which are the subject of an order under this section as if it were an order for forfeiture.

(11) An order made under this section on a conviction does not take effect until the expiration of the time within which an appeal against the conviction may be lodged (whether to the Court of Appeal or the Supreme Court, and if to the Supreme Court, whether by notice of appeal or by way of a case stated for the opinion of that court) or, if such an appeal is duly lodged, until the appeal is finally decided or abandoned.
[Criminal Justice Ord. s.59 modified; UK Powers of Criminal Courts (Sentencing) Act 2000 s.143; UK Obscene Publications Act 1959 s.3A as am. by Courts Act 1971, Criminal Law Act 1977 and PACE Act 1984]

Disqualification orders

618. Driving disqualification if vehicle used for crime
(1) This section applies if a person is convicted by or before a court of an offence punishable with imprisonment for a term of 2 years or more or, having been convicted by the Summary Court of such an offence, is committed to the Magistrate's Court for sentence.

(2) If the convicting court (or, in the case of committal for sentence, the Magistrate's Court) is satisfied that a motor vehicle was used, whether by the person convicted or by anyone else, for the purpose of committing, or facilitating the commission, of the offence in question, the court may order the person convicted to be disqualified, for such period as the court thinks fit, from holding or obtaining a licence to drive a motor vehicle granted under the Road Traffic Ordinance.

(3) Subsection (3) of section 617 applies for the purpose of this section as it applies for the purpose of that section.

(4) A court which makes an order under this section disqualifying a person from holding a driving licence as described in subsection (1) must require the person to produce any such licence held by him or her; and failure to comply with such a requirement is an offence under section 6(12) of the Road Traffic Ordinance.
[Criminal Justice Ord. s.60; UK Powers of Criminal Courts (Sentencing) Act 2000 s.147]

619. Disqualification from working with youths or vulnerable adults
(1) If a person is convicted of an offence to which this subsection applies, as provided by section 620(2), the person is by virtue of that conviction disqualified for life from working with youths or vulnerable adults.

(2) If a person is convicted of any offence in which the court finds that the person has engaged in relevant conduct with a youth aged under 16 or a vulnerable adult, the court which passes sentence may by order disqualify the person from working with youths or vulnerable adults for any period it thinks fit.

(3) Before making an order under subsection (2), the court must hear any representations that the prosecution or the defence wish to make, and must take all the circumstances of the case into account.

(4) A person who is disqualified under subsection (2) may appeal against the disqualification as if it were a sentence of the court, and the disqualification is subject to revision under Part 31 (Appeals to the Supreme Court).

(5) A disqualification under subsection (1) or (2) operates from the date of the conviction or the date on which the order is imposed, as the case may be, but if a conviction as mentioned in subsection (1), or which results in an order being made under subsection (2), is reversed on appeal, the disqualification is automatically lifted.
[UK Safeguarding Vulnerable Groups Act 2006 ss.3 and 5 adapted]

620. Provisions supplementary to section 619
(1) The offences to which section 619(1) applies are —

(a) any offence listed in Schedule 3 to the Crimes Ordinance 2014;

(b) an offence under section 87 of the Mental Health Ordinance;

(c) an attempt to commit the offence listed in paragraph (b);

(d) conspiracy to commit any of that offence;

(e) encouraging, or aiding and abetting, that offence.

(2) In section 619(1), "working with youths or vulnerable adults" means doing any of the following on a regular basis in relation to such persons —

(a) any form of teaching, training or instruction, unless the teaching, training or instruction is merely incidental to teaching, training or instruction of persons who are not youths or vulnerable adults;

(b) any form of care or supervision, unless the care or supervision is merely incidental to care for or supervision of persons who are not youths or vulnerable adults;

(c) any form of advice or guidance provided wholly or mainly for youths or vulnerable adults, if the advice or guidance relates to their physical, emotional or educational well-being;

(d) any form of treatment or therapy provided for children or vulnerable adults;

(e) moderating a public electronic interactive communication service which is likely to be used wholly or mainly by children or vulnerable adults; or

(f) driving a vehicle which is being used only or mainly for the purpose of conveying children or vulnerable adults.

(3) In the case of a youth aged 16 or over or of a vulnerable adult, paragraphs (a), (b), (c) and (d) of subsection (1) do not prevent the activities mentioned in those paragraphs being carried out solely and necessarily in connection with the employment of the youth or vulnerable adult.

(4) For the purpose of section 619(2) —

(a) "relevant conduct" is —

(i) conduct which endangers or is likely to endanger a child or vulnerable adult;

(ii) conduct which, if repeated against or in relation to a child or vulnerable adult, would endanger or be likely to endanger that person;

(iii) conduct involving sexual material relating to children (including possession of such material);

(iv) conduct involving sexually explicit images depicting violence against human beings (including possession of such images);

(v) conduct of a sexual nature involving a child;

(b) conduct endangers a child or vulnerable adult if the conduct —

(i) harms the child or vulnerable adult;

(ii) causes the child or vulnerable adult to be harmed; or

(iii) puts the child or vulnerable adult at risk of harm;

(c) "sexual material relating to children" means —

(i) indecent images of children; or

(ii) material (in whatever form) which portrays children involved in sexual activity and which is produced for the purposes of giving sexual gratification; and

(d) "image" means an image produced by any means, whether of a real or imaginary subject.
[UK Safeguarding Vulnerable Groups Act 2006 Schedule 4 adapted]

Return of property

621. Return of property taken from defendant
(1) If —

(a) a summons or warrant has been issued requiring any person to appear or be brought before the Magistrate's Court or the Summary Court to answer to an information; or

(b) a person has been arrested without a warrant for an offence,

and property has been taken from the person after the issue of the summons or warrant or, as the case may be, on or after the person's arrest without a warrant, the police must report the taking of the property, with particulars of it, to either the Magistrate's Court or the Summary Court.

(2) If the court considers that the whole or any part of the property can be returned to the defendant consistently with the interests of justice and the safe custody of the defendant, it may direct that the property, or any part of it, is to be returned to the defendant or to some other person as the defendant designates, but without affecting the provisions of section 51 of the Police Ordinance 2000.

(3) Despite 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.
[Powers of Criminal Courts (Sentencing) Act 2000 s.144 adapted]

622. Order for disposal of property
(1) During or at the conclusion of any trial the court may make any order it thinks fit for the disposal, whether by way of deprivation, forfeiture, confiscation or otherwise, of any property produced before it regarding which any offence appears to have been committed or which has been used for the commission of or to facilitate the commission of any offence.

(2) In a case where no evidence has been called, if the prosecutor wishes any property to be disposed of under subsection (1), he or she must after the conviction of the defendant produce the property before the court and the court may make an order under subsection (1).

(3) If the court orders the deprivation, forfeiture or confiscation of any property under subsection (1) but does not make an order for its destruction or for its delivery to any person, the court may direct that the property is to be kept or sold and that the property or, if sold, the proceeds of it is to be held as it directs until some person establishes to the satisfaction of the court a right to the property or proceeds.

(4) If no person establishes a right under subsection (3) within 6 months from the date of forfeiture or confiscation, the property or the proceeds of it must be paid into and form part of the Consolidated Fund.

(5) The powers conferred on the court by subsections (1) and (3) must be exercised subject to any special provisions regarding deprivation, forfeiture, confiscation, destruction, detention or delivery in the enactment under which the conviction was made or in any other applicable written law, including section 51 of the Police Ordinance 2000 and section 90 of the Interpretation and General Clauses Ordinance.

(6) If an order is made under this section, or section 51 of the Police Ordinance 2000, the order must not, unless the property is livestock or is subject to speedy and natural decay, be carried out until the period allowed for appealing against the order has passed or, if an appeal is made, until its disposal.

(7) In this section, "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any person, but also any property into or for which the same has been converted or exchanged and anything acquired by such conversion or exchange, whether immediately or otherwise.
[UK Police Property Act 1897 s.1]

623. Application of proceeds of forfeited property
(1) If a court makes an order under section 622 in a case where —

(a) the offender has been convicted of an offence which has resulted in a person suffering personal injury, loss or damage; or

(b) any such offence is taken into consideration by the court in determining sentence,

the court may also make an order that any proceeds which arise from the disposal of the property and which do not exceed a sum specified by the court are to be paid to that person.

(2) The court may make an order under this section only if it is satisfied that but for the inadequacy of the offender's means it would have made a compensation order under this Part under which the offender would have been required to pay compensation of an amount not less than the specified amount.

(3) An order under this section has no effect —

(a) before the end of the period specified in section 623(4); or

(b) if a successful application under section 619 has been made.
[UK Powers of Criminal Courts (Sentencing) Act 2000 s. 145]

Miscellaneous provisions

624. Effect of appeal
No steps to enforce an order under this Part may be taken until the time for appealing against the order has passed or the person against whom the award was made has indicated that the person does not intend to appeal, or the appeal has been disposed of.

625. Power to vary financial limits
The Governor, after consulting the Criminal Justice Council, may by order vary any financial limits prescribed in this Part, other than the limit prescribed by section 607.

626. Saving for other powers of forfeiture, etc.
This Part does not affect the operation of any provisions of any other law relating to compensation for victims of crime, compensation for unlawful imprisonment, confiscation of the proceeds of crime, forfeiture of anything used in connection with the commission of crime or similar matters.

PART 29 – REHABILITATION OF OFFENDERS

Rehabilitation of offenders

627. Rehabilitated persons and spent convictions
(1) If an individual has been convicted of any offence or offences, and the conditions mentioned in subsection (2) are satisfied, then, after the end of the rehabilitation period applicable to the conviction (including any extension under section 631 of the period originally applicable) or, if that rehabilitation period ended before the commencement of this Part, after the commencement of this Part, that individual is for the purposes of this Part to be treated as a rehabilitated person in respect of the conviction and the conviction is for those purposes to be treated as spent.

(2) The conditions are that the individual —

(a) did not have imposed on him or her in respect of that conviction a sentence which is excluded from rehabilitation under this Part; and

(b) has not had imposed on him or her in respect of a subsequent conviction during the rehabilitation period applicable to the first-mentioned conviction in accordance with section 631 a sentence which is excluded from rehabilitation under this Part.

(3) Subject to subsection (4), a person does not become a rehabilitated person for the purposes of this Part in respect of a conviction unless the person has served or otherwise undergone or complied with any sentence imposed on him or her in respect of that conviction.

(4) The following do not prevent a person from becoming a rehabilitated person for the purposes of this Part —

(a) failure to pay a fine or other sum adjudged to be paid by or imposed on a conviction, or breach of a condition of a recognisance or bond to keep the peace or be of good behaviour;

(b) breach of any condition or requirement applicable in relation to a sentence which renders the person to whom it applies liable to be dealt with for the offence for which the sentence was imposed, or, if the sentence was a suspended sentence of imprisonment, liable to be dealt with in respect of that sentence (whether or not, in any case, the person is in fact so dealt with).

(c) failure to comply with any requirement of a suspended sentence supervision order imposed under section 571.

(5) If in respect of a conviction a person has been sentenced to imprisonment with an order under section 566 (Partly suspended sentence), the person is to be treated for the purposes of subsection (3) above as having served the sentence when the person completes service of so much of the sentence as was by that order required to be served in prison.

(6) In this Part "sentence" includes any order made by a court in dealing with a person in respect of his or her conviction of any offence or offences, other than —

(a) an order for committal or any other order made in default of payment of a fine or other sum adjudged to be paid by or imposed on a conviction, or for want of sufficient distress to satisfy any such fine or other sum;

(b) an order dealing with a person in respect of a suspended sentence of imprisonment.

(7) In this Part, references to a conviction, however expressed, include references to —

(a) a conviction by or before a court outside the Falkland Islands; and

(b) any finding (other than a finding linked with a finding of mental disorder) in any criminal proceedings or in care proceedings under the Children Ordinance 2014 (or any Ordinance replaced by that Ordinance) that a person has committed an offence or done the act or made the omission charged.

(8) A conviction in respect of which an order is made discharging the person absolutely or conditionally, imposing a community sentence, or, before the repeal of Part III of the Criminal Justice Ordinance, placing the person convicted on probation, is to be treated as a conviction for the purposes of this Part and the person in question may become a rehabilitated person in respect of that conviction and the conviction may become a spent conviction for those purposes accordingly.

(9) This section is in addition to and does not affect the operation of Part 8 (Simple and Conditional Cautions) as regards spent cautions.
[Criminal Justice Ord. s.132; UK Rehabilitation of Offenders Act 1974 s.1]

628. Effect of rehabilitation

(1) Subject to the following provisions of this Part, and except as provided by section 372, if a person has become a rehabilitated person for the purposes of this Part in respect of a conviction—

(a) the person is to be treated for all purposes in law as a person who has not committed or been charged with or prosecuted for or convicted of or sentenced for the offence or offences which were the subject of that conviction;

(b) no evidence is admissible in any proceedings before a court exercising jurisdiction or performing functions in the Falkland Islands to prove that the person has committed or been charged with or prosecuted for or convicted of or sentenced for any offence which was the subject of that conviction;

(c) the person must not, in any such proceedings, be asked, and, if asked, is not required to answer, any question relating to his or her past which cannot be answered without acknowledging or referring to that conviction or any circumstances ancillary to that conviction.

(2) If a question seeking information with respect to a person's previous convictions, offences, conduct or circumstances is put to the person or to any other person otherwise than in proceedings before a court —

(a) the question is to be treated as not relating to spent convictions or to any circumstances ancillary to spent convictions, and the answer to it may be framed accordingly; and

(b) the person questioned is not to be subject to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose a spent conviction or any circumstances ancillary to a spent conviction in his or her answer to the question.

(3) Any obligation imposed on any person by any rule of law or by the provisions of any agreement or arrangement to disclose any matters to any other person does not extend to requiring the person to disclose a spent conviction or any circumstances ancillary to a spent conviction (whether the conviction is that person's own or another's).

(4) A conviction which has become spent or any circumstances ancillary to such a conviction, or any failure to disclose a spent conviction or any such circumstances, is not a proper ground for dismissing or excluding a person from any office, profession, occupation or employment, or for prejudicing the person in any way in any occupation or employment.

(5) For the purposes of this section and section 632 any of the following are circumstances ancillary to a conviction —

(a) the offence or offences which were the subject of that conviction;

(b) the conduct constituting that offence or those offences;

(c) any process or proceedings preliminary to that conviction, any sentence imposed in respect of that conviction, any proceedings (whether by way of appeal or otherwise) for reviewing that conviction or any such sentence, and anything done pursuant to or undergone in compliance with any such sentence.

(6) For the purposes of this section and section 632, "proceedings before a court" include, in addition to proceedings before a court of law, proceedings before any tribunal, body or person that has power —

(a) by virtue of any enactment, law, custom or practice;

(b) under the rules governing any association, institution, profession, occupation or employment; or

(c) under any provision of an agreement providing for arbitration with respect to questions arising under it,

to decide any question affecting the rights, privileges, obligations or liabilities of any person, or to receive evidence affecting the determination of any such question.
[Criminal Justice Ord. s.133; UK Rehabilitation of Offenders Act 1974 s.4 (part)]

629. Excluded sentences
(1) The sentences excluded from rehabilitation under this Part are —

(a) a sentence of imprisonment for life;

(b) a sentence of imprisonment for more than 48 months;

(c) a sentence of detention during Her Majesty's pleasure.

(2) Any other sentence is a sentence subject to rehabilitation under this Part.
[Criminal Justice Ord. s.134(1); UK Rehabilitation of Offenders Act 1974 s.5(1) am. by LASPO Act 2012 and adapted]

630. Rehabilitation periods for particular sentences – Schedule 10
(1) For the purposes of this Act and subject to subsections (3) and (4), the rehabilitation period for a sentence is the period —

(a) beginning with the date of the conviction in respect of which the sentence is imposed; and

(b) ending at the time listed in Schedule 10 in relation to that sentence:

(2) In Schedule 10, the age of the defendant is the age at the date of conviction.

(3) For the purposes of this section —

(a) consecutive terms of imprisonment, and terms which are wholly or partly concurrent (being terms of imprisonment or detention imposed in respect of offences of which a person was convicted in the same proceedings) are to be treated as a single term;

(b) no account is to be taken of any subsequent variation, made by a court in dealing with a person in respect of a suspended sentence of imprisonment, of the term originally imposed; and

(c) a sentence imposed by a court outside the Falkland Islands is to be treated as a sentence of that one of the descriptions mentioned in this section that most nearly corresponds to the sentence imposed.

(4) References in this section to the period during which a probation order, a care order or supervision order under the Children Ordinance 2014 (or any Ordinance replaced by that Ordinance), or a community sentence was in force include references to any period during which an order or sentence imposed in substitution for such an order or sentence is or was in force.

(5) In this section and section 631, a reference to a probation order is to such an order made under Part III of the Criminal Justice Ordinance before that Part was repealed by this Ordinance.
[Criminal Justice Ord. s.134(2); UK Rehabilitation of Offenders Act 1974 s.5(1A) to (11) am. by Policing & Crime Act 2009 s.18 and LASPO Act 2012 s.139]

631. The rehabilitation period applicable to a conviction

(1) If only one sentence is imposed in respect of a conviction (not being a sentence excluded from rehabilitation under this Part) the rehabilitation period applicable to the conviction is, subject to the following provisions of this section, the period applicable to the sentence in accordance with section 630.

(2) If more than one sentence is imposed in respect of a conviction (whether or not in the same proceedings) and none of the sentences imposed is excluded from rehabilitation under this Part, then, subject to this section, if the periods applicable to those sentences in accordance with section 630 differ, the rehabilitation period applicable to the conviction is the longer or the longest (as the case may be) of those periods.

(3) Without affecting subsection (2), if in respect of a conviction a person was conditionally discharged or placed on probation, or made the subject of a community sentence, and after the end of the rehabilitation period applicable to the conviction in accordance with subsection (1) or (2) the person is dealt with, in consequence of a breach of the conditional discharge, probation order or community sentence, for the offence for which the order for conditional discharge or probation order was made or community sentence imposed, subsection (4) applies.

(4) If the rehabilitation period applicable to the conviction in accordance with subsection (2) (taking into account any sentence imposed when the person is so dealt with) ends later than the rehabilitation period previously applicable to the conviction —

(a) the person is to be treated for the purposes of this Part as not having become a rehabilitated person in respect of that conviction; and

(b) the conviction is for those purposes to be treated as not having become spent,

in relation to any period falling before the end of the new rehabilitation period.

(5) Subject to subsection (7), if during the rehabilitation period applicable to a conviction —

(a) the person convicted is convicted of a further offence; and

(b) no sentence excluded from rehabilitation under this Part is imposed on the person in respect of the later conviction,

and if the rehabilitation period applicable in accordance with this section to either of the convictions would end earlier than the period so applicable in relation to the other, the rehabilitation period which would (apart from this subsection) end the earlier is extended so as to end at the same time as the other rehabilitation period.

(6) If a person is convicted of a further offence during a rehabilitation period in respect of an offence, then —

(a) if the rehabilitation period is the rehabilitation period applicable to an order imposing on the person any disqualification, disability, prohibition or other penalty, the rehabilitation period applicable to the later conviction is not extended by reference to that period; but

(b) if any other sentence is imposed in respect of the first-mentioned conviction for which a rehabilitation period is prescribed by section 630, the rehabilitation period applicable to the later conviction is, to be calculated by reference to the period applicable to that sentence or, if more than one such sentence is imposed, by reference to the longer or longest of the periods so applicable to those sentences, as if the period in question were the rehabilitation period applicable to the first-mentioned conviction.

(7) For the purposes of subsection (6)(a),any conviction by or before a court outside the Falkland Islands of an offence involving conduct which, if it had taken place in the Falkland Islands, would not have constituted an offence in the Falkland Islands, is to be disregarded.
[Criminal Justice Ord. s.135; UK Rehabilitation of Offenders Act 1974 s.6]

632. Limitations on rehabilitation under this Part, etc.
(1) Nothing in section 628(1) affects —

(a) the Governor's power under section 71 of the Constitution to pardon an offender;

(b) the power under the Prison Ordinance or under Part 26 (Custodial Sentences) to release a prisoner on licence;

(c) the enforcement by any process or proceedings of any fine or other sum adjudged to be paid by or imposed on a spent conviction;

(d) the issue of any process for the purpose of proceedings in respect of any breach of a condition or requirement applicable to a sentence imposed in respect of a spent conviction; or

(e) the operation of any enactment by virtue of which, in consequence of any conviction, a person is subject, otherwise than by way of sentence, to any disqualification, disability, prohibition or other penalty the period of which extends beyond the rehabilitation period applicable in accordance with section 631 to the conviction.

(2) Except as provided in section 637 (references in court to spent convictions), nothing in section 628(1) affects the determination of any issue, or prevents the admission or requirement of any evidence, relating to a person's previous convictions or to circumstances ancillary to it —

(a) in any criminal proceedings before a court in the Falkland Islands, including any appeal or reference in a criminal matter;

(b) in any proceedings relating to adoption or to the guardianship, wardship, marriage, custody, care or control of, or access to, any minor, or to the provision by any person of accommodation, care or schooling for minors;

(c) in any care proceedings under the Children Ordinance 2014 or on appeal from any such proceedings, or in any proceedings relating to the variation

(d) in any proceedings in which the person is a party or a witness, if, when the issue or the admission or requirement of the evidence falls to be decided, the person consents to the determination of the issue or, as the case may be, the admission or requirement of the evidence despite the provisions of section 628(1).

(3) If at any stage in any proceedings before a court in the Falkland Islands the court is satisfied, in the light of any considerations which appear to it to be relevant (including any evidence which has been or may thereafter be put before it), that justice cannot be done in the case except by admitting or requiring evidence relating to a person's spent convictions or to circumstances ancillary to them, the court may admit or, as the case may be, require the evidence in question despite the provisions of section 628(1), and may decide any issue to which the evidence relates in disregard, so far as necessary, of those provisions.

(4) Subsection (3) does not apply to proceedings to which, by virtue of section 629(1) or of an order made under subsection (5), section 628(1) has no application, or proceedings to which section 635 applies)

(5) The Governor, after consulting the Criminal Justice Council, may by order exclude the application of section 628(1) in relation to any proceedings specified in the order (other than

proceedings to which section 635 applies) to the extent and for the purposes specified in the order.

(6) No order made by a court with respect to any person otherwise than on a conviction may be included in any list or statement of that person's previous convictions given or made to any court which is considering how to deal with the person in respect of an offence.
[Criminal Justice Ord. s.136 modified; UK Rehabilitation of Offenders Act 1974 s.7]

633. Exceptions to rehabilitation – Schedule 11

(1) Section 628(2) does not apply in relation to any question asked by or on behalf of any person in the course of the duties of his or her office or employment, in order to assess the suitability —

(a) of the person to whom the question relates for admission to any of the professions specified in Part 1 of Schedule 11;

(b) of the person to whom the question relates for any office or employment specified in Part 2 of Schedule 11;

(c) of the person to whom the question relates or of any other person to pursue any occupation specified in Part 3 of Schedule 11 or to pursue it subject to a particular condition or restriction; or

(d) of the person to whom the question relates or of any other person to hold a licence, certificate or permit of a kind specified in Part 4 of Schedule 11 or to hold it subject to a particular condition or restriction,

if the person questioned is informed at the time the question is asked that, by virtue of this section, spent convictions are to be disclosed.

(2) Section 628(2) does not apply in relation to any question asked in the course of duties by or on behalf of a person employed in the service of the Government or of the Crown in right of the Falkland Islands or any statutory body prescribed for the purposes of this section by the Governor by order, after consulting the Criminal Justice Council, if —

(a) the question is asked in order to assess, for the purpose of safeguarding national security, the suitability of the person to whom the question relates or of any other person; and

(b) the person questioned is informed at the time the question is asked that, by virtue of this section, spent convictions are to be disclosed for the purpose of safeguarding that security.

(3) Section 628(2) does not apply in relation to any question asked by or on behalf of a person ('A') in the course of A's duties at work, in order to assess the suitability of another person ('B') to work with children, if —

(a) the question relates to B;

(b) one of the following applies —

(i) B lives on the premises where B's work with children would normally take place and the question relates to a person ('C') living in the same household as B;

(ii) B lives on the premises where B's work with children would normally take place and the question relates to a person ('C') who regularly works on those premises at a time when the work with children usually takes place; or

(iii) the work for which B's suitability is being assessed is working with children which would normally take place on premises other than premises where B lives and the question relates to a person who lives on those other premises or to a person who regularly works on them at a time when the work takes place; and

(c) the person to whom the question relates is informed at the time the question is asked that, by virtue of this section, spent convictions are to be disclosed.

(4) Section 628(2) does not apply in relation to any question asked by or on behalf of a person ('A') in the course of A's duties to assess the suitability of another person ('B') to adopt children in general or a child in particular if —

(a) the question relates to B; or

(b) the question relates to a person over the age of 18 living in the same household as B,

and if the person to whom the question relates is informed at the time the question is asked that, by virtue of this section, spent convictions are to be disclosed.

(5) Section 628(3) does not apply in relation to any question asked by or on behalf of any person ('A') in the course of the duties of A's work, in order to assess the suitability of a person ('B') to provide day care for children if —

(a) the question relates to B; or

(b) the question relates to a person who lives on the premises which are or are proposed to be day care premises,

and if the person to whom the question relates is informed at the time the question is asked that, by virtue of this section, spent convictions are to be disclosed.

(6) Section 628(4) does not apply in relation to the dismissal or exclusion of any person from any profession specified in Part 1 of Schedule 11, or from any office or employment or occupation specified in Part 2 of that Schedule, or from any occupation specified in Part 3 of that Schedule.

(7) Section 628(4) does not apply in relation to any action taken for the purpose of safeguarding national security.

(8) Section 628(4) does not apply in relation to any proceedings specified in Part 5 of Schedule 11 to the extent that a decision needs to be taken in those proceedings relating to a person's spent conviction or to circumstances ancillary to a conviction.
[Criminal Justice Ord. RO (Exceptions) Order 1989; UK Rehabilitation of Offenders Act 1974 s.4 (part); UK Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (part)]

634. Exceptions: Supplementary
(1) For the purpose of section 633 and Schedule 11, unless the context otherwise requires —

"day care premises" means any premises at which day care for children (as defined in the Children Ordinance 2014) is provided and children are looked after;

"work" includes —

(a) work of any kind, whether paid or unpaid, and whether under a contract of service or apprenticeship, under a contract for services, or otherwise than under a contract; and

(b) an office established by or by virtue of an enactment;

"work with children" means any work which is normally concerned with the provision of any form of information, advice or guidance wholly or mainly to children which relates to their physical, emotional or educational well-being and includes giving such advice by means of telephone or other form of electronic communication including the internet and mobile telephone text messaging.

(2) Schedule 11 applies in respect of all convictions and findings of guilt whatsoever and whatever the age of the person concerned at the date of any such conviction or finding of guilt.

(3) If, by virtue of section 633, the operation of any provision of this Part is excluded in relation to spent convictions, the exclusion is to be taken to extend to spent convictions for offences of every description.
[UK Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (part)]

635. Defamation actions
(1) This section applies to any action for libel or slander begun after the commencement of this Part by a rehabilitated person and founded upon the publication of any matter imputing that the claimant has committed or been charged with or prosecuted for or convicted of or sentenced for an offence which was the subject of a spent conviction.

(2) Nothing in section 628(1) affects an action to which this section applies if the publication complained of took place before the conviction in question became spent, and the following provisions of this section do not apply in any such case.

(3) Subject to subsections (5) and (6), nothing in section 628(1) prevents the defendant in an action to which this section applies from relying on any defence of justification or fair comment

or of absolute or qualified privilege which is available to the defendant, or restricts the matters the defendant may establish in support of any such defence.

(4) Without limiting subsection (3), if in any such action malice is alleged against a defendant who is relying on a defence of qualified privilege, nothing in section 628(1) restricts the matters he or she may establish in rebuttal of the allegation.

(5) A defendant in any such action is not by virtue of subsection (3) entitled to rely upon the defence of justification if the publication is proved to have been made with malice.

(6) Subject to subsection (7), a defendant in any such action is not, by virtue of subsection (3), entitled to rely on any matter or adduce or require any evidence for the purpose of establishing the defence that the matter published constituted a fair and accurate report of judicial proceedings, if it is proved that the publication contained a reference to evidence which was ruled to be inadmissible in the proceedings by virtue of section 628(1).

(7) Subsection (3) applies without the qualifications imposed by subsection (6) in relation to —

(a) a report of judicial proceedings contained in any *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;

(b) a report or account of judicial proceedings published for *bona fide* educational, scientific or professional purposes, or given in the course of any lecture, class or discussion given or held for any of those purposes.

[Criminal Justice Ord. s.137; UK Rehabilitation of Offenders Act 1974 s.8]

Disclosure of spent convictions and cautions

636. Unauthorised disclosure of spent convictions

(1) In this section —

(a) "official record" means a record which —

(i) contains conviction information; and

(ii) is kept for the purposes of its functions by any court, police force, Government department or other public authority in the Falkland Islands;

(b) "conviction information" means information imputing that a named or otherwise identifiable rehabilitated living person ("the rehabilitated person") has committed or been charged with or prosecuted for or convicted of or sentenced for any offence which is the subject of a spent conviction; and

(c) "relevant person" means any person who, in the course of his or her official duties has or at any time has had custody of or access to any official record or the information contained in it.

(2) Subject to an order under subsection (5), a relevant person commits an offence if, knowing or having reasonable cause to suspect that any conviction information he or she has obtained in the course of those duties is conviction information, the person discloses it, otherwise than in the course of those duties, to another person.
Penalty: A fine at level 4 on the standard scale.

(3) In proceedings for an offence under subsection (2) it is a defence to show that the disclosure was made —

(a) to the rehabilitated person or to another person at the express request of the rehabilitated person; or

(b) to a person whom the defendant reasonably believed to be the rehabilitated person or to another person at the express request of a person whom the defendant reasonably believed to be the rehabilitated person.

(4) A person who obtains any conviction information from any official record by means of fraud, dishonesty or a bribe commits an offence.
Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(5) The Governor, after consulting the Criminal Justice Council, may by order make provision for excepting the disclosure of conviction information derived from an official record from the provisions of subsection (2) in the cases or classes of case specified in the order.

(6) Proceedings for an offence under subsection (2) or (4) may not be commenced except by, or with the consent of, the Attorney General.
[Criminal Justice Ord. s.138; UK Rehabilitation of Offenders Act 1974 s.9]

637. References to spent convictions and cautions in court proceedings
(1) The court and every legal practitioner appearing in a court should not refer to a spent conviction or caution if such reference can reasonably be avoided.

(2) After a verdict of guilty —

(a) the court must be provided with a statement of the defendant's record for the purpose of sentence;

(b) the record should contain all previous convictions and cautions, but those which are spent should, as far as possible, be marked as such.

(3) No person should refer in open court to a spent conviction or caution without the authority of the judge or person presiding, which authority should not be given unless the interests of justice so require.

(4) A person when passing sentence should make no reference to spent convictions or cautions unless it is necessary to do so to explain the sentence being passed.

(5) In this section and section 638 "spent caution" has the meaning given to it by section 136.
[UK Practice Direction (Criminal Proceedings: Consolidation) 2002 para.1.6]

638. Character reports and protected convictions and cautions
(1) Subject to this section, a spent conviction or spent caution may be disclosed in a report on the antecedents and character of a defendant prepared by a police officer for the purpose of section 637(2)(a) (a "character report".)

(2) A protected conviction or caution must not be included in a character report.

(3) A conviction is a protected conviction if the conditions in subsection (4) are satisfied and —

(a) if the person was under 18 years at the time of the conviction - 5 ½ years or more have passed since the date of the conviction; or

(b) if the person was 18 years or over at the time of the conviction - 11 years or more have passed since the date of the conviction.

(4) The conditions referred to in subsection (3) are that —
(a) the offence of which the person was convicted was not a listed offence;

(b) no custodial sentence was imposed in respect of the conviction; and

(c) the person has not been convicted of any other offence at any time.

(5) A caution is a protected caution if it was given to a person for an offence other than a listed offence and —

(a) if the person was under 18 years at the time the caution was given - 2 years or more have passed since the date on which it was given; or

(b) if the person was 18 years or over at the time the caution was given - 6 years or more have passed since the date on which it was given.

(6) For protected convictions and cautions the following will apply —

(a) a cautions administered to a young offender will not be subject to disclosure after a period of 2 years;

(b) an adult caution will not be subject to disclosure after a period of 6 years;

(c) a conviction received as a young offender resulting in a non-custodial sentence will not be subject to disclosure after a period of 5 1/2 years.

(d) an adult conviction resulting in a non-custodial sentence will not be subject to disclosure after a period of 11 years;

(e) a conviction will still be subject to disclosure if there is some other conviction on the individual's record, whether as a young offender or an adult.

(7) In subsections (4)(a) and (5) "listed offence" means —

(a) an offence listed in Schedule 3 or 4 to the Crimes Ordinance 2014;

(b) an offence under the Medicines Ordinance relating to prescribing of medicinal products;

(c) an offence under Part12 of the Mental Health Ordinance;

(d) any offence relating to child minding, day care, private fostering or the registration or administration of a children's home;

(e) an offence superseded (whether directly or indirectly) by any offence falling within paragraphs (a) to (d);

(f) an offence under any enactment specified by the Governor by order, after consulting the Criminal Justice Council;

(g) attempting or conspiring to commit any offence falling within paragraphs (b) to (f);

(h) encouraging, or aiding and abetting, any such offence;

(i) an offence under the law of any country or territory outside the Falkland Islands which corresponds to any offence under the law of the Falkland Islands falling within paragraphs (a) to (h).

[UK Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013 Art.2A]

Disregarded convictions and cautions

639. Certain convictions and cautions to be disregarded

(1) A person who has been convicted of, or cautioned for, an offence under any of the offences mentioned in subsection (2) may apply to the Governor for the conviction or caution to become a disregarded conviction or caution.

(2) The offences are any offence under —

(a) section 12 of the UK Sexual Offences Act 1956 (buggery);

(b) section 13 of that Act (gross indecency between men);

(c) section 61 of the UK Offences against the Person Act 1861 (corresponding earlier offences),

as applied to the Falkland Islands until repealed by the UK Sexual Offences Act 2003.

(3) A conviction or caution becomes a disregarded conviction or caution when conditions A and B are met.

(4) Condition A is that it appears to the Governor in Council, after consulting the Criminal Justice Council, that —

(a) the other person involved in the conduct constituting the offence consented to it and was aged 16 or over; and

(b) any such conduct now would not be an offence under section 289 of the Crimes Ordinance 2014 (Sexual activity in a public lavatory).

(5) Condition B is that the Governor has given notice of the decision to the applicant under section 640(5) and at least 14 days have expired since the notice was given.
[UK Protection of Freedoms Act 2012 s. 92]

640. Procedure on an application
(1) An application under section 639 must be in writing and must state —

(a) the name, address and date of birth of the applicant;

(b) the name and address of the applicant at the time of the conviction or caution;

(c) so far as known to the applicant, the time when and the place where the conviction was made or the caution given and, for a conviction, the case number; and

(d) any other information the Governor reasonably requires.

(2) An application may include representations by the applicant or written evidence about the matters mentioned in condition A in section 639(4).

(3) In considering whether to make a decision of the kind mentioned in condition A in section 639(4), the Governor in Council, after consulting the Criminal Justice Council, must, in particular, consider —

(a) any representations or evidence included in the application; and

(b) any available record of the investigation of the offence and of any proceedings relating to it that the Governor considers to be relevant.

(4) The Governor may not hold an oral hearing for the purpose of deciding whether to make a decision of the kind mentioned in condition A in section 639(4).

(5) If the Governor, after consulting as aforesaid —

(a) decides that it appears as mentioned in condition A in section 639(4); or

(b) makes a different decision in relation to the matters mentioned in that condition,

the Governor must record the decision in writing and give notice of it to the applicant.
[UK Protection of Freedoms Act 2012 ss. 93 and 94]

641. Effect of disregard on police and other records
(1) The Governor must by notice direct the relevant data controller to delete details contained in relevant official records, of a disregarded conviction or caution.

(2) A notice under subsection (1) may be given at any time after condition A in section 639(4) is met, but no deletion is to have effect before condition B in subsection (5) of that section is met.

(3) Subject to that, the relevant data controller must delete the details as soon as reasonably practicable.

(4) Having done so, the relevant data controller must give notice to the person who has the disregarded conviction or caution that the details of it have been deleted.

(5) In this section —

"delete", in relation to relevant official records, means record with the details of the conviction or caution concerned —

(a) the fact that it is a disregarded conviction or caution; and

(b) the effect of it being such a conviction or caution;

"the names database" means the names database held by the police force and by the UK Police National Computer for the use of police officers;

"official records" means records containing information about persons convicted of, or cautioned for, offences and kept by the Royal Falkland Islands Police Force, or by any court or government department of and in the Falkland Islands for the purposes of its functions;

"prescribed" means prescribed by the Governor by order, after consulting the Criminal Justice Council;

"relevant data controller" means —

(a) in relation to the names database, the Chief Police Officer;

(b) in relation to other relevant official records, a prescribed person;

"relevant official records" means —

(a) the names database; and

(b) any other prescribed official records.

[UK Protection of Freedoms Act 2012 s.95]

642. Effect of disregard for disclosure and other purposes

(1) A person who has a disregarded conviction or caution is to be treated for all purposes in law as if the person has not —

(a) committed the offence;

(b) been charged with, or prosecuted for, the offence;

(c) been convicted of the offence;

(d) been sentenced for the offence; or

(e) been cautioned for the offence.

(2) In particular —

(a) no evidence is to be admissible in any proceedings before a court exercising its jurisdiction or functions in the Falkland Islands to prove that the person has done, or undergone, anything within subsection (1)(a) to (e); and

(b) the person is not, in any such proceedings, to be asked (and, if asked, is not to be required to answer) any question relating to the person's past which cannot be answered without acknowledging or referring to the conviction or caution or any circumstances ancillary to it.

(3) If a question is put to a person, other than in such proceedings, seeking information with respect to the previous convictions, cautions, offences, conduct or circumstances of any person—

(a) the question is to be treated as not relating to any disregarded conviction or caution, or any circumstances ancillary to it (and the answer to the question may be framed accordingly); and

(b) the person questioned is not to be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose that conviction or caution or any circumstances ancillary to it in answering the question.

(4) Any obligation imposed on any person by any enactment or rule of law or by the provisions of any agreement or arrangement to disclose any matters to any other person is not to extend to requiring the disclosure of a disregarded conviction or caution or any circumstances ancillary to it.

(5) A disregarded conviction or caution, or any circumstances ancillary to it, is not a proper ground for —

(a) dismissing or excluding a person from any office, profession, occupation or employment; or

(b) prejudicing the person in any way in any office, profession, occupation or employment.

(6) This section is subject to subsection (7) but otherwise applies despite any enactment or rule of law to the contrary.

(7) Nothing in this section affects —

(a) any power of the Governor under section 71 of the Constitution to grant a free pardon, grant a respite from the execution of any punishment, substitute a less severe form of punishment or remit the whole or any part of any punishment; or

(b) the power of any court under any enactment to vary or quash any sentence on appeal or review.

[UK Protection of Freedoms Act 2012 ss.96 and 97 adapted]

643. Supplementary provisions

(1) In section 642 "proceedings before a court" includes (in addition to proceedings before any of the ordinary courts of law) proceedings before any tribunal, body or person having power —

(a) by virtue of any enactment, law, custom or practice;

(b) under the rules governing any association, institution, profession, occupation or employment; or

(c) under any provision of an agreement providing for arbitration with respect to questions arising under that agreement,

to determine any question affecting the rights, privileges, obligations or liabilities of any person, or to receive evidence affecting the determination of any such question.

(2) For the purposes of section 642, circumstances ancillary to a conviction are any circumstances of —

(a) the offence which was the subject of the conviction;

(b) the conduct constituting the offence;

(c) any process or proceedings preliminary to the conviction;

(d) any sentence imposed in respect of the conviction;

(e) any proceedings (whether by way of appeal or otherwise) for reviewing the conviction or any such sentence;

(f) anything done pursuant to, or undergone in compliance with, any such sentence.

(3) For the purposes of section 642, circumstances ancillary to a caution are any circumstances of—

(a) the offence which was the subject of the caution;

(b) the conduct constituting the offence;

(c) any process preliminary to the caution (including consideration by any person of how to deal with the offence and the procedure for giving the caution);

(d) any proceedings for the offence which take place before the caution is given;

(e) anything which happens after the caution is given for the purpose of bringing any such proceedings to an end; and

(f) any judicial review proceedings relating to the caution.
[UK Protection of Freedoms Act 2012 s.98]

644. Appeal against refusal to disregard convictions or cautions
(1) The applicant may appeal to the Supreme Court if —

(a) the Governor makes a decision of the kind mentioned in section 640(5)(b); and

(b) the Supreme Court gives permission for an appeal against the decision.

(2) On such an appeal, the Supreme Court must make its decision only on the basis of the evidence that was available to the Governor.

(3) If the Supreme Court decides that it appears as mentioned in condition A in section 639(4), it must make an order to that effect.

(4) Otherwise it must dismiss the appeal.

(5) A conviction or caution to which an order under subsection (3) relates becomes a disregarded conviction or caution when the period of 14 days beginning with the day on which the order was made has ended.

(6) There is no appeal from a decision of the Supreme Court under this section.
[UK Protection of Freedoms Act 2012 s.99]

645. Advisors
(1) The Governor in Council, after consulting the Criminal Justice Council, may appoint persons to advise whether, in any case referred to them by the Governor, the Governor should decide as mentioned in condition A in section 639(4).

(2) The Governor may disclose to a person so appointed such information (including anything within section 640(3)(a) or (b)) as the Governor considers relevant to the provision of such advice.

(3) The Governor may pay expenses and allowances to a person so appointed.
[UK Protection of Freedoms Act 2012 s.100]

CHAPTER 9 – COSTS

PART 30 – COSTS IN CRIMINAL CASES

646. Interpretation of Part
(1) In this Part —

"costs order" means an order for payment of the costs of a defendant or a prosecutor, pursuant to this Part;

"defendant" includes a person who is accused in an information or indictment and a person who is convicted at a trial and appeals against the conviction or sentence;

"witness " means any person properly attending to give evidence, whether or not the person gives evidence or is called at the instance of one of the parties or of the court, but does not include a person attending as a witness to character only unless the court has certified that the interests of justice required the person's attendance.
[UK Prosecution of Offences Act 1985 s.21 (part)]

647. Award of costs
(1) A court may order the payment of costs —

(a) to the prosecutor, whether public or private, by a person convicted of an offence;

(b) to any person acquitted of any offence, by the prosecutor, whether public or private, if the court considers that the prosecutor had no reasonable grounds for prosecuting the person;

(c) to the defendant in a trial, by the prosecutor, if the court considers that the charge or indictment, as the case may be, contains unnecessary matter, or is of unnecessary length, or is materially defective in any respect and that the defendant has incurred unnecessary costs as a result;

(d) to the respondent to an appeal, by an appellant, if the appeal fails;

(e) to an appellant, by a respondent, if the appeal is successful;

(f) to any person in any matter of an interlocutory nature, including a request for an adjournment, if the person has been put to any expense when in the opinion of the court the applicant had no reasonable or proper grounds for making the application.

(2) The costs awarded under subsection (1) —

(a) must be a sum that appears to the court to be just and reasonable in the circumstances of the case; and

(b) without affecting sections 648 and 649, must take account of any plea of guilty and the manner in which the parties have conducted the case.

(3) Costs awarded against a prosecutor (not being a private prosecutor) are payable out of the Consolidated Fund.

(4) Costs payable to a prosecutor by a defendant who has been granted legal aid are payable out of legal aid funds.

(5) Costs awarded on an appeal are payable out of the Consolidated Fund, unless the award —

(a) is against a private prosecutor, in which case the prosecutor is liable to pay them;

(b) is against a legally aided person, in which case the legal aid funds are liable to pay them.

(6) A costs order against a youth must not exceed —

(a) the amount of any fine that is imposed on the youth (if a fine is imposed); or

(b) the limit on the fine that could be imposed on the youth under section 733.

(7) No costs in a criminal matter may be awarded against legal aid funds except as provided by subsection (4).
[UK Prosecution of Offences Act 1985 ss.16 to 18 adapted]

648. Costs orders in special circumstances

(1) If a court is satisfied that one party to criminal proceedings has incurred costs as a result of an unnecessary or improper act or omission by, or on behalf of, another party to the proceedings, the court may make an order for the payment of those costs by that other party, subject to subsection (2).

(2) A costs order made under subsection (1) —

(a) may be made at any time during the proceedings;

(b) must take account of any other order as to costs which has been made in respect of the proceedings;

(c) must be taken into account in the making of any other order as to costs in respect of the proceedings; and

(d) must specify the amount to be paid by the relevant party under the order.

(3) A court may order the payment out of the Consolidated Fund of such sums as appear to the court to be reasonably necessary —

(a) to compensate any person who is called by the court as a witness in the proceedings or who in the opinion of the court necessarily attends for the purpose of the proceedings otherwise than to give evidence, for the expense, trouble or loss of time properly incurred in or incidental to that attendance, at the court or elsewhere;

(b) to cover the proper expenses of an interpreter who is required because of the defendant's lack of English, except as provided in section 652(4);

(c) to compensate a medical practitioner (other than one employed by the Government) who makes an oral or written report to the court pursuant to a request made by the court under any provision of this Ordinance, for the expenses properly incurred in or incidental to reporting to the court;

(d) to cover the proper fee or costs of a person appointed by the court under any provision of this Ordinance to represent the interests of any defendant or witness, and any expenses properly incurred in providing such a person with evidence or other material in connection with the appointment.

[UK Prosecution of Offences Act 1985 s.19 adapted]

649. Costs against legal practitioners

(1) In any criminal proceedings, a court may disallow, or (as the case may be) order the legal practitioner concerned to meet, the whole of any wasted costs or such part of them as may be determined by the court in accordance with relevant criminal procedure rules, or in the absence of such rules, as the court thinks fit.

(2) A legal practitioner against whom action is taken by the Magistrate's Court or the Summary Court under subsection (1) may appeal to the Supreme Court, and a legal practitioner against whom action is taken by the Supreme Court under subsection (1) may appeal to the Court of Appeal.

(3) In this section, "wasted costs" means any costs incurred by a party —

(a) as a result of any improper, unreasonable, or negligent act or omission on the part of a legal practitioner, or any employee of a legal practitioner; or

(b) which, in the light of any such act or omission occurring after they were incurred, the court considers it is unreasonable to expect that party to pay.

[UK Prosecution of Offences Act 1985 s.19A]

650. Costs against third parties

(1) A court may at any time during the course of criminal proceedings before the court make a third party costs order, if the conditions in subsection (3) are satisfied.

(2) A "third party costs order" is an order as to the payment of costs incurred by a party to criminal proceedings by a person who is not a party to those proceedings ("the third party").

(3) The conditions are that —

(a) there has been serious misconduct (whether or not constituting a contempt of court) by a person who is not a party to those proceedings; and

(b) the court considers it appropriate, having regard to that misconduct, to make a third party costs order against the person.

(4) The Chief Justice may by criminal procedure rules specify types of misconduct in respect of which a third party costs order may not be made.

(5) Any other order as to costs which has been made in respect of the proceedings may be varied upon, or taken account of in, the making of a third party costs order.

(6) Account must be taken of any third party costs order in the making of any other order as to costs in respect of the proceedings.

(7) A person against whom a third party costs order has been made in the Magistrate's Court or the Summary Court may appeal to the Supreme Court against the order.

(8) A person against whom a third party costs order has been made in the Supreme Court may appeal to the Court of Appeal against the order.

[UK Prosecution of Offences Act 1985 s.19B]

651. Appeals on costs

(1) An appeal may be brought to the Supreme Court against any award of costs of over £50 by the Magistrate's Court or the Summary Court, but only if the leave of the Magistrate's Court or the Summary Court, as the case may be, or of a judge is given for the bringing of the appeal.

(2) Subject to subsection (3) an appeal may not be brought —

(a) against an order of the Magistrate's Court or the Summary Court refusing to award costs;

(b) against an order of the Supreme Court in respect of costs, including an order on an appeal under subsection (1).

(3) A court hearing an appeal relating to any other matter than costs may vary any order relating to costs made by the court from whose decision the appeal is made.

(4) An appellate court may by order annul or vary a costs order made by the trial court even if the conviction is not quashed or the sentence varied, and the order, if annulled, does not take effect, and, if varied, takes effect as so varied.

652. Assessment of costs

(1) Subject to this Part, costs should be reasonably sufficient to compensate the person to whom they are awarded for any expenses properly incurred in the conduct of the prosecution, defence, appeal or application, as the case may be, including any preliminary or incidental proceedings.

(2) For the purposes of this Part, the costs of any party to proceedings include the expense of compensating any witness called by the party for the expenses, trouble or loss of time properly incurred in or incidental to attendance by the witness.

(3) Costs ordered to be paid under this Part may include the reasonable cost of any transcript of a record of proceedings made, in accordance with relevant criminal procedure rules, for the purposes of an appeal or application.

(4) If, in any proceedings in a criminal cause or matter or in either of the cases mentioned in subsection (5), an interpreter is required because of the defendant's lack of English, the expenses properly incurred are to be paid out of the Consolidated Fund.

(5) The cases are —

(a) if an information charging the defendant with an offence is laid before a justice of the peace but not proceeded with and the expenses are incurred on the employment of the interpreter for the proceedings on the information; and

(b) if the defendant is sent for trial but not tried and the expenses are incurred on the employment of the interpreter for the proceedings in the Supreme Court.

(6) The amount to be paid under a costs order must —

(a) if the court considers it appropriate for the amount to be specified and the person in whose favour the order is made agrees the amount - be specified in the order; and

(b) in any other case - be determined in accordance with relevant criminal procedure rules.

(7) If a court makes a costs order but is of the opinion that there are circumstances which make it inappropriate that the person in whose favour the order is made should recover the full amount mentioned in subsection (1), the court must, after hearing representations from the person —

(a) assess what amount would, in its opinion, be just and reasonable; and

(b) specify that amount in the order.

(8) If a person ordered to be retried is acquitted at the retrial, the costs which may be ordered to be paid under this section include —

(a) any costs which, at the original trial, could have been ordered to be paid under this section if the person had been acquitted; and

(b) if no order was made under this section in respect of the person's expenses on appeal - any sums for the payment of which such an order could have been made.

(9) Costs payable under this Part and not specified by the court are to be assessed by the Registrar in the case of the Supreme Court and by the Clerk of the court in the case of the Magistrate's Court or the Summary Court.

(10) Sections 98 to 102 of the Court of Appeal Rules (which provide for assessment and taxation of costs on appeal to the Court of Appeal) apply to the making of costs orders under this Part by the Court of Appeal unless and until the Chief Justice makes criminal procedure rules for the assessment of costs on appeal.
[UK Prosecution of Offences Act 1985 ss.16 (part) and 21 (part)]

653. Enforcement of costs orders
(1) Sums allowed for costs under this Part must in all cases be specified in the conviction, sentence or order, but may be made subject to assessment as provided by section 652.

(2) If a court makes an order against a person for the payment of costs, the court may —

(a) allow time for the payment of the sum due under the order;

(b) direct payment of that sum by instalments of amounts and on dates that the court specifies.

(3) An order under this Part for the payment of costs by a defendant is enforceable under Part 27 (Fines and Recognisances) as if it were a fine imposed on a conviction.

(4) An order under this Part for the payment of costs by any other party or by a legal practitioner is enforceable as a civil debt.

(5) If the person liable to pay is the person convicted, the court may direct that an order for costs is to be paid out of any money taken from the person on arrest.

(6) No steps to enforce an order under this Part may be taken until the time for appealing against the award of costs has passed or the person against whom the award was made has indicated that the person does not intend to appeal, or the appeal has been disposed of.
[Criminal Justice Ord s.15; UK Powers of Criminal Courts (Sentencing) Act 2000 s.141 adapted]

654. Criminal procedure rules
(1) The Chief Justice may by criminal procedure rules make provision giving effect to this Part, and in particular, but without limiting that power, may, after consulting the Criminal Justice Council —

(a) with the approval of the Governor (acting in his or her discretion), prescribe the scales or rates of payments of any costs payable out of the Consolidated Fund pursuant to a costs order;

(b) prescribe the expenses which may be included in such costs;

(c) prescribe the circumstances in which and conditions under which such costs may be allowed and paid;

(d) provide for the review, as respects costs payable out of the Consolidated Fund pursuant to a costs order, of any decision on taxation, or determination of the amount, of the costs; and

(e) provide for the repayment of overpaid costs by the person to whom they were paid.

(2) Any provision made by or under this Part enabling any sum to be paid out of the Consolidated Fund has effect subject to relevant criminal procedure rules.
[UK Prosecution of Offences Act 1985 s.20]

655. Saving provisions
(1) Nothing in this Part affects the provision in any law for the payment of the costs of the prosecution or defence of any offence out of any assets, money or fund or by any person other than the prosecutor or defendant.

(2) Costs awarded under this Part may be awarded in addition to any compensation awarded under Part 28 (Compensation, Restitution, Deprivation, etc.).

(3) This Part does not displace —

(a) the provision about costs on the abandonment of an appeal in section 658(2);

(b) the provisions about costs on entry of a plea of guilty in absence under Part 16 (Summary Procedure),

or any other specific statutory provision about payment of costs in criminal proceedings.

CHAPTER 10 – APPEALS

PART 31 – APPEALS TO AND FROM THE SUPREME COURT
Appeals to Supreme Court

656. Right of appeal to Supreme Court in criminal proceedings

(1) A person convicted by the Magistrate's Court or the Summary Court may appeal to the Supreme Court —

(a) if the person pleaded guilty - against the sentence;

(b) if the person did not plead guilty - against the conviction or sentence, or both.

(2) A person sentenced by the Magistrate's Court or the Summary Court for an offence in respect of which a probation order or conditional discharge has been previously made may appeal to the Supreme Court against the sentence.

(3) An appeal may be made against a conviction resulting in an absolute or conditional discharge, even though such a discharge may for certain purposes not be regarded as a conviction.

(4) In this section "sentence" includes any order made on conviction by the Magistrate's Court or the Summary Court, except —

(a) an order for the payment of costs;

(b) an order under any enactment which enables a court to order the destruction of an animal, fish or bird;

(c) an order made pursuant to any enactment under which the court has no discretion as to the making of the order or as to its terms.

(5) If a person is ordered by the Magistrates' Court or Summary Court to enter into a recognisance with or without sureties to keep the peace or to be of good behaviour, the person may appeal to the Supreme Court and in the case of any such appeal —

(a) the other party to the proceedings which were the occasion of the making of the order is the respondent to the appeal;

(b) in relation to an appellant in custody for failure to comply with the order, 153 (Bail on appeal) applies, with necessary modifications, as if the appeal were an appeal against a

conviction;

(c) the appeal may be treated as an appeal against conviction for purposes of the grant of legal aid.

[UK Magistrates' Courts Act 1980 s.108]

657. Notice of appeal

(1) An appeal under section 656 is commenced by the appellant giving notice of appeal to the Clerk of the court and to the other party within 21 days after the day on which the decision of the Magistrates' Court or Summary Court was given.

(2) For the purpose of subsection (1), the day on which the decision of the Magistrates' Court or Summary Court is given is —

(a) if the court adjourns the trial of an information after conviction - the day on which the court sentences or otherwise deals with the offender;

(b) if the court defers sentence - the day to which sentence is deferred.

(3) A notice of appeal must —

(a) be in writing; and

(b) state the grounds of appeal.

(4) The time for giving notice of appeal may be extended, either before or after it expires, by direction of the Chief Justice, on an application in writing to the Registrar, specifying the grounds of the application.

(5) If the Chief Justice extends the time for giving notice of appeal, the Registrar must give notice of the extension to —

(a) the appellant; and

(b) the Clerk of the court,

and the appellant must give notice to any other party to the appeal.

(6) On receiving a notice of appeal, the Clerk of the court must send the notice and the record of the proceedings to the Registrar, who must —

(a) enter the appeal; and

(b) give notice of the date, time and place of the hearing to the appellant, any other party to the appeal and the Clerk of the court.

(7) A notice required by this section to be given to any person may be sent by post in a registered letter addressed to the person at the person's last or usual place of residence.
[UK Criminal Procedure Rules 2005 rule 63]

658. Abandonment of appeal

(1) An appellant may abandon an appeal to the Supreme Court in a criminal proceeding by giving notice in writing, not later than the third day before the day fixed for hearing the appeal, to the Registrar, with a copy to the Clerk of the court.

(2) If notice of abandonment of an appeal has been duly given by the appellant —

(a) the Magistrate's Court or the Summary Court, as the case may be, may issue process for enforcing its decision, subject to anything already suffered or done under it by the appellant; and

(b) the Magistrate's Court or the Summary Court, as the case may be, may, on the application of the other party to the appeal, order the appellant to pay to that party any costs that appear to the court to be just and reasonable in respect of expenses properly incurred or work done by or on behalf of that party in connection with the appeal before notice of abandonment was given to that party.

(3) Costs ordered to be paid under this section are enforceable as a civil debt.
[UK Magistrates' Courts Act 1980 s.109]

659. Duties of Registrar

(1) The Registrar must, in respect of any criminal appeal that has not been abandoned —

(a) take all necessary steps for obtaining a hearing under this Part of any appeals of which notice is given to the Registrar; and

(b) obtain and lay before the Chief Justice in proper form all documents, exhibits, and other things relating to the proceedings in the court before which the appellant was tried that appear to be necessary for the proper determination of the appeal.

(2) Any documents, exhibits, or other things connected with the proceedings on the trial of any person, who, if convicted, is entitled or may be authorised to appeal, must be kept in the custody of the Magistrates' Court or Summary Court, as the case may be, in accordance with relevant rules, for the time provided by the rules, and subject to any power given by the rules for the conditional release of any such documents, exhibits, or things from that custody.

(3) The Registrar must provide the necessary forms and instructions in relation to notices of appeal under this Part to any person who demands them, and to the Clerk of the court.

(4) The Chief Police Officer must cause —

(a) the forms and instructions referred to in subsection (4) to be placed at the disposal of

prisoners wishing to appeal; and

(b) any notice of appeal given by a prisoner in custody to be forwarded on behalf of the prisoner to the Registrar.

(5) In this section "the relevant rules" means —

(a) the Falkland Islands Court of Appeal Rules as they apply to criminal appeals to the Court of Appeal, but replacing references to the Court of Appeal by references to the Supreme Court, references to the Supreme Court by references to the Magistrate's Court or the Summary Court as the case may be, and references to the Registrar by references to the Clerk of the Court, and with other appropriate modifications; or

(b) any replacement of those rules that applies to appeals to the Supreme Court in criminal matters.

[Court of Appeal Ord. (part) by analogy; SH Criminal Procedure Ord.; Gibraltar CPE Act]

660. Summary dismissal of appeal

(1) If it appears to the Chief Justice that any notice of an appeal against a conviction or sentence, does not show any substantial ground of appeal, the Chief Justice may, if he or she considers that the appeal is frivolous or vexatious, and can be decided without adjourning the same for a full hearing, dismiss the appeal summarily, without calling on any persons to attend the hearing or to appear for the Crown on the appeal, despite any other provisions of this Part.

(2) For the purpose of section 681 of this Ordinance and section 5(1) of the Court of Appeal Ordinance, a decision by the Chief Justice under this section is an interlocutory decision of the Supreme Court in its appellate capacity.

(3) The powers of the Chief Justice under subsection (1) may be exercised while the Chief Justice is outside the Falkland Islands.

[Court of Appeal Ord. (part) by analogy]

661. Procedure at hearing

(1) An appeal to the Supreme Court under section 656 is to be decided by the Supreme Court after —

(a) perusing a copy, certified as a true copy by the Clerk of the court, of the notes made the Clerk of the proceedings before the Magistrates' Court or Summary Court, as the case may be, or other transcript of those proceedings;

(b) perusing the Grounds of Appeal and any Respondent's Notice or further written legal submission which has been made by either party; and

(c) hearing the parties to the appeal or their legal practitioners.

(2) The parties to the appeal or their legal practitioners are to be heard in the following order—

(a) the appellant or the appellant's legal practitioner first addresses the court in support of the appeal;

(b) the prosecutor then addresses the court;

(c) the appellant or the appellant's legal practitioner then has the right of reply.

(3) If neither party appears or is represented on an appeal, the appeal must be dismissed.

(4) An appellant, even if in custody, is entitled to be present, if he or she desires it, on the hearing of an appeal, including —

(a) on a ground involving a question of law alone;

(b) on proceedings preliminary or incidental to an appeal;

(c) any stage of an appeal conducted by live link.

(5) The power of the Supreme Court to pass any sentence under this Part may be exercised even if the appellant is for any reason not present, but only if the appellant is legally represented.

(6) Section 153 applies as regards the grant of bail by the Magistrates' Court or Summary Court on an appeal.

(7) Subject to subsection (9), and unless the Supreme Court otherwise orders, any sentence passed on appeal under this Ordinance in substitution for another sentence begins to run from the time when that other sentence would have begun to run.

(8) Unless the Supreme Court otherwise directs, the time during which an appellant is in custody pending the determination of his or her appeal is to be reckoned as part of the term of any sentence to which the appellant is for the time being subject. If the Supreme Court otherwise directs, it must state its reasons for doing so.

(9) If a person subject to sentence is granted bail pending an appeal to the Supreme Court, the time during which the person is released on bail is to be disregarded in computing the term of any sentence to which the person is for the time being subject.

(10) So far as is convenient and practicable, and to the extent that any matter is not provided for by this Part, the practice and procedure of the Supreme Court in the exercise of its criminal appellate jurisdiction is to be the same as that of the Court of Appeal in relation to criminal appeals, with necessary modifications, including but not limited to those mentioned in section 659(5)(a).

(11) Section 183 (which enables judicial functions to be exercised outside the Falkland Islands) applies to appeals under this Part if the conditions mentioned in section 183(4) are satisfied.

[Admin. of Justice Ord. s.48(2) adapted; Court of Appeal Ord. s.8 etc. by analogy; SH Criminal Procedure Ord.; Gibraltar CPE Act]

662. Powers of Supreme Court on a criminal appeal

(1) On an appeal under section 656 against conviction, the Supreme Court may —

(a) quash the conviction and acquit the appellant;

(b) affirm the conviction;

(c) substitute a conviction for any other offence of which the appellant could have been awfully convicted in the Magistrate's Court or the Summary Court, as the case may be; or

(d) order a retrial of the appellant before the Magistrate's Court or the Summary Court, as the case may be;

(e) order the payment of costs in accordance with Part 30 (Costs in Criminal Cases).

(2) On an appeal against sentence, or against conviction and sentence, the Supreme Court may—

(a) affirm the sentence;

(b) substitute any other sentence, whether more or less severe and whether of the same nature or not, that the Magistrate's Court or the Summary Court, as the case may be, would have had power to pass; or

(c) substitute a finding of not guilty by reason of mental disorder for any sentence;

(d) order the payment of costs in accordance with Part 30 (Costs in Criminal Cases).

(3) On an appeal against any other order, the Supreme Court may affirm, quash or vary the order, in which case the Supreme Court may make any consequential or incidental order that appears to it to be just and proper.

(4) Subsections (1) to (3) have effect subject to any enactment relating to any such appeal which expressly limits or restricts the powers of the Supreme Court on the appeal.

(5) This section applies whether or not the appeal is against the whole of the decision.

(6) Neither the Senior Magistrate nor any other justice of the peace is liable to any costs in respect or by reason of an appeal under this Part.
[Court of Appeal Ord. (part) by analogy]

663. Appeals against conviction

(1) Subject to subsection (2), the Supreme Court, upon the hearing of an appeal against conviction, must allow the appeal if it thinks that —

(a) the verdict should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory;

(b) the judgment of the Magistrates' Court or Summary Court should be set aside because of a wrong decision on any question of law; or

(c) there was a material irregularity in the course of the trial,

and in any other case must dismiss the appeal.

(2) The Supreme Court, even if it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, may dismiss the appeal if it considers that no miscarriage of justice has actually occurred.

(3) Subject to this Part, the Supreme Court must, if it allows an appeal against conviction, quash the conviction and direct a judgment and order of acquittal to be entered.
[UK Criminal Appeal Act 1968 s.2 applied by analogy]

664. Appeals against sentence
(1) On an appeal against sentence under this Part, if 2 or more sentences were passed by the Magistrate's Court or the Summary Court in the same proceedings, an appeal against any one of those sentences is to be treated as an appeal or application in respect of both or all of them.

(2) For the purposes of this section, any 2 or more sentences are to be treated as passed in the same proceedings if —

(a) they are passed on the same day; or

(b) they are passed on different days but the court in passing any one of them states that it is treating that one together with the other or others as substantially one sentence,

and consecutive terms of imprisonment and terms which are wholly or partly concurrent are to be treated as a single term.

(3) In this Part, "sentence" includes any order made by a court when dealing with an offender, including —

(a) a hospital order, interim hospital order or supervision order under Part 34 (Mentally Disordered Offenders); and

(b) a recommendation for deportation made when dealing with an offender.
[Court of Appeal Ord. s.16 by analogy]

665. Notification to Magistrates' Court or Summary Court
When an appeal against a conviction, special finding or order of the Magistrates' Court or Summary Court has been decided under the provisions of this Part —

(a) the Registrar must forthwith notify that decision to the relevant court; and

(b) that court must, in relation to the decision, exercise all the powers necessary for the enforcement of the decision that are conferred by this Ordinance, or any other written law for the enforcement of a conviction, special finding or order of the Magistrates' Court or Summary Court.

[SH Criminal Procedure Ord.; Gibraltar CPE Act]

666. Enforcement of decision on appeal

(1) After the determination by the Supreme Court of an appeal from the Magistrate's Court or the Summary Court, the decision appealed against as confirmed or varied by the Supreme Court, or any decision of the Supreme Court substituted for the decision appealed against, may, without affecting the powers of the Supreme Court to enforce the decision, be enforced —

(a) by the issue by the Magistrate's Court or the Summary Court of any process it could have issued if it had decided the case as the Supreme Court decided it;

(b) so far as the nature of any process already issued to enforce the decision against permits - by that process.

(2) The decision of the Supreme Court has effect as if it had been made by the Magistrate's Court or the Summary Court.

[UK Magistrates' Courts Act 1980 s.110]

Appeals in particular cases

667. Right of appeal in mental disorder cases

(1) A person in whose case a special finding or verdict under Part 34 (Mentally Disordered Offenders) is made by the Magistrates' Court or Summary Court may appeal against the finding or verdict to the Supreme Court in accordance with this Part.

(2) If on the trial of an information charging a person with an offence the Magistrates' Court or Summary Court makes a hospital order or interim hospital order in respect of the person without convicting the person —

(a) the person has the same right of appeal against the order as if it had been made on conviction of the person; and

(b) on any such appeal the Supreme Court has the same powers as if the appeal had been against both conviction and sentence.

(3) The fact that an appeal is pending against an interim hospital order under Part 34 does not affect the power of the Magistrates' Court or Summary Court to renew or terminate the order or to deal with the appellant on its termination.

(4) If the Supreme Court quashes an interim hospital order but does not pass any sentence or make any other order in its place the court may direct the appellant to be kept in custody or released on bail pending the appellant's case being dealt with by the Magistrates' Court or the Summary Court, as the case may be.

(5) If the Supreme Court makes an interim hospital order by virtue of this section —

(a) the power of renewing or terminating the order and of dealing with the appellant on its termination is exercisable by the Magistrates' Court or Summary Court, as the case may be, and not by the Supreme Court; and

(b) the Magistrates' Court or Summary Court, as the case may be, is to be treated for the purposes of section 158 (absconding offenders) as the court that made the order.

[Admin. of Justice Ord. s.57 (part); Court of Appeal Ord. ss.4(1)(f), 17, 18 and 20 by analogy; UK Mental Health Act 1983 s.45]

668. Appeals against special findings or verdicts

(1) If, apart from this section —

(a) an appeal against a special finding or verdict would fall to be allowed; and

(b) none of the grounds for allowing it relates to the question of the mental disorder of the defendant,

the Supreme Court may dismiss the appeal if it is of the opinion that but for the mental disorder of the defendant the proper verdict would have been that he or she was guilty of an offence other than the offence charged.

(2) If an appeal by a person against a special finding or verdict is allowed, then —

(a) if the ground, or one of the grounds, for allowing the appeal is that the finding of the court as to the mental disorder of the person ought not to stand and the Supreme Court is of the opinion that the proper verdict would have been that the person was guilty of an offence, whether the offence charged or any other offence of which the court could have found the person guilty, the Supreme Court —

(i) must substitute for the special finding a verdict of guilty of that offence; and

(ii) has the like powers of punishing or otherwise dealing with the appellant and other powers as the court before which he or she was tried would have had if the court had come to the substituted verdict; and

(b) in any other case, the Supreme Court must substitute for the finding of the court a verdict of acquittal.

(3) If, on an appeal against conviction, the Supreme Court, on the written or oral evidence of 2 or more medical practitioners, is of the opinion —

(a) that the proper verdict would have been one of not guilty by reason of mental disorder; or

(b) that the case is not one where there should have been a verdict of acquittal, but there should have been a finding that the defendant was suffering from mental disorder so as not to be responsible in law for his or her actions at the time when the act was done or omission made,

then, if it appears to the court that the defendant did the act or made the omission charged, but was suffering from mental disorder at the time when he or she did or made the same, the court must give a special verdict to the effect that the defendant was not guilty by reason of mental disorder.

(4) If the court gives a special verdict as in subsection (3), it must also make —

(a) a hospital order, interim hospital order or supervision order pursuant to Part [MDO] (Mentally Disordered Offenders); or

(b) an order for the defendant's absolute discharge.

(5) The term of any sentence imposed by the Supreme Court in the exercise of the powers conferred by subsection (2)(a), unless the court otherwise directs, begins to run from the time when it would have begun to run if imposed in the proceedings in the Magistrate's Court or the Summary Court, as the case may be.
[Court of Appeal Ordinance ss.12 and 13 by analogy; UK Criminal Appeal Act 1968 ss.12 & 13]

669. Appeals in cases concerning youths
(1) Appeals to the Supreme Court from orders of the Magistrates' Court or Summary Court, sitting as a Youth Court, in relation to a youth may be brought in the following cases and by the following persons —

(a) in the case of a sentence of imprisonment or detention - by the youth or his or her parent or guardian on behalf of the youth;

(b) in the case of a community sentence (youth rehabilitation order) - by the youth or by the probation officer;

(c) in the case of a binding over order on a parent or guardian - by the parent or guardian.

(2) Nothing in this section affects any right of appeal to the Supreme Court conferred by this Ordinance or any other law.
[SH Criminal Procedure Ord; Gibraltar CPE Act adapted]

Prosecution appeals

670. Prosecution appeal from the Supreme Court in respect of rulings

(1) This section applies whenever a judge in a trial on indictment makes a ruling at an applicable time relating to one or more offences included on the indictment.

(2) The prosecutor may appeal to the Court of Appeal on the grounds that the ruling —

(a) was erroneous in law; or

(b) was one which no reasonable court, properly directing itself in law, could have reached.

(3) The ruling appealed against has no effect while the prosecution is able to take any steps under subsection (4).

(4) The prosecution may not appeal in respect of a ruling unless —

(a) following the making of the ruling, it —

(i) informs the court that it intends to appeal; or

(ii) requests an adjournment to consider whether to appeal; and

(b) if such an adjournment is granted, informs the court following the adjournment that it intends to appeal.

(5) If the prosecution requests an adjournment under subsection (4)(a)(ii), the court may grant such an adjournment.

(6) If the ruling relates to two or more offences —

(a) any one or more of those offences may be the subject of the appeal; and

(b) if the prosecution informs the court in accordance with subsection (5) that it intends to appeal, it must at the same time inform the court of the offence or offences which are the subject of the appeal.

(7) If —

(a) the ruling is one that there is no case to answer; and

(b) the prosecution, when it informs the court in accordance with subsection (5) that it intends to appeal, nominates one or more other rulings which have been made by the judge in relation to the trial at an applicable time and which relate to the offence or offences which are the subject of the appeal,

that other ruling or those other rulings are also to be treated as the subject of the appeal.

(8) The prosecution may not inform the court in accordance with subsection (4) that it intends to appeal unless, at or before that time, it informs the court that it agrees that, in respect of the offence or each offence which is the subject of appeal, the defendant in relation to that offence should be acquitted of that offence if either —

(a) leave to appeal to the Court of Appeal is not obtained; or

(b) the appeal is abandoned before it is determined by the Court of Appeal.

(9) On an appeal under subsection (2)(a) or (b) the Court of Appeal may remit the case together with its judgment on it to the Supreme Court for determination, whether or not by way of rehearing, with any directions the Court of Appeal thinks necessary.

(10) The procedure on an appeal under this section is to be governed by the Court of Appeal Rules.

(11) In this section —

"applicable time", in relation to a trial before the Supreme Court, means any time (whether before or after the commencement of the trial) before the closure of the case for the defence, or, if the trial is before a jury, before the time when the judge starts summing up to the jury;

"ruling" includes a decision, determination, direction, finding, notice, order, refusal, rejection or requirement.
[UK Criminal Justice Act 2003 ss.58 to 61]

671. Prosecution appeal from the Magistrate's Court in respect of rulings and sentence
(1) This section applies whenever the Senior Magistrate —

(a) makes a ruling at an applicable time relating to one or more offences being considered at the trial; or

(b) imposes a sentence on a person convicted of an offence for which the maximum penalty is imprisonment for 10 years or more.

(2) The prosecutor may appeal to the Supreme Court on any of the following grounds —

(a) that the ruling was erroneous in law;

(b) that the ruling was one which no reasonable court, properly directing itself in law, could have reached;

(c) that the sentence imposed was so lenient as to be one which no reasonable court, properly directing itself in law, could have passed.

(3) An appeal under subsection (2)(c) may not be instituted except by, or with the consent of, the Attorney General.

(4) The ruling or sentence appealed against has no effect while the prosecution is able to take any steps under subsection (5).

(5) The prosecution may not appeal in respect of a ruling or sentence unless —

(a) following the making of the ruling or imposing of the sentence, it —

(i) informs the court that it intends to appeal; or

(ii) requests an adjournment to consider whether to appeal; and

(b) if such an adjournment is granted, informs the court following the adjournment that it intends to appeal.

(6) If the prosecution requests an adjournment under subsection (5)(a)(ii), the court may grant such an adjournment.

(7) If the appeal relates to a ruling, subsections (8) to (11) apply.

(8) If the ruling relates to two or more offences —

(a) any one or more of those offences may be the subject of the appeal; and
(b) if the prosecution informs the court in accordance with subsection (5) that it intends to appeal, it must at the same time inform the court of the offence or offences which are the subject of the appeal.

(9) If —

(a) the ruling is one that there is no case to answer; and

(b) the prosecution, when it informs the court in accordance with subsection (5) that it intends to appeal, nominates one or more other rulings which have been made by the Senior Magistrate in relation to the trial at an applicable time and which relate to the offence or offences which are the subject of the appeal,

that other ruling or those other rulings are also to be treated as the subject of the appeal.

(10) The prosecution may not inform the court in accordance with subsection (5) that it intends to appeal unless, at or before that time, it informs the court that it agrees that, in respect of the offence or each offence which is the subject of appeal, the defendant in relation to that offence should be acquitted of that offence if either —

(a) leave to appeal to the Supreme Court is not obtained; or

(b) the appeal is abandoned before it is determined by the Supreme Court.

(11) On an appeal under subsection (2)(a) or (b) the Supreme Court may remit the case together with its judgment on it to the Magistrate's Court for determination, whether or not by way of rehearing, with any directions the Supreme Court thinks necessary.

(12) On appeal against sentence under subsection (2)(c) the Supreme Court may substitute any sentence the Magistrates' Court could lawfully have imposed.

(13) The procedure on an appeal under this section is to be governed by criminal procedure rules.

(14) In this section —

"applicable time" in relation to a trial before the Magistrate's Court means any time (whether before or after the commencement of the trial) before the closure of the case for the defence;

"ruling" includes a decision, determination, direction, finding, notice, order, refusal, rejection or requirement.
[UK Criminal Justice Act 2003 ss.58 to 61, by analogy; SH Criminal Procedure Ord. ss.242 and 251]

Appeals by way of case stated

672. Statement of case by Magistrate's Court or Summary Court
(1) Any person who was a party to any criminal proceeding before the Magistrate's Court or the Summary Court or who is aggrieved by the conviction, order, determination or other decision of either court may, subject to subsection (2), question the decision on the ground that it is wrong in law or is in excess of jurisdiction by applying to the Senior Magistrate, or to the justices composing the Summary Court, as the case may be, to state a case for the opinion of the Supreme Court on the question of law or jurisdiction involved.

(2) A person may not make an application under this section in respect a decision against which the person has a right of appeal to the Supreme Court under section 656, or which by virtue of any enactment is final.

(3) An application under subsection (1) must be made within 21 days of the day on which the decision of the Summary Court was given.

(4) For the purpose of subsection (3), the day on which the decision of the Magistrate's Court or the Summary Court is given is the day on which the court sentences or otherwise deals with the defendant.

(5) Subject to subsection (6), if the Senior Magistrate is, or the justices are, of the opinion that an application under this section is frivolous, the Senior Magistrate or the justices, as the case may be, may refuse to state a case, and if the applicant so requires, must certify that the application has been refused.

(6) The Senior Magistrate or the justices must not refuse under subsection (5) to state a case if the application is made by or on the direction of the Attorney General.

(7) If the Senior Magistrate or the justices refuse to state a case, the Supreme Court may, on the application of the person who applied for the case to be stated, make an order requiring the Senior Magistrate or justices, as the case may be, to state a case.

(8) Nothing in this section, nor the fact that an application has been made to the Senior Magistrate or to the justices to state a case, precludes a judge from exercising the powers conferred by sections 682 to 685 (revision powers).
[UK Magistrates' Courts Act 1980 s.111; Senior Courts Act 1981 s.28; Criminal Procedure Rules 2012 para.64.2, 3]

673. Case may be sent back for amendment
(1) The Supreme Court may, if it thinks fit, cause any case stated to be sent back to the Senior magistrate or the Summary Court justices for amendment.

(2) If a case is sent back pursuant to subsection (1), the case must be amended accordingly, and judgment is to be delivered only after it has been amended.
[UK Senior Courts Act 1981 s.28A (part)]

674. Determination of question and enforcement of decision
(1) The Supreme Court must hear and decide the question or questions of law arising on any case stated, and may —

(a) reverse, affirm or amend the decision in respect of which the case has been stated; or

(b) remit the matter to the Magistrate's Court or the Summary Court, as the case may be, with the opinion of the Supreme Court on the case; and

(c) make any other order in relation to the matter as the Supreme Court thinks fit.

(2) Any conviction, order, determination or other proceeding of the Magistrate's Court or the Summary Court that is varied by the Supreme Court on an appeal by case stated, and any judgment or order of the Supreme Court on such an appeal, may be enforced as if it were a decision of the Magistrate's Court or of the Summary Court, as the case may be.

(3) Neither the Senior Magistrate nor any other justice of the peace is liable to any costs in respect or by reason of an appeal by way of case stated under this section.
[UK Magistrates' Courts Act 1980 s.112; Senior Courts Act 1981 s.28A (part)]

Miscellaneous provisions

675. Enlargement of time
A judge of the Supreme Court may, upon application made in open court by the appellant and after not less than 2 days' notice to the other party, enlarge any period of time prescribed for the

doing of any act or the taking of any proceedings in relation to an appeal, if in any particular case the judge thinks fit so to do.
[UK CPR 2012 Rule 63.9; CA Ordinance s.23(3); Gibraltar CPE Act s.306]

676. Power to correct errors or omissions
(1) The conviction of an offender shall not be quashed or set aside on the ground of want of form in the order, judgment, warrant or other proceeding made in connection therewith.
[Admin . of Justice Ord. s.50]

(2) The Supreme Court may, in the course of hearing any appeal, correct any error or omission in the order or judgment incorporating the decision which is the subject of the appeal.

(3) Without limiting subsection (1), if on an appeal under this Part —

(a) an objection is made on account of any error or omission in the drawing up of a conviction or order of the Magistrates' Court or Summary Court; and

(b) it is shown to the satisfaction of a judge of the Supreme Court that sufficient grounds were placed before the Magistrates' Court or Summary Court to have authorised the drawing up of such conviction or order free from the error or omission,

the judge may amend the conviction or order and adjudicate on it as if no such error or omission had occurred.
[SH Criminal Procedure Ord. s.244; Gibraltar CPE Act]

677. Effect of death on appeals to Supreme Court
(1) If a person dies —

(a) any appeal to which this Part applies which the person might have begun if he or she were still alive may be begun by a person approved by the Supreme Court; and

(b) if any such appeal was begun by the person while alive or is begun by virtue of paragraph (a),

any further step which might have been taken by the dead person in connection with the appeal if he or she were alive may be taken by a person so approved.

(2) Approval for the purposes of this section may only be given to —

(a) the widow or widower of the dead person;

(b) a person who is the personal representative of the dead person; or

(c) any other person appearing to the Supreme Court to have, by reason of a family or similar relationship with the dead person, a substantial financial or other interest in the determination of a relevant appeal relating to that person.

(3) An application for such approval may not be made more than one year after the date of death.

(4) If this section applies, any reference in this Part to the appellant is, where appropriate, to be construed as being or including a reference to the person approved under this section.

(5) If the Supreme Court refuses an application for approval under this section, the applicant is entitled to have the application determined by the Court of Appeal.
[UK Criminal Appeals Act 1968 s.44A adapted]

678. Effect of death on appeals from the Supreme Court
(1) If a person dies —

(a) any criminal appeal to which the Court of Appeal Ordinance applies which the person might have begun if he or she were still alive may be begun by a person approved by the Court of Appeal; and

(b) if any such appeal was begun by the person while alive or is begun by virtue of paragraph (a),

any further step which might have been taken by the dead person in connection with the appeal if he or she were alive may be taken by a person so approved.

(2) Approval for the purposes of this section may only be given to —

(a) the widow or widower of the dead person;

(b) a person who is the personal representative of the dead person; or

(c) any other person appearing to the Court of Appeal to have, by reason of a family or similar relationship with the dead person, a substantial financial or other interest in the determination of a relevant appeal relating to that person.

(3) An application for such approval may not be made more than one year after the date of death.

(4) If this section applies, any reference in the Court of Appeal ordinance to the appellant is, where appropriate, to be construed as being or including a reference to the person approved under this section.

(5) If the Court of Appeal refuses an application for approval under this section, the applicant is entitled to have the application determined by the Judicial Committee.
[UK Criminal Appeals Act 1968 s.44A adapted]

679. Restitution of property
(1) The operation of an order for the restitution of property to a person made by the Magistrate's Court or the Summary Court is, unless the Supreme Court directs to the contrary in any case in

which, in its opinion, the title to property is not in dispute, be suspended until there is no further possibility of an appeal on which the order could be varied or set aside.

(2) The Supreme Court may by order annul or vary any order made by the Magistrate's Court or the Summary Court for the restitution of property to any person, although the conviction is not quashed; and the order, if annulled, does not take effect and, if varied, takes effect as if so varied.

680. Evidence

(1) In the exercise of its appellate jurisdiction under this section the Supreme Court may in its discretion hear additional evidence.

(2) For the purposes of this Part, the Supreme Court may, if it thinks that it is necessary or expedient in the interests of justice —

(a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to it to be necessary for the determination of the case;

(b) order any person who would have been a compellable witness in the proceedings in which the appeal lies to attend for examination and be examined before the Court, whether or not the person was called in the proceedings; and

(c) receive any evidence which was not adduced in the proceedings from which the appeal lies.

(3) The Supreme Court must, in considering whether to receive any evidence, have regard in particular to —

(a) whether the evidence appears to the Court to be capable of belief;

(b) whether it appears to the Court that the evidence may afford any ground for allowing the appeal; and

(c) whether there is a reasonable explanation for the failure to adduce the evidence in those proceedings.

(4) Subsection (2)(c) applies to evidence of any witness (including the appellant) who is competent but not compellable, and applies also to the appellant's spouse where the appellant makes an application for that purpose and the evidence of the spouse could not have been given in the proceedings from which the appeal lies except on such an application.

(5) For the purposes of this Part, the Supreme Court may, if it thinks that it is necessary or expedient in the interests of justice, order the examination of any witness whose attendance might be required under subsection (1)(b) of this section to be conducted, in a manner provided by criminal procedure rules, before any judge or officer of the Court or other person appointed

by the Court for the purpose, and allow the admission of any depositions so taken as evidence before the Court.

681. Further appeals

(1) The right of any person to appeal from an interlocutory or final decision of the Supreme Court in its appellate capacity is governed by the Court of Appeal Ordinance.

(2) The granting of bail on an appeal from the Supreme Court is governed by section 7 of the Court of Appeal Ordinance.

Revision powers

682. Revision by Supreme Court

(1) The Chief Justice (in this section and sections 683 and 684 called "the judge") may on his or her own initiative call for and examine the record of any criminal proceedings before the Magistrate's Court or the Summary Court in which a person has been sentenced to imprisonment or to a fine exceeding £100, for the purpose of being satisfied as to the correctness, legality or propriety of the finding, sentence or order recorded or passed, and as to the regularity of those proceedings.

(2) In every case coming before the Magistrate's Court or the Summary Court in which a person is convicted and sentenced to an aggregate period of more than 12 months imprisonment, the Clerk of the court must as soon as reasonably practicable submit the record of the proceedings to the Supreme Court for consideration.

(3) If —

(a) the judge has called for any proceedings of the Magistrate's Court or the Summary Court pursuant to subsection (1), or proceedings have been submitted to the judge under subsection (2); and

(b) the judge, having examined the proceedings, considers that in those proceedings an error material to the merits of any case or involving a miscarriage of justice has occurred,

the judge has the powers mentioned in section 683.

(4) The powers of the judge under this section and sections 683 and 684 may be exercised while the judge is outside the Falkland Islands.
[SH Criminal Procedure Ord. s.261]

683. Powers of judge on revision

(1) The powers that the judge may exercise on revision of proceedings are —

(a) in the case of a conviction - any of the powers conferred on the Supreme Court on an appeal under section 662;

(b) in the case of any other order, other than an order of acquittal – the power to alter or reverse the order.

(2) No order may be made under this section to the prejudice of a person convicted of an offence unless the person has had an opportunity of making representations either personally or by a legal practitioner on behalf of the person.

(3) In exercising the powers under this section in relation to sentence, the judge must not impose a more severe sentence for the offence which in the opinion of the judge the defendant has committed, than could legally have been imposed by the Magistrates' Court or Summary Court, as the case may be.

(4) Nothing in this section authorises the judge to convert a finding of acquittal into one of conviction, except that if a person is acquitted of the offence with which the person was charged but is convicted of another offence, whether charged with that other offence or not, the judge may, if he or she reverses the finding of conviction, convert the finding of acquittal into one of conviction.

(5) If there is a right of appeal from any finding, sentence or order, and no appeal is brought, the party who could have appealed cannot initiate a proceeding by way of revision.

(6) In exercising the powers under this section, the judge may call for and receive from the Magistrates' Court or Summary court, as the case may be, a report on any matter connected with the case.
[SH Criminal Procedure Ord. s.262]

684. Procedure on revision
(1) Except as provided in section 683, no party has any right to be heard either personally or by a legal practitioner by the judge when the powers of revision, but the judge may, when exercising those powers, hear any party either personally or by a legal practitioner, or receive a written submission.

(2) When a case is revised by a judge —

(a) the judge must certify his or her decision or order to the Magistrates' Court or Summary Court, as the case may be;

(b) that court must make orders conforming to the decision so certified; and

(c) if necessary, the record of that court must be amended accordingly.
[SH Criminal Procedure Ord. ss.263 and 264]

685. Saving for judicial review
The power of revision conferred by sections 682 to 684 does not affect the right of a defendant or of the Attorney General to apply for a prerogative order, declaration or injunction under any enactment of or applying to the Falkland Islands governing applications for judicial review.
[UK Senior Courts Act 1981 s.31]

686. Cases that may be retried

(1) Sections 687 to 703 apply if a person has been acquitted of a qualifying offence in proceedings —

(a) on indictment in the Falkland Islands;

(b) on appeal against a conviction, verdict or finding in proceedings on indictment in the Falkland Islands; or

(c) on appeal from a decision on such an appeal.

(2) A person acquitted of an offence in proceedings mentioned in subsection (1) is treated for the purposes of that subsection as also acquitted of any qualifying offence of which the person could have been convicted in the proceedings because of the first-mentioned offence being charged in the indictment, except an offence —

(a) of which the person has been convicted;

(b) of which the person has been found not guilty by reason of mental disorder; or

(c) in respect of which a finding has been made under section 764 that the person did the act or made the omission charged against him or her.

(3) References in subsections (1) and (2) to a qualifying offence do not include references to an offence which, at the time of the acquittal, was the subject of an order under section 688(1) or (3).

(4) Sections 687 to 703 also apply if a person has been acquitted, in criminal proceedings elsewhere than in the Falkland Islands, of an offence under the law of the place where the proceedings were held, if the commission of the offence as alleged would have amounted to or included the commission (in the Falkland Islands or elsewhere) of a qualifying offence.

(5) Conduct punishable under the law in force elsewhere than in the Falkland Islands is an offence under that law for the purposes of subsection (4), however it is described in that law.

(6) Sections 687 to 703 apply whether the acquittal was before or after the commencement of this Part.

(7) In this section and sections 687 to 703 —

(a) references to acquittal are to acquittal in circumstances within subsection (1) or (4) of this section;

(b) "qualifying offence" means an indictment-only offence and a serious offence as defined in section 2;

(c) "new evidence" is to be read in accordance with section 689(2).
[UK Criminal Justice Act 2003 ss.75 and 95]

687. Application to Court of Appeal
(1) The Attorney General may apply to the Court of Appeal for an order —

(a) quashing a person's acquittal in proceedings within section 686(1); and

(b) ordering the person to be retried for the qualifying offence.

(2) The Attorney General may apply to the Court of Appeal, in the case of a person acquitted elsewhere than in the Falkland Islands, for —

(a) a decision whether the acquittal is a bar to the person being tried in the Falkland Islands for the qualifying offence; and

(b) if it is, an order that the acquittal is not to be a bar.

(3) The Attorney General may make an application only if satisfied that —

(a) there is evidence as respects which the requirements of section 689 appear to be met;

(b) it is in the public interest for the application to be made; and

(c) any trial pursuant to an order on the application would not be inconsistent with section 6(6) of the Constitution.

(4) Not more than one application may be made under subsection (1) or (2) in relation to an acquittal.

(5) The Chief Justice may by criminal procedure rules provide for the procedure on an application to the Court of Appeal under this Part, having regard to section 93(3) of the Constitution (which enables the Court of Appeal to sit outside the Falkland Islands.)
[UK Criminal Justice Act 2003 s.76]

688. Decision by Court of Appeal
(1) On an application under section 687(1), the Court of Appeal —

(a) if satisfied that the requirements of sections 686 and 687 are met, must make the order applied for;

(b) otherwise, must dismiss the application.

(2) Subsections (3) and (4) apply to an application under section 687(2).

(3) If the Court of Appeal decides that the acquittal is a bar to the person being tried for the qualifying offence, the court —

(a) if satisfied that the requirements of sections 689 and 690 are met, must make the order applied for;

(b) otherwise, must make a declaration to the effect that the acquittal is a bar to the person being tried for the offence.

(4) If the Court of Appeal decides that the acquittal is not a bar to the person being tried for the qualifying offence, it must make a declaration to that effect.
[UK Criminal Justice Act 2003 s.77]

689. New and compelling evidence
(1) The requirements of this section are met if there is new and compelling evidence against the acquitted person in relation to the qualifying offence.

(2) Evidence is new if it was not adduced in the proceedings in which the person was acquitted (nor, if those were appeal proceedings, in earlier proceedings to which the appeal related).

(3) Evidence is compelling if —

(a) it is reliable;

(b) it is substantial; and

(c) in the context of the outstanding issues, it appears highly probative of the case against the acquitted person.

(4) The outstanding issues are the issues in dispute in the proceedings in which the person was acquitted and, if those were appeal proceedings, any other issues remaining in dispute from earlier proceedings to which the appeal related.

(5) For the purposes of this section, it is irrelevant whether any evidence would have been admissible in earlier proceedings against the acquitted person.
[UK Criminal Justice Act 2003 s.78]

690. Interests of justice
(1) The requirements of this section are met if in all the circumstances it is in the interests of justice for the court to make the order under section 687.

(2) That question is to be decided having regard in particular to —

(a) whether existing circumstances make a fair trial unlikely;

(b) for the purposes of that question and otherwise, the length of time since the qualifying offence was allegedly committed;

(c) whether it is likely that the new evidence would have been adduced in the earlier proceedings against the acquitted person but for a failure by a police officer or by the prosecutor to act with due diligence or expedition;

(d) whether, since those proceedings or, if later, since the commencement of this Part, any police officer or prosecutor has failed to act with due diligence or expedition.

(3) In subsection (2) references to a police officer or prosecutor include references to a person charged with corresponding duties under a law in force outside the Falkland Islands.
[UK Criminal Justice Act 2003 s.79]

691. Procedure and evidence on the application

(1) If the Attorney General wishes to make an application under section 687(1) or (2), he or she must give notice of the application to the Court of Appeal.

(2) Within 2 days beginning with the day on which any such notice is given, notice of the application must be served by the Attorney General on the person to whom the application relates, charging the person with the offence to which it relates or, if the person has been charged with it in accordance with section 699(4), stating that the person has been so charged.

(3) Subsection (2) applies whether the person to whom the application relates is in the Falkland Islands or elsewhere, but the Court of Appeal may, on application by the Attorney General, extend the time for service under that subsection if it considers it necessary to do so because of the person's absence from the Falkland Islands.

(4) The Court of Appeal must consider the application at a hearing.

(5) The person to whom the application relates —

(a) is entitled to be present at the hearing, even if in custody, unless the person is in custody outside the Falkland Islands; and

(b) is entitled to be represented at the hearing, whether present or not.

(6) For the purposes of the application, the Court of Appeal may, if it thinks it necessary or expedient in the interests of justice —

(a) order the production of any document, exhibit or other thing, the production of which appears to the court to be necessary for the determination of the application; and

(b) order any witness who would be a compellable witness in criminal proceedings, pursuant to an order or declaration made on the application, to attend for examination and be examined before the court.

(7) The Court of Appeal may at one hearing consider more than one application (whether or not relating to the same person), but only if the offences concerned could be tried on the same indictment.
[UK Criminal Justice Act 2003 s.80]

692. Appeals
(1) An appeal lies to the Judicial Committee, at the instance of the acquitted person or the Attorney General, from any decision of the Court of Appeal on an application under section 687(1) or (2).

(2) An appeal under subsection (1) can be made only with the leave of the Court of Appeal or the Judicial Committee.

(3) An application under this Part to the Court of Appeal for leave to appeal to the Judicial Committee may be made orally immediately after the court gives its ruling or by notice served on the Registrar within 14 days of the ruling.

(4) For the purpose of dealing with a case under this section the Judicial Committee may exercise any powers of the Court of Appeal.
[UK Criminal Justice Act 2003 s.81]

693. Restrictions on publication in the interests of justice
(1) If it appears to the Court of Appeal that the inclusion of any matter in a publication or relevant programme would give rise to a substantial risk of prejudice to the administration of justice in a retrial, the court may order that the matter is not to be included in any publication or relevant programme while the order has effect.

(2) In subsection (1) "retrial" means the trial of an acquitted person for a qualifying offence pursuant to any order made or that may be made under section 688.

(3) The court may make an order under this section only if it appears to it necessary in the interests of justice to do so.

(4) An order under this section may apply to a matter which has been included in a publication published or relevant programme included in a programme service before the order takes effect, but such an order —

(a) applies only to the later inclusion of the matter in a publication or programme (whether directly or by inclusion of the earlier publication or programme); and

(b) does not otherwise affect the earlier publication.

(5) After notice of an application has been given under section 691(1) relating to the acquitted person and the qualifying offence, the court may make an order under this section either —

(a) on its own initiative; or

(b) on the application of the Attorney General.

(6) Before such notice has been given, an order under this section —

(a) may be made only on the application of the Attorney General; and

(b) may not be made unless, since the acquittal concerned, an investigation of the commission by the acquitted person of the qualifying offence has been commenced by the police.

(7) The court may at any time, on its own initiative or on an application made by the Attorney General or the acquitted person, vary or revoke an order under this section.

(8) Any order made under this section before notice of an application has been given under section 691(1) relating to the acquitted person and the qualifying offence must specify the time when it ceases to have effect.

(9) An order under this section which is made or has effect after such notice has been given ceases to have effect, unless it specifies an earlier time —

(a) when there is no longer any step that could be taken which would lead to the acquitted person being tried pursuant to an order made on the application; or

(b) if the person is tried pursuant to such an order, at the conclusion of the trial.

(10) Nothing in this section affects any prohibition or restriction by virtue of any other enactment on the inclusion of any matter in a publication or relevant programme or any power, under an enactment or otherwise, to impose such a prohibition or restriction.

(11) A breach of an order under this section, whether or not in the face of the court, may be treated as contempt of court and dealt with in accordance with Part 18 of the Crimes Ordinance 2014.
[UK Criminal Justice Act 2003 s.82]

694. Offences in connection with publication restrictions
(1) This section applies if —

(a) an order under section 693 is made; and

(b) while the order has effect, any matter is included in a publication in contravention of the order.

(2) If the publication is a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical commits an offence.
Penalty: A fine at level 5 on the standard scale.

(3) If the publication is a relevant programme, any person having functions in relation to the programme corresponding to those of an editor of a newspaper commits an offence.
Penalty: A fine at level 5 on the standard scale.

(4) In the case of any other publication, any person publishing it commits an offence.
Penalty: A fine at level 5 on the standard scale.

(5) If an offence under this section committed by a corporate body is proved —

(a) to have been committed with the consent or connivance of; 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.

(6) In subsection (5), "officer" means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

(7) If the affairs of a corporate body are managed by its members, "director" in subsection (6) means a member of that body.

(8) Proceedings for an offence under this section may not be commenced except by, or with the consent of, the Attorney General.
[UK Criminal Justice Act 2003 s.83]

695. Procedure on a retrial
(1) If a person is to be tried pursuant to an order under section 688(1) or (3), the trial must be —

(a) on an indictment preferred by direction of the Court of Appeal, or on a fresh information laid by the Attorney General; and

(b) by the same mode (i.e. judge and jury or judge alone) as the original trial.

(2) After the end of 2 months after the date of the order, the person may not be charged on an indictment preferred or an information laid pursuant to such a direction unless the Court of Appeal gives leave.

(3) The Court of Appeal must not give leave unless satisfied that —

(a) the prosecutor has acted with due expedition; and

(b) there is a good and sufficient cause for trial despite the lapse of time since the order under section 688.

(4) If the person may not be charged without leave, he or she may apply to the Court of Appeal to set aside the order and —

(a) for any direction required for restoring an earlier judgment and verdict of acquittal of the qualifying offence; or

(b) in the case of a person acquitted outside the Falkland Islands, for a declaration to the effect that the acquittal is a bar to the person's being tried for the qualifying offence.

(5) An indictment preferred or information laid under subsection (1) may relate to more than one offence, or more than one person, and may relate to an offence which, or a person who, is not the subject of an order or declaration under section 688.
[UK Criminal Justice Act 2003 s.84 (part)]

696. Evidence on a retrial
(1) Evidence given at a trial pursuant to an order under section 688(1) or (3) must be given orally if it was given orally at the original trial, unless —

(a) all the parties to the trial agree otherwise;

(b) section 394 applies (witness unavailable); or

(c) the witness is unavailable to give evidence, otherwise than as mentioned in subsection (2) of that section, and section 392(1)(d) applies (interests of justice).

(2) At a retrial pursuant to an order under section 688(1), written depositions read as evidence at the original trial are not admissible in evidence.

(3) A transcript of the record of the evidence given by any witness at the original trial may, with the leave of the judge, be read as evidence —

(a) by agreement between the prosecution and the defence; or

(b) if the judge is satisfied that the witness is dead or unfit to give evidence or to attend for that purpose, or that all reasonable efforts to find him or to secure his attendance have been made without success,

and in either case may be so read without further proof, if verified in accordance with relevant criminal procedure rules.
[UK Criminal Justice Act 2003 s.84 (part); Criminal Appeals Act 1968 Sched.2 para.1]

697. Authorisation of investigations
(1) This section applies to the investigation of the commission of a qualifying offence by a person —

(a) acquitted in proceedings within section 686(1) of the qualifying offence; or

(b) acquitted outside the Falkland Islands of an offence the commission of which as alleged would have amounted to or included the commission (in the Falkland Islands or elsewhere) of the qualifying offence.

(2) Subject to section 698, a police officer may not do anything within subsection (3) for the purposes of such an investigation unless the Attorney General has —

(a) certified that in his or her opinion the acquittal would not be a bar to the trial of the acquitted person in the Falkland Islands for the qualifying offence; or

(b) given written consent to the investigation (whether before or after the start of the investigation).

(3) The police officer may not, either with or without the consent of the acquitted person —

(a) arrest or question the person;

(b) search the person or premises owned or occupied by the person;

(c) search a vehicle owned by the person or anything in or on such a vehicle;

(d) seize anything in the person's possession; or

(e) take the person's fingerprints or take a sample from the person.

(4) The Attorney General may only give consent on a written application, and such an application may be made only by a police officer of the rank of Inspector or above.

(5) A police officer may make an application under subsection (4) only if the officer —

(a) is satisfied that new evidence has been obtained which would be relevant to an application under section 687(1) or (2) in respect of the qualifying offence to which the investigation relates; or

(b) has reasonable grounds for believing that such new evidence is likely to be obtained as a result of the investigation.

(6) The Attorney General may not give consent unless satisfied that —

(a) there is, or there is likely as a result of the investigation to be, sufficient new evidence to warrant the conduct of the investigation; and

(b) it is in the public interest for the investigation to proceed.

[UK Criminal Justice Act 2003 s.85]

698. Urgent investigative steps

(1) Section 697 does not prevent a police officer from taking any action for the purposes of an investigation if —

(a) the action is necessary as a matter of urgency to prevent the investigation being substantially and irrevocably prejudiced;

(b) the requirements of subsection (2) are met; and

(c) either —

(i) the action is authorised under subsection (3); or

(ii) the requirements of subsection (5) are met.

(2) The requirements of this subsection are met if —

(a) there has been no undue delay in applying for consent under section 697(2);

(b) that consent has not been refused; and

(c) taking into account the urgency of the situation, it is not reasonably practicable to obtain that consent before taking the action.

(3) A police officer of the rank of Inspector or above may authorise the action if the officer —

(a) is satisfied that new evidence has been obtained which would be relevant to an application under section 687(1) or (2) in respect of the qualifying offence to which the investigation relates; or

(b) has reasonable grounds for believing that such new evidence is likely to be obtained as a result of the investigation.

(4) An authorisation under subsection (3) must —

(a) if reasonably practicable, be given in writing;

(b) otherwise, be recorded in writing by the officer giving it as soon as is reasonably practicable.

(5) The requirements of this subsection are met if —

(a) there has been no undue delay in applying for authorisation under subsection (3);

(b) that authorisation has not been refused; and

(c) taking into account the urgency of the situation, it is not reasonably practicable to obtain that authorisation before taking the action.

(6) If the requirements of subsection (5) are met, the action is nevertheless to be treated as having been unlawful unless, as soon as reasonably practicable after the action is taken, a police officer of the rank of Inspector or above certifies in writing that he or she is satisfied that, when the action was taken —

(a) new evidence had been obtained which would be relevant to an application under section 687(1) or (2) in respect of the qualifying offence to which the investigation relates; or

(b) the officer who took the action had reasonable grounds for believing that such new evidence was likely to be obtained as a result of the investigation.

[UK Criminal Justice Act 2003 s.86]

699. Arrest and charge

(1) If section 697 applies to the investigation of the commission of an offence by any person and no certification has been given under subsection (2) of that section —

(a) a justice of the peace may issue a warrant to arrest the person for that offence only if satisfied by written information that new evidence has been obtained which would be relevant to an application under section 687(1) or (2) in respect of the commission by that person of that offence; and

(b) the person may not be arrested for that offence except under a warrant so issued.

(2) Subsection (1) does not affect section 701(3)(b) or 703(3), or any other power to arrest a person, or to issue a warrant for the arrest of a person, otherwise than for an offence.

(3) Part 5 (Police Detention) applies as follows if a person —

(a) is arrested for an offence under a warrant issued in accordance with subsection (1)(a); or

(b) having been so arrested, is subsequently treated under section 59(7) (limitations on police detention) as arrested for that offence.

(4) For the purposes of Part 5 (Police Detention) there is sufficient evidence to charge the person with the offence for which the person has been arrested if, and only if, a police officer of the rank of Inspector or above (who has not been directly involved in the investigation) is of the opinion that the evidence available or known to that officer is sufficient for the case to be referred to a prosecutor to consider whether consent should be sought for an application in respect of that person under section 687.

(5) For the purposes of that Part it is the duty of the custody officer at each police station where the person is detained to make available or known to an officer at that police station of the rank of Inspector or above any evidence which it appears to that officer may be relevant to an

application under section 687(1) or (2) in respect of the offence for which the person has been arrested, and to do so as soon as practicable —

(a) after the evidence becomes available or known to the officer; or

(b) if later, after the officer forms that view.

(6) Section 61 (Duties of custody officer before charge), including any provision of that section as applied by section 67(7) (review of police detention) has effect subject to the following modifications —

(a) in subsection (1) —

(i) for "decide whether the officer has before him" substitute "request an officer of the rank of Inspector or above (who has not been directly involved in the investigation) to decide, in accordance with section 699(4), whether there is";

(ii) for "the officer to make that decision" substitute "that decision to be made";

(b) in subsection (2) —

(i) for the words from "custody officer decides" to "evidence" substitute "officer who is making a decision decides that there is not such sufficient evidence";

(ii) omit "custody" from the second place where it occurs;

(c) in subsection (3) —

(i) omit "custody";

(ii) after "may" insert "direct the custody officer to".

(d) in subsection (7) for the words from "the custody officer" to the end of that subsection substitute "an officer of the rank of Inspector or above (who has not been directly involved in the investigation) decides, in accordance with section 699(4), that there is sufficient evidence to charge the person arrested with the offence for which he or she was arrested, the person arrested must be charged.";

(e) subsection (8) does not apply;

(f) after subsection (13) insert —

"(14) The officer who is requested by the custody officer to make a decision under subsection (1) must make it as soon as practicable after the request is made.".

(7) Section 67 (Review of police detention) has effect as if in subsections (7) and (8) of that section after "(6)" there were inserted "and (12)".
[UK Criminal Justice Act 2003 s.87]

700. Bail and custody before application

(1) In relation to a person charged in accordance with section 689(4) —

(a) section 65 (Duties of custody officer after charge) (including any provision of that section as applied by section 67(9)) has effect as if, in subsection (1), for "either on bail or without bail" there were substituted "on bail",

(b) section 76(2) (Bail after arrest) does not apply and references in section 61 to bail are references to bail subject to a duty to appear before the Supreme Court at a time the custody officer appoints, not being later than 24 hours after the person is released.

(2) A person who, after being charged in accordance with section 699(4), is kept in police detention, must be brought before the Supreme Court as soon as practicable and, in any event, not more than 24 hours after being is charged.

(3) If a person appears or is brought before the Supreme Court in accordance with subsection (1) or (2), the court may either —

(a) grant bail for the person to appear, if notice of an application is served on the person under section 691(2), before the Court of Appeal at the hearing of that application; or

(b) remand the person in custody to be brought before the Supreme Court under section 701(2).

(4) If the Supreme Court grants bail under subsection (3), it may revoke bail and remand the person in custody as referred to in subsection (3)(b).

(5) In subsection (6) the "relevant period", in relation to a person granted bail or remanded in custody under subsection (3), means —

(a) the period of 42 days beginning with the day on which the person is granted bail or remanded in custody under that subsection; or

(b) that period as extended or further extended under subsection (7).

(6) If at the end of the relevant period no notice of an application under section 687(1) or (2) in relation to the person has been given under section 689(1), the person —

(a) if on bail subject to a duty to appear as mentioned in subsection (3)(a), ceases to be subject to that duty and to any conditions of that bail; and

(b) if in custody on remand under subsection (3)(b) or (4), must be released immediately

without bail.

(7) The Supreme Court may, on the application of the prosecutor, extend or further extend the period mentioned in subsection (5)(a) until a specified date, but only if satisfied that —

(a) the need for the extension is due to some good and sufficient cause; and

(b) the prosecutor has acted with all due diligence and expedition.

[UK Criminal Justice Act 2003 s.88]

701. Bail and custody before hearing

(1) This section applies when notice of an application is given under section 691(1).

(2) If the person to whom the application relates is in custody under section 700(3)(b) or (4), the person must be brought before the Supreme Court as soon as practicable and, in any event, within 48 hours after the notice is given.

(3) If that person is not in custody under section 700(3)(b) or (4), the Supreme Court may, on application by the prosecutor —

(a) issue a summons requiring the person to appear before the Court of Appeal at the hearing of the application; or

(b) issue a warrant for the person's arrest,

and a warrant under paragraph (b) may be issued at any time even though a summons has previously been issued.

(4) If a summons is issued under subsection (3)(a), the time and place at which the person must appear may be specified either —

(a) in the summons; or

(b) in a subsequent direction of the Supreme Court.

(5) The time or place specified may be varied from time to time by a direction of the Supreme Court.

(6) A person arrested under a warrant under subsection (3)(b) must be brought before the Supreme Court as soon as practicable and in any event within 48 hours after arrest.

(7) If a person is brought before the Supreme Court under subsection (2) or (6) the court must either —

(a) remand the person in custody to be brought before the Court of Appeal at the hearing of the application; or

(b) grant bail for the person to appear before the Court of Appeal at the hearing.

(8) If bail is granted under subsection (7)(b), the Supreme Court may revoke the bail and remand the person in custody as referred to in subsection (7)(a).
[UK Criminal Justice Act 2003 s.89]

702. Bail and custody during and after hearing
(1) The Court of Appeal may, at any adjournment of the hearing of an application under section 687(1) or (2) —

(a) remand the person to whom the application relates on bail; or

(b) remand the person in custody.

(2) At a hearing at which the Court of Appeal —

(a) makes an order under section 688;

(b) makes a declaration under subsection (4) of that section; or

(c) dismisses the application or makes a declaration under subsection (3) of that section (if the court gives the prosecutor leave to appeal against its decision or the prosecutor gives notice of intention to apply for such leave),

the court may make any order it sees fit for the custody or bail of the acquitted person pending trial pursuant to the order or declaration, or pending determination of the appeal.

(3) For the purpose of subsection (2), the determination of an appeal is pending —

(a) until any application for leave to appeal is disposed of, or the time within which it must be made expires;

(b) if leave to appeal is granted - until the appeal is disposed of.

(4) Section 142 (Reasons for not granting bail) applies in relation to the grant of bail under this section as if in subsection (2) the reference to the court included a reference to the Court of Appeal.

(5) The court may at any time, as it sees fit —

(a) revoke bail granted under this section and remand the person in custody; or

(b) vary an order under subsection (2).
[UK Criminal Justice Act 2003 s.90]

703. Revocation of bail

(1) If —

(a) a court revokes a person's bail under this Part; and

(b) that person is not before the court when his or her bail is revoked,

the court must order the person to surrender forthwith to the custody of the court.

(2) If a person surrenders into the custody of the court in compliance with an order under subsection (1), the court must remand the person in custody.

(3) A person who has been ordered to surrender to custody under subsection (1) and who fails without reasonable cause to surrender to custody in accordance with the order may be arrested by a police officer without a warrant.

(4) A person arrested under subsection (3) must be brought as soon as practicable, and, in any event not more than 24 hours after the arrest, before the court and the court must remand the person in custody.

Tainted acquittals

704. Acquittals tainted by intimidation, etc.

(1) This section applies if —

(a) a person has been acquitted of an offence in any court; and

(b) any person has been convicted of an administration of justice offence involving interference with or intimidation of a juror or a witness (or potential witness) in any proceedings which led to the acquittal.

(2) If it appears to the court before which the person was convicted as mentioned in subsection (1)(b) that —

(a) there is a real possibility that, but for the interference or intimidation, the acquitted person would not have been acquitted; and

(b) it would not, for lapse of time or for any other reason, be contrary to the interests of justice to take proceedings against the acquitted person for the offence of which the person was acquitted,

the court must certify that it so appears.

(3) If a court certifies under subsection (2), the Attorney General may apply to the Supreme Court for an order quashing the acquittal, and the court must make the order if (but must not do so unless) the 4 conditions in section 705 are satisfied.

(4) If an order is made under subsection (3) —

(a) proceedings may be taken against the acquitted person for the offence of which the person was acquitted; and

(b) the provisions of this Ordinance relating to arrest, charge and detention of persons apply with necessary modifications.

(5) For the purposes of this section the following offences are administration of justice offences—

(a) perverting the course of justice;

(b) an offence under section 467 of the Crimes Ordinance 2014 (Intimidation etc. of witnesses, jurors and others);

(c) an offence of encouraging, or aiding and abetting, another person to commit an offence under section 477 of the Crimes Ordinance 2014 (Perjury in judicial proceedings)**.**

(6) This section only applies in relation to acquittals in respect of offences alleged to be committed on or after the commencement of this Part.
[UK Criminal Procedure & Investigations Act 1996 s.54]

705. Conditions for making order
(1) The first condition required by section 704(3) is that it appears to the Supreme Court likely that, but for the interference or intimidation, the acquitted person would not have been acquitted.

(2) The second condition is that it does not appear to the court that, because of lapse of time or for any other reason, it would be contrary to the interests of justice to take proceedings against the acquitted person for the offence of which the person was acquitted.

(3) The third condition is that it appears to the court that the acquitted person has been given a reasonable opportunity to make written representations to the court.

(4) The fourth condition is that it appears to the court that the conviction for the administration of justice offence will stand.

(5) In applying subsection (4) the court must —

(a) take into account all the information before it; but

(b) ignore the possibility of new factors coming to light.

(6) Accordingly, the fourth condition has the effect that the court must not make an order under section 704(3) if (for example) it appears to the court that any time allowed for giving notice of appeal has not expired or that an appeal is pending.

[UK Criminal Procedure & Investigations Act 1996 s.55]

706. Time limits for proceedings

(1) If —

(a) an order is made under section 704(3) quashing an acquittal;

(b) by virtue of section 704(4) it is proposed to take proceedings against the acquitted person for the offence of which the person was acquitted; and

(c) apart from this subsection, there is a statutory requirement that the proceedings must be commenced before a specified period calculated by reference to the commission of the offence,

in relation to the proceedings the requirement has effect as if the period were instead one calculated by reference to the time the order is made under section 704(3).

(2) Subsection (1)(c) applies however the requirement is expressed.
[UK Criminal Procedure & Investigations Act 1996 s.56]

707. Time and service of certification

(1) The certification referred to in section 704(2) must be given —

(a) immediately after the court sentences or otherwise deals with a person for the administration of justice offence; or

(b) if the person is committed to the Magistrate's Court for sentencing for the offence - immediately after the person is so committed

(c) if the person is a youth and is remitted to the Youth Court for sentence – immediately after the youth is so remitted.

(2) A certification under section 704(2) must be in the form prescribed by criminal procedure rules or, if no rules have been made, in accordance with any relevant practice direction in that behalf.

(3) If a court makes a certification under section 704(2), the court officer must, as soon as practicable after the drawing up of the form of certification serve a copy on the person who was acquitted, on the prosecutor and, if the certification takes place before a court other than the court which acquitted the person, on the Clerk of the court or the Registrar, as the case may be.
[UK Criminal Proc. Rules 2012 Pt.40]

References by the Attorney General

708. Review of sentence: Scope

(1) Any proceeding in which sentence is passed on a person by the Supreme Court for an indictment-only offence (other than a sentence substituted on an appeal) may be referred to the Court of Appeal under this section.

(2) If it appears to the Attorney General that the sentencing of a person for an offence as mentioned in subsection (1) has been unduly lenient, the Attorney General may, with the leave of the Court of Appeal, refer the proceeding to that court for it to review the sentencing of that person.

(3) Without limiting subsection (2), the sentence of the Supreme Court may be regarded as unduly lenient if the court —

(a) failed to impose a sentence required by any enactment; or

(b) erred in law as to its powers of sentencing.

(4) For the purposes of this section, any 2 or more sentences are to be treated as passed in the same proceeding if they would be so treated for the purposes of an appeal by the defendant.
[UK Criminal Justice Act 1988 s.35 and s.36 (part)]

709. Review of sentence: Powers

(1) On a reference under subsection (1), the Court of Appeal may —

(a) quash any sentence passed on the person in the proceeding; and

(b) in place of it pass a sentence that the court thinks appropriate for the case and that the Supreme Court had power to pass when dealing with the person.

(2) A judge must not sit as a member of the Court of Appeal on the hearing of, or decide any application in proceedings incidental or preliminary to, a reference under this section of a sentence passed by that judge.

(3) When the Court of Appeal has concluded the review of a proceeding referred to it under section 708, the Attorney General or the person to whose sentencing the reference relates may refer a point of law involved in any sentence passed on that person in the proceeding to the Judicial Committee which must —

(a) consider the point and decide on it accordingly;

(b) either remit the case to the Court of Appeal or deal with it.

(4) A reference under subsection (3) can be made only with the leave of the Court of Appeal or the Judicial Committee and leave is not to be granted unless it is certified by the Court of Appeal

that the point of law is of general public importance and it appears to the Court of Appeal or the Judicial Committee (as the case may be) that the point is one which ought to be considered by the Judicial Committee.

(5) For the purpose of dealing with a case under this section the Judicial Committee may exercise any powers of the Court of Appeal.
[UK Criminal Justice Act 1988 s.36 (part)]

710. Review of sentence: Procedure

(1) Notice of an application for leave to refer a proceeding to the Court of Appeal under section 708 must be given within 28 days after the day on which the sentence, or the last of the sentences, in the proceeding was passed.

(2) If notice of a reference or application to the Court of Appeal under section 708 is given to the Registrar, the Registrar must —

(a) take all necessary steps for obtaining a hearing of the reference or application; and

(b) obtain and lay before the court in proper form all documents, exhibits and other things which appear necessary for the proper determination of the reference or application.

(3) The Chief Justice may, by criminal procedure rules, make provision —

(a) enabling a person to whose sentencing such a reference or application relates to obtain from the Registrar any documents or things, including copies or reproductions of documents, required for the reference or application; and

(b) authorising the Registrar to make charges for such documents or things in accordance with scales and rates fixed by the rules;

(c) enabling an application for review of sentence to be made, and for the review to be conducted, while the Chief Justice is outside the Falkland Islands.

(4) An application —

(a) to the Court of Appeal for leave to refer a proceeding to the Judicial Committee under section 709(3) - must be made within 14 days after the Court of Appeal concludes its review of the proceeding;

(b) to the Judicial Committee for leave - must be made within 14 days after the Court of Appeal concludes its review or refuses leave to refer the proceeding to the Judicial Committee.

(5) The time during which a person whose case has been referred for review under section 708 is in custody pending its review and pending any reference to the Judicial Committee under section

709(3) is to be reckoned as part of the term of any sentence to which the person is for the time being subject.

(6) Subject to subsections (7) and (8), a person whose sentencing is the subject of a reference to the Court of Appeal under section 708 is entitled to be present, if the person wishes, on the hearing of the reference, even if the person is in custody.

(7) A person in custody is not entitled to be present —

(a) on an application by the Attorney General for leave to refer a case; or

(b) on any proceedings preliminary or incidental to a reference,

unless the Court of Appeal gives the person leave to be present.

(8) The power of the Court of Appeal to pass sentence on a person may be exercised even if the person is not present.

(9) A person whose sentencing is the subject of a reference to the Judicial Committee under section 709(3), and who is detained pending the hearing of that reference, is not entitled to be present on the hearing of the reference or of any proceeding preliminary or incidental to it unless the Judicial Committee so authorises.

(10) The term of any sentence passed by the Court of Appeal or by the Judicial Committee under section 709 begins to run from the time when it would have begun to run if passed in the proceeding in relation to which the reference was made, unless the Court of Appeal or the Judicial Committee otherwise directs.
[UK Criminal Justice Act 1988 Sched.3]

711. Reference of point of law following acquittal on indictment
(1) If a person tried on indictment has been acquitted (whether in respect of the whole or part of the indictment) —

(a) the Attorney General, if desiring to have the opinion of the Court of Appeal on a point of law which has arisen in the case, may refer that point to the court; and

(b) the Court of Appeal must, in accordance with this section, consider the point and give its opinion on it.

(2) For the purpose of its consideration of a point referred to it under this section the Court of Appeal must hear argument —

(a) by, or by counsel on behalf of, the Attorney General; and

(b) if the acquitted person desires to present any argument to the court - by counsel on the person’s behalf or, with the leave of the court, by the acquitted person in person.

(3) A reference under this section does not affect the trial in relation to which the reference is made, or any acquittal in that trial.

(4) The court must ensure that the identity of the respondent to a reference is not disclosed during the proceedings on the reference unless the respondent has consented to the use of the respondent's name in the proceedings.

(5) No mention must be made in the reference of the proper name of any person or place which is likely to lead to the identification of the respondent.
[UK Criminal Justice Act 1972 s.36 (part)]

712. Appeal on a reference to the Judicial Committee
(1) If the Court of Appeal has given its opinion on a point referred to it under section 711, the court may, on its own initiative or pursuant to an application in that behalf, refer the point to the Judicial Committee if it appears to the court that the point ought to be considered by the Judicial Committee.

(2) If a point is referred to the Judicial Committee under subsection (3), the Judicial Committee must consider the point and give an opinion on it accordingly.

(3) An application under this section to the Court of Appeal for leave to appeal to the Judicial Committee on any ruling by the Court of Appeal may be made orally immediately after the court gives its ruling or by notice served on the Registrar within 14 days of the ruling.
[UK Criminal Justice Act 1972 s.36 (part)]; Criminal Procedure Rules 2012 Pt.70]

References by the Governor

713. Reference to the Court of Appeal of conviction, verdict or finding on indictment
(1) If a person has been convicted of an offence on indictment before the Supreme Court the Governor, in his or her discretion, may, subject to section 715, at any time refer the conviction to the Court of Appeal.

(2) A reference under subsection (1) of a person's conviction is to be treated for all purposes as an appeal by the person under section 4(1)(c) of the Court of Appeal Ordinance, whether or not the person pleaded guilty.

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

(4) If in the Supreme Court a verdict of not guilty by reason of mental disorder has been returned by a jury or by a judge sitting alone, the Governor may at any time refer the verdict to the Court of Appeal, and a reference under this subsection is to be treated for all purposes as an appeal under section 4(1)(e) of the Court of Appeal Ordinance against the verdict.

(5) If in a trial in the Supreme Court a jury has returned findings, or a judge sitting alone has found, that a person is under a disability and did the act or made the omission charged, the

Governor may at any time refer either or both of those findings to the Court of Appeal; and a reference under this subsection is to be treated for all purposes as an appeal under section 4(1)(f) of the Court of Appeal Ordinance against the finding or findings referred.
[Criminal Justice (Am) (Miscarriages of Justice Ord. s.2 modified]

714. Reference to the Supreme Court of conviction, verdict or finding in a summary trial
(1) If a person has been convicted of an offence by the Magistrate's Court or the Summary Court, the Governor may, subject to section 715, at any time refer the conviction to the Supreme Court.

(2) A reference under subsection (1) of a person's conviction is to be treated for all purposes as an appeal under Part 31 (Appeals to the Supreme Court) against the conviction, whether or not the person pleaded guilty.

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

(4) For the purposes of subsection (3) convictions are related if they are convictions of the same person by the same court on the same day.

(5) If the Magistrate's Court or the Summary Court has returned a verdict of not guilty by reason of mental disorder, the Governor may at any time refer the verdict to the Supreme Court, and a reference under this subsection is to be treated for all purposes as an appeal under section 668 against the verdict.

(6) If the Magistrate's Court or the Summary Court has found that a person is under a disability and did the act or made the omission charged, the Governor may at any time refer either or both of those findings to the Supreme Court; and a reference under this subsection is to be treated for all purposes as an appeal under section 668 against the finding or findings referred.
[Criminal Justice (Am) (Miscarriages of Justice Ord. s.3 modified]

715. Conditions for making of reference
(1) If —

(a) a person has been convicted of an offence in any court;

(b) a verdict of not guilty by reason of mental disorder has been returned by a court in respect of a person; or

(c) a finding has been made by a court that a person was under a disability and did the act or made the omission charged,

the person, or the Attorney General on behalf of the person (with or without the consent of the person) may petition the Governor for the conviction, verdict or finding to be referred to the

Court of Appeal or the Supreme Court, as the case may be, on the ground that the conviction, verdict or finding constitutes a miscarriage of justice.

(2) Before exercising the powers in this section or section 713 or 714, the Governor must obtain the advice of the Advisory Committee as to whether the conviction, verdict or finding should be referred under section 713 or 714, as the case may be.

(3) The Advisory Committee must not advise the Governor to refer a conviction, verdict or finding unless —

(a) the Advisory Committee considers that there is a real possibility that the conviction, verdict or finding would not be upheld if the reference were made;

(b) the Advisory Committee so considers because of an argument, or evidence, not raised in the proceedings which led to it or on any appeal or application for leave to appeal against it; and

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

(4) Nothing in subsection (3)(b) or (c) prevents the making of a reference if it appears to the Advisory Committee that there are exceptional circumstances which justify making it.
[Criminal Justice (Am) (Miscarriages of Justice Ord. s.4 modified; UK Criminal Appeal Act 1995 s.13]

716. Procedure on a petition
(1) A petition under section 715 must contain —

(a) the facts of the case and the arguments as to why the conviction, verdict or finding constitutes a miscarriage of justice;

(b) all the evidence before the courts in the previous hearings;

(c) all previous judgments in the case;

(d) all new evidence or significant points of law not previously considered by the courts.

(2) Unless the Attorney General is acting on behalf of a petitioner as provided by section 715(1), a copy of every petition must be served on the Attorney General, who must —

(a) decide whether to oppose or support the petition; and

(b) notify the Governor accordingly.

(3) When the Governor requests the advice of the Advisory Committee on the Prerogative of Mercy on a petition, as required by section 715(2), the Advisory Committee must have regard to—

(a) any application or representations made to the Governor by or on behalf of the person to whom the conviction, verdict or finding relates;

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

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

(4) The Advisory Committee —

(a) may instruct independent investigators or experts to assist it if necessary;

(b) when satisfied that all investigations necessary to make a decision on the petition are complete, must decide whether to advise the Governor to refer the conviction, verdict or finding under section 713 or 714 as the case may be.

717. Further provisions about references

(1) In considering whether to make a reference under section 713 or 714 the Governor, on the advice of the Advisory Committee on the Prerogative of Mercy, may at any time refer any point on which the Governor desires the assistance of the Court of Appeal to that court for the court's opinion on it; and on a reference under this subsection the Court of Appeal must consider the point referred and furnish the Governor with the court's opinion on the point.

(2) If the Governor makes a reference under section 713 or 714 the Governor must —

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

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

(3) When an appeal arising out of a reference under section 713 or 714 is being considered by the Court of Appeal or the Supreme Court, as the case maybe, it may be considered on any ground relating to the conviction, verdict or finding, whether or not the ground is related to any reason given by the Governor for making the reference.

(4) The grounds on which a conviction, verdict or finding may be revered on a reference under section 713 or 714 are that —

(a) fresh evidence shows clearly that the defendant is innocent of the crime of which the defendant was convicted (or in respect of which a verdict was returned or a finding was made);

(b) the fresh evidence is such that, had it been available at the time of the trial, no reasonable jury (or court, in the absence of a jury) could properly have convicted the defendant (or returned a verdict or made a finding);

(c) the fresh evidence renders the conviction, verdict or finding unsafe in that, had it been available at the time of the trial, a reasonable jury (or court, in the absence of a jury) might or might not have convicted the defendant (or returned the verdict or made the finding); and

(d) something has gone seriously wrong in the investigation of the offence or the conduct of the trial, resulting in the conviction of someone who should not have been convicted (or a wrongful verdict or finding).

(5) In every case in which —

(a) an application has been made to the Governor by or on behalf of any person for the reference under section 713 or 714 of any conviction, verdict or finding; but

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

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

(6) The Chief Justice may by criminal procedure rules make provision governing the procedure on a petition under section 716 and on an application for compensation under section 718, including provision for applications to be made and disposed of while the Chief Justice is outside the Falkland Islands.

(7) The procedure in and powers of the Court of Appeal and the Supreme Court on a reference under section 713 or 714 respectively are the same as on an appeal under the Court of Appeal Ordinance or Part 31 (Appeals to the Supreme Court) respectively.
[Criminal Justice (Am) (Miscarriages of Justice Ord. s.5]

718. Compensation for miscarriage of justice

(1) Subject to subsection (2), if a person has been convicted of a criminal offence, and if subsequently the conviction has been reversed or the person has been pardoned on the ground that a new or newly discovered fact so undermines the evidence against the defendant that no conviction could reasonably be based upon it, the Governor must order compensation to be paid—

(a) to the person who suffered punishment as the result of the conviction; or

(b) if that person is dead, to his or her personal representatives,

unless the disclosure of the unknown fact was wholly or partly attributable to the person convicted.

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

(3) If the Governor determines that there is a right to compensation, the amount of the compensation, not exceeding £1 million for a sentence served in excess of 10 years or £500,000 in any other case, must be determined by an assessor appointed by the Governor.

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

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

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

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

(5) In this section "reversed" is to be construed as referring to a conviction having been quashed—

(a) on an appeal out of time;

(b) on a reference under section 713 or 714.

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

(7) A person shall not be appointed by the Governor under subsection (3) to be an assessor unless the person holds one or more of the qualifications specified in section 88(2) of the Constitution.

(8) The Governor's powers under this section are to be exercised after consultation with the Advisory Committee on the Prerogative of Mercy.
[Criminal Justice (Amendment) Miscarriages of Justice) Ordinance s.6; *UK Criminal Justice Act 1988 ss.133 and 133A]*

CHAPTER 11 – YOUTHS AND YOUNG OFFENDERS

PART 33 – YOUNG OFFENDERS AND YOUTH PROTECTION
Preliminary

719. Interpretation of Part
(1) In this Part —

"detained" means detained in a place designated by the Governor under section 732; and "detention" is to be construed accordingly;

"make reparation", in relation to an offender, means make reparation for the offence otherwise than by the payment of compensation;

"place of safety" means any police station or any hospital other suitable place which is able and willing to receive a youth temporarily;

"youth justice system" means the system of criminal justice in so far as it relates to youths and young offenders.

(2) The provisions of this Part are in addition to and do not derogate from the provisions of —

(a) Part 25 (Community Sentences) relating to community sentences on youths or young offenders;

(b) Part 24 (Absolute or Conditional Discharges) relating to breaches of conditional discharges by young offenders;

(c) Part 8 (Simple and Conditional Cautions) relating to conditional cautioning of young offenders;

(d) Part 23 (Sentencing: General principles) relating to young offenders;

(e) the Children Ordinance 2014 relating to care and supervision orders.

720. General considerations when dealing with youths

(1) The principal aim of the youth justice system in the Falkland Islands is to prevent offending by youths and re-offending by young offenders, and all persons and bodies performing functions in relation to the youth justice system must have regard to that aim.

(2) Every court in dealing with a youth who is brought before it, either as an offender or otherwise, must —

(a) have regard to the welfare of the youth; and

(b) in an appropriate case take steps for removing the youth from undesirable surroundings, and for securing that proper provision is made for his or her education and training.

(3) A court dealing with a youth —

(a) must have regard to the principal aim of the youth justice system as set out in subsection (1);

(b) must have regard to the purpose of sentencing as set 0ut in section 477,

except when considering an offence the sentence for which is fixed by law, or is provided for by section 730 (murder convictions) or by Part 34 (Mentally Disordered Offenders).

(4) The words "conviction" and "sentence" must not be used in relation to youths dealt with summarily and any reference in any enactment to a person convicted, a conviction or a sentence is, in the case of a youth, to be construed as including a reference to a person found guilty of an offence, a finding of guilt or an order made upon such a finding, as the case may be.

(5) A conviction or finding of guilt of or against a youth is to be disregarded for the purposes of any law which imposes any disqualification or disability upon convicted persons or authorises or requires the imposition of any such disqualification or disability.
[UK Children & Young Persons Act 1933 ss.44 & 59; Crime & Disorder Act 1998 s.37; Criminal Justice Act 2003 s.142A ins. by Criminal Justice & Investigations Act 2009]

Youth Courts

721. Constitution and procedure of Youth Courts
(1) Subject to section 722, the Magistrate's Court or the Summary Court when sitting for the purpose of hearing any charge against a youth or when exercising any other jurisdiction conferred on a Youth Court by this or any other enactment is to be known as the Youth Court.

(2) No person may be present at any sitting of the Youth Court except —

(a) members and officers of the court;

(b) parties to the case before the court, their legal practitioners, and witnesses and other persons directly concerned in that case;

(c) genuine representatives of newspapers or news agencies; and

(d) any other persons that the court authorises to be present.

(3) The Chief Justice may by criminal procedure rules make provision regulating the procedure of the Youth Court.
[UK Children & Young Persons Act 1933 ss.45 and 47 adapted]

722. Charges to be heard in the Youth Court
(1) Subject to subsections (2) and (3), every charge against a youth that is not for an indictment-only offence is to be heard by the Magistrate's Court or the Summary Court sitting as the Youth Court, except that —

(a) a charge made jointly against a youth and an adult must be heard by the Magistrate's Court or the Summary Court in accordance with Part 16 (Summary Procedure); and

(b) if a youth is charged with an offence and an adult is charged at the same time with aiding, abetting, causing, procuring, allowing or permitting that offence, the case must be tried in the Magistrate's Court or the Summary Court in accordance with Part 16.

(2) If, in the course of any proceedings before the Magistrate's Court or the Summary Court not sitting as the Youth Court, it appears that the person to whom the proceedings relate is a youth, the court may, if it thinks fit to do so, proceed with the hearing and determination of those proceedings.

(3) If a notification that the defendant wishes to plead guilty without appearing before the court is received by the Clerk of the court and the court has no reason to believe that the defendant is a youth, then, even if the defendant is a youth, he or she is deemed to have attained the age of 18 for the purposes of subsection (1) in its application to the proceedings in question.

(4) No rule, whether contained in this Ordinance or any other law, that a charge is to be brought before the Youth Court restricts the powers of any justice of the peace to entertain an application for bail or for a remand, and to hear any evidence necessary for that purpose.
[UK Children & Young Persons Act 1933 s.46 am by Children & Young Persons Acts 1963 and 1969]

723. Extension of jurisdiction
(1) The Youth Court when sitting for the purpose of hearing a charge against a person who is believed to be a youth may, if it thinks fit to do so, proceed with the hearing and determination of the charge even if it is discovered that the person in question is not a youth.

(2) The attainment of the age of 18 years by a person who is a youth subject to a youth rehabilitation order, or in whose case an order for conditional discharge has been made, does not deprive the Youth Court of jurisdiction to enforce the person's attendance and deal with him or her in respect of any failure to comply with the requirements of the order or the commission of a further offence or to amend or discharge the youth rehabilitation order.
[UK Children & Young Persons Act 1933 s.48]

724. Duty to remit youth offenders to the Youth Court for sentence
(1) Subsection (2) applies if a youth is convicted by or before any court, other than the Youth Court, of an offence other than homicide.

(2) The court must, unless satisfied that it would be undesirable to do so, remit the case to the Youth Court for sentence, subject to subsection (6).

(3) If a case is remitted under subsection (2), the offender must be brought before the Youth Court accordingly, and that court may deal with the offender in any way in which it might have dealt with the offender if he or she had been tried and convicted by that court.

(4) A court by which an order remitting a case to the Youth Court is made under subsection (2)—

(a) may, subject to section 161 (Bail in cases of treason or murder) and section 162 (Bail in cases of other serious crime), give any directions necessary with respect to the custody of the offender or for the release of the offender on bail until he or she can be brought before the Youth Court; and

(b) must send to the Clerk of the court a certificate setting out the nature of the offence and stating that —

(i) the offender has been convicted of the offence; and

(ii) the case has been remitted for the purpose of being dealt with under this section.

(5) If a case is remitted under subsection (2), the offender does not have a right of appeal against the order of remission, but has the same right of appeal against any order of the Youth Court as if he or she had been convicted by that court.

(6) If the Magistrate's Court or the Summary Court convicts a youth of an offence it must exercise the power conferred by subsection (2) unless the court is of the opinion that the case is one which can properly be dealt with by means of —

(a) an order discharging the offender absolutely or conditionally;

(b) an order for the payment of a fine; or

(c) an order under section 737 requiring the offender's parent or guardian to enter into a recognisance to take proper care of the offender and exercise proper control over him or her,

with or without any other order that the court has power to make when absolutely or conditionally discharging an offender.

(7) For the purposes of subsection (6), taking care of a person includes giving him or her protection and guidance, and control includes discipline.
[UK Powers of Criminal Courts (Sentencing) Act 2000 ss.8 & 150(11)]

725. Remitting an offender who becomes 18 to the Magistrate's Court for sentence
(1) If a person who appears or is brought before the Youth Court charged with an offence subsequently attains the age of 18, the Youth Court may, at any time after conviction and before sentence, remit the person for sentence to the Magistrate's Court.

(2) If an offender is remitted under subsection (1), the Youth Court must adjourn proceedings in relation to the offence, and —

(a) any enactment relating to remand or the granting of bail in criminal proceedings has effect, in relation to the Youth Court's power or duty to remand the offender on that adjournment, as if any reference to the court to or before which the person remanded is to be brought or appear after remand were a reference to the Magistrate's Court;

(b) subject to subsection (3), the Magistrate's Court may deal with the case in any way in which it would have power to deal with it if all proceedings relating to the offence which took place before the Youth Court had taken place before the Magistrate's Court.

(3) If an offender is remitted under subsection (1), section 7246) does not apply to the Magistrate's Court.

(4) An offender who is remitted under subsection (1) has no right of appeal against the order of remission, but without affecting any right of appeal against an order made in respect of the offence by the Magistrate's Court to which he or she is remitted.
[UK Powers of Criminal Courts (Sentencing) Act 2000 s.9]

Custodial sentences on young offenders and youths

726. Custodial sentences on young offenders
(1) Subject to subsection (2) and section 730(2) and (3), a court must not —

(a) pass a sentence of imprisonment for an offence on a person who was aged under 21 when convicted of the offence; or

(b) commit a person aged under 21 to prison for any reason.

(2) Nothing in subsection (1) prevents the committal to prison of a person aged under 21 who is—

(a) remanded in custody; or

(b) sent in custody for trial or committed in custody for sentence.

(3) A court must not —

(a) pass a sentence of detention under any of sections 727 to 729; or

(b) pass a sentence of custody for life under section 730,

unless it is satisfied —

(i) that the circumstances, including the nature and gravity of the offence, are such that if the offender were aged 21 or over the court would pass a sentence of imprisonment; and

(ii) that the offender qualifies for a custodial sentence.

(4) An offender qualifies for a custodial sentence if —

(a) he or she has a history of failure to respond to non-custodial penalties and is unable or unwilling to respond to them; or

(b) only a custodial sentence would be adequate to protect the public from serious harm from the offender or

(c) the offence of which the offender has been convicted or found guilty was so serious that a non-custodial sentence for it cannot be justified.

(5) The provisions of sections 558 and 559 apply in relation to a person under 21 years of age as they do to a person above that age with the modification required by subsection (7).

(6) The modification referred to in subsection (6) is the substitution of a reference to a sentence of detention or a sentence of custody for life for any reference to a term of imprisonment.

(7) Before imposing a custodial sentence on a youth the court must consider a report from the probation officer on the offender and his or her personal and family circumstances (irrespective of how serious the offence is).

(8) If —

(a) the Supreme Court passes a sentence of detention or a sentence of custody for life under section 730; or

(b) the Magistrate's Court or the Youth Court passes a sentence of detention, the court must—

(i) state in open court that it is satisfied that the offender qualifies for a custodial sentence under one or more of the paragraphs of subsection (4) above, the paragraph or paragraphs in question and why it is so satisfied; and

(ii) explain to the offender in open court and in ordinary language why it is passing a custodial sentence on him or her.

[Criminal Justice Ord. ss.33 & 37; UK Powers of Criminal Courts (Sentencing) Act 2000 s.89]

727. Detention of young offenders

(1) Subject to sections 728 to 730, if —

(a) an offender under 21 but not less than 15 years of age at the date of conviction is convicted of an offence which is punishable with imprisonment in the case of a person aged 21 or over; and

(b) the court is satisfied of the matters referred to in section 726(3),

the court may impose a sentence of detention.

(2) Subject to section 728(2) and (3), the maximum term of detention that a court may impose for an offence is the same as the maximum term of imprisonment that it may impose for that offence on a person aged 21 or over.

(3) Subject to subsection (4) of this section and to section 728(3), a court must not pass a sentence of detention on an offender for less than 21 days.

(4) A court may pass a sentence of detention for less than 21 days for an offence under section 731(2) (contempt of court)

(5) Subject to section 728(4), if —

(a) an offender is convicted of more than one offence for which he or she is liable to a sentence of detention; or

(b) an offender who is serving a sentence of detention is convicted of one or more further offences for which he or she is liable to such a sentence,

the court has the same power to pass consecutive sentences of detention as if they were sentences of imprisonment.

(6) If an offender who —

(a) is serving a sentence of detention; and

(b) is aged over 21 years,

is convicted of one or more further offences for which he or she is liable to imprisonment, the court may impose one or more sentences of imprisonment to run consecutively upon the sentence of detention.
UK Powers of Criminal Courts (Sentencing) Act 2000 ss.101 & 102 adapted (part)]

728. Detention of young offenders: Supplementary
(1) A person who was under the age of 15 years at the date of conviction must not be sentenced to detention unless section 729 or section 730 applies.

(2) A person who was aged 15 but less than 18 years at the date of conviction may be sentenced to detention for any period not exceeding 24 months.

(3) Subject to the limit specified in subsection (2), the maximum period of detention which the court can impose upon a person aged 15 but less than 18 years for an offence is half the maximum term of imprisonment for the offence that a court could impose on a person over 21.

(4) A court may impose consecutive sentences of detention up to a maximum total term of 24 months.

(5) Time spent by the offender on remand in detention in must be allowed for in calculating a term of detention under this section or section 727.

(6) In this section "total term" means, in the case of an offender sentenced (whether or not on the same occasion) to 2 or more terms of detention which are consecutive or wholly or partly concurrent, the total of those terms.

(7) Sections 580 to 583 (relating to release on licence) and any rules made or criteria established under section 584 apply, with necessary modifications, to persons serving a period of detention under this Part as they apply to persons serving a term of imprisonment under that Part.

(8) The Governor, after consulting the Criminal Justice Council, may specify the modifications required to sections 580 to 583 and any rules made or criteria established under section 584 in relation to young offenders.
[Criminal Justice Ord. s.35; UK Powers of Criminal Courts (Sentencing) Act 2000 ss.101 & 102 adapted (part)]

729. Youths convicted of murder, etc.
(1) If a person convicted of murder or any other offence the sentence for which is fixed by law as life imprisonment appears to the court to have been aged under 18 when the offence was committed, the court must sentence the person to be detained during Her Majesty's pleasure.

(2) If a youth is convicted of —

(a) any indictment-only offence;

(b) an offence punishable in the case of a person aged 21 or over with imprisonment for 14 years or more, not being an offence the sentence for which is fixed by law;

(c) an offence under section 216 of the Crimes Ordinance 2014 (child sex offences); or

(d) an offence under section 14 of the Road Traffic Ordinance (Causing death by reckless driving),

and the court is of the opinion that none of the other ways in which the case may be dealt with is suitable, the court may sentence the offender to be detained for a specified period, not exceeding the maximum term of imprisonment with which the offence is punishable in the case of a person aged 18 or over.

(3) Subsections (1) and (2) are subject to section 726(3) to (8) (restrictions on imposition of custodial sentences).
[Criminal Justice Ord. s.39; UK Powers of Criminal Courts (Sentencing) Act 2000 ss.90 & 91 adapted]

730. Young offenders convicted of murder, etc.
(1) If a person aged under 21 is convicted of murder or any other offence the sentence for which is fixed by law as imprisonment for life, the court must sentence the person to imprisonment for life unless he or she is liable to be detained under section 729(1).

(2) If a person aged at least 18 but under 21 is convicted of an offence —

(a) for which the sentence is not fixed by law; but

(b) for which a person aged 21 or over would be liable to imprisonment for life,

the court must, if it considers that a sentence for life would be appropriate, sentence the person to imprisonment for life.

(3) Subsections (1) and (2) are subject to section 726(3) to (8) (restrictions on imposition of custodial sentences).
[Criminal Justice Ord. s.38; UK Powers of Criminal Courts (Sentencing) Act 2000 ss.93 and 94 am. by Criminal Justice & Court Services Act 2000 s.61]

731. Sentences on young offenders for contempt, etc.
(1) In any case where, but for section 726, a court would have power to —

(a) commit a person under 21 to prison for contempt of court or any kindred offence;

(b) commit such a person to prison for default in payment of a fine or any other sum of money; or

(c) make an order fixing a term of imprisonment in the event of such a default by such a person,

the court may commit the person to be detained under this section or, as the case may be, may make an order for fixing a term of detention under this section in the event of default, for a term not exceeding the term of imprisonment.

(2) For the purposes of subsection (1), a power of the court to order a person to be imprisoned under legislation relating to the attachment of earnings in default of payment by that person of any sum ordered by a court to be paid shall be taken to be a power to commit the person to prison.

(3) A court must not commit a person under 21 to be detained under this section unless it is of the opinion that no other method of dealing with the person is appropriate.

(4) If a court commits a person under 21 to be detained under this section it must state its reasons in open court and cause the reason to be recorded in the warrant of commitment and the register.
[Criminal Justice Ord. s.40 modified]

732. Powers of the Governor
(1) The Governor may from time to time direct where a youth or a young offender who is sentenced to detention under this Part is to be detained.

(2) The place designated under subsection (1) must not be in the prison unless no other suitable place is available to receive the offender.

(3) If a place in the prison is designated, it must be an area of the prison partitioned off from other areas of the prison.

(4) A person sentenced to be detained during Her Majesty's pleasure is to be detained in a place, and under conditions, that the Governor directs.
[Criminal Justice Ord. s.36]

Fines, etc. on youth offenders

733. Limit on fines imposed in respect of youths
(1) The maximum fine that can be imposed by a court on a child for any offence is £250.

(2) The maximum fine that can be imposed by a Youth Court on a young person for any offence is £1,000.

(3) The Supreme Court may fine a young person any amount up to the limit, if any, prescribed for the offence.

(4) A youth must not be imprisoned for non-payment of a fine but the court may impose a youth rehabilitation order under Part 25 (Community Sentences) instead of imprisonment.

(5) The Governor in Council, after consulting the Criminal Justice Council, may by order vary the maximum amount of fine mentioned in subsection (1) or (2).
[UK Powers of Criminal Courts (Sentencing) Act 2000 s.135 adapted; Magistrates' Courts Act 1980 s.36]

734. Power to order parent or guardian to pay fine, costs or compensation
(1) If —

(a) a youth is convicted of any offence for the commission of which a fine or costs may be imposed or a compensation order may be made; and

(b) the court is of the opinion that the case would best be met by the imposition of a fine or costs or the making of such an order, whether with or without any other penalty,

the court must order that the fine, compensation or costs awarded be paid by the parent or guardian of the youth instead of by the youth himself or herself, unless the court is satisfied that—

(i) the parent or guardian cannot be found; or

(ii) it would be unreasonable to make an order for payment, having regard to the circumstances of the case.

(2) If but for this subsection a court would impose a fine on a youth for a breach of any order or condition imposed by a court, the court must order that the fine be paid by the parent or guardian of the youth instead of by the youth himself or herself, unless the court is satisfied that —

(a) the parent or guardian cannot be found; or

(b) it would be unreasonable to make an order for payment, having regard to the circumstances of the case.

(3) In the case of a young person aged 16 or over, subsections (1) and (2) have effect as if, instead of imposing a duty, they conferred a power to make an order as mentioned in those subsections.

(4) Subject to subsection (5), no order may be made under this section without giving the parent or guardian an opportunity of being heard.

(5) An order under this section may be made against a parent or guardian who, having been required to attend, has failed to do so.

(6) A parent or guardian may appeal to the Supreme Court against an order under this section made by the Magistrate's Court or the Summary Court.

(7) A parent or guardian may appeal to the Court of Appeal against an order under this section made by the Supreme Court, as if he or she had been convicted on indictment and the order were a sentence passed on his or her conviction.

(8) In relation to a youth for whom the Crown has parental responsibility and who —

(a) is in the care of the Crown; or

(b) is provided with accommodation by the Crown in the exercise of any statutory functions,

references in this section to his or her parent or guardian are to be construed as references to the Crown.
[UK Powers of Criminal Courts (Sentencing)Act 2000 s.137; Magistrate's Courts Act s.81 (part) adapted]

735. Power to order statement as to financial circumstances of parent or guardian
(1) Before exercising its powers under section 734 against the parent or guardian of a youth who has been convicted of an offence, the court may make a financial circumstances order with respect to the parent or (as the case may be) guardian.

(2) In this section "financial circumstances order" has the meaning given by subsection (3) of section 593, and subsections (4) to (6) of that section apply in relation to a financial circumstances order made under this section as they apply in relation to such an order made under that section.
[UK Powers of Criminal Courts (Sentencing) Act 2000 s.136; Magistrate's Courts Act 1980 s.81 (part)]

736. Fixing of fine or compensation to be paid by parent or guardian
(1) For the purposes of any order under section 734 made against the parent or guardian of a youth —

(a) section 592 (Fixing of fines) has effect as if any reference in subsections (1) to (4) of that section to the financial circumstances of the offender were a reference to the financial circumstances of the parent or guardian, and as if subsection (5) were omitted;

(b) section 604 (Power of court to order search, etc.) has effect as if the person before the court were the parent or guardian;

(c) section 610(5) (decision on amount payable under a compensation order) has effect as if any reference to the means of the person against whom the compensation order is made were a reference to the financial circumstances of the parent or guardian; and

(d) section 610(6) (preference to be given to compensation) has effect as if the reference to the offender were a reference to the parent or guardian;

but in relation to an order under section 734 made against the Crown this subsection has effect subject to subsection (2) of this section.

(2) For the purposes of any order under section 734 made against the Crown, sections 592(1) to (4) and 610(4) to (6) do not apply.

(3) For the purposes of an order under section 734, if the parent or guardian of an offender who is a youth has —

(a) failed to comply with an order under section 735 or

(b) otherwise failed to co-operate with the court in its inquiry into his or her financial circumstances,

and the court considers that it has insufficient information to make a proper determination of the parent's or guardian's financial circumstances, it may make such determination as it thinks fit.

(4) If a court has, in fixing the amount of a fine, decided the financial circumstances of a parent or guardian under subsection (3), subsections (2) to (4) of section 594 have effect as they have effect in the case mentioned in section 594(1), but as if the reference in section 594(2) to the offender's financial circumstances were a reference to the financial circumstances of the parent or guardian.
[UK Powers of Criminal Courts (Sentencing)Act 2000 s.138; Magistrate's Courts Act s.81 (part) adapted]

Action against parent or guardian

737. Binding over of parent or guardian
(1) If a youth is convicted of an offence, the powers conferred by this section are exercisable by the court by which the youth is sentenced for that offence, and if he or she is aged under 16 when sentenced the court must —

(a) exercise those powers if it is satisfied, having regard to the circumstances of the case, that their exercise is appropriate in the interests of preventing the commission by the youth of further offences; and

(b) if it does not exercise them, state in open court that it is not satisfied as mentioned in paragraph (a) and why it is not so satisfied.

(2) A court may, in relation to the parent or guardian of a youth convicted by the court of an offence —

(a) if the parent or guardian consents – order the parent or guardian to enter into a recognisance to take proper care of the offender and exercise proper control over the youth;

(b) if the parent or guardian refuses consent and the court considers the refusal unreasonable – to order the parent or guardian to pay a fine of up to £1,000.

(3) If the court has imposed a youth rehabilitation order on a youth under Part 25 (Community Sentences), it may include in the recognisance a provision that the youth's parent or guardian must ensure that the youth complies with the requirements of that sentence.

(4) An order under this section must not require the parent or guardian to enter into a recognisance —

(a) for more than £1,000; or

(b) for a period exceeding 3 years; or

(c) if the offender will attain the age of 18 in a period shorter than 3 years – for a period exceeding that shorter period.

(5) The power under Part 27 (Fines and Recognisances) to enforce a recognisance applies in relation to a recognisance entered into pursuant to an order under this section as it applies in relation to a recognisance to keep the peace under Part 4 of the Crimes Ordinance 2014.

(6) A fine imposed under subsection (2)(b) is deemed, for the purposes of any enactment, to be a sum adjudged to be paid upon a conviction.

(7) In fixing the amount of a recognisance under this section, the court must take into account among other things the means of the parent or guardian so far as they appear or are known to the court, whether this has the effect of increasing or reducing the amount of the recognisance.

(8) A parent or guardian may appeal to the Supreme Court against an order under this section made by the Magistrate's Court or the Youth Court.

(9) A parent or guardian may appeal to the Court of Appeal against an order under this section made by the Supreme Court, as if he or she had been convicted on indictment and the order were a sentence passed on that conviction.

(10) A court may vary or revoke an order made by it under this section if, on the application of the parent or guardian, it appears to the court, having regard to any change in the circumstances since the order was made, to be in the interests of justice to do so.

(11) For the purposes of this section, taking care of a person includes giving him or her protection and guidance and control includes discipline.
[UK Powers of Criminal Courts (Sentencing) Act 2000 s.150]

738. Attendance at court of parent or guardian
(1) If a youth is charged with an offence or is for any other reason brought before a court, the court —

(a) may in any case; and

(b) must in the case of a youth who is under the age of 16 years,

require a person who is a parent or guardian of the youth to attend at the court during all the stages of the proceedings, unless and to the extent that the court is satisfied that it would be unreasonable to require such attendance, having regard to the circumstances of the case.

(2) If a youth is arrested and taken to the police station or to a place of safety, the police officer by whom the youth is arrested, or the police officer in charge of the police station, or the person by whom the youth is taken to the place of safety, as the case may be, must cause the parent or guardian of the youth, if he or she can be found, to be warned to attend at the court before which the youth will appear.

(3) The attendance of the parent or guardian of a youth is not required under this section in any case where the youth was before the institution of the proceedings removed from the custody or charge of his or her parent by an order of a court.

(4) In relation to a youth for whom the Crown has parental responsibility and who is —

(a) in its care; or

(b) provided with accommodation by the Crown in the exercise of functions under the Children Ordinance 2014,

the reference in subsections (1) to (3) to a person who is a parent or guardian of the youth is to be construed as a reference to the Crown.

(5) The Chief Justice may by criminal procedure rules make provision —

(a) for enforcing the attendance of the parent or guardian of a youth brought before a court;

(b) enabling such parent or guardian to take part in the proceedings;

(c) enabling orders to be made against a parent or guardian; and

(d) prescribing forms of summons to a youth and to his or her parent or guardian.

(6) This section is in addition to and does not derogate from sections 88 and 89 (rights to have someone informed when arrested) in relation to a youth in police detention.
[Criminal Justice Ord. s.115; UK Children & Young Persons Act 1933 s.34]

Reparation orders on youths

739. Making of reparation orders
(1) If a youth is convicted of an offence, other than one for which the sentence is fixed by law, the court by or before which the youth is convicted may, subject to section 741, make an order (a "reparation order") requiring him or her to make reparation specified in the order —

(a) to a person or persons identified by the court as a victim of the offence or a person otherwise affected by it; or

(b) to the community at large.

(2) The court must not make a reparation order in respect of the offender if it proposes —

(a) to pass on the offender a custodial sentence; or

(b) to make in respect of the offender a youth rehabilitation order.

(3) Before making a reparation order, a court must obtain and consider a written report by the probation officer indicating —

(a) the type of work that is suitable for the offender; and

(b) the attitude of the victim or victims to the requirements proposed to be included in the order.

(4) Before making a reparation order, the court must explain to the offender in ordinary language—

(a) the effect of the order and of the requirements proposed to be included in it;

(b) the consequences which may follow under section 741 if he or she fails to comply with any of those requirements; and

(c) that the court has power under section 742 to review the order on the application either of the offender or of the probation officer.

(5) The court must give reasons if it does not make a reparation order in a case in which it has power to do so.
[UK Powers of Criminal Courts (Sentencing) Act 2000 s.73]

740. Requirements and provisions of reparation orders
(1) A reparation order must not require the offender to —

(a) work for more than 24 hours in total; or

(b) make reparation to any person without the consent of that person.

(2) Subject to subsection (1), requirements specified in a reparation order must be such as in the opinion of the court are commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it.

(3) Requirements so specified must, as far as practicable, be such as to avoid —

(a) any conflict with the offender's religious beliefs or with the requirements of any community order to which he or she is subject; and

(b) any interference with the times, if any, at which the offender normally works or attends school or any other educational establishment.

(4) Any reparation required by a reparation order —

(a) must be made under the supervision of the probation officer; and

(b) must be made within 3 months from the making of the order.
[UK Powers of Criminal Courts (Sentencing) Act 2000 s.74]

741. Breach of requirement of reparation order

(1) This section applies if while a reparation order is in force in respect of an offender it is proved to the satisfaction of the court that made the order, on the application of the probation officer, that the offender has failed to comply with any requirement included in the order.

(2) If this section applies, the court, whether or not it also makes an order under section 742, may—

(a) subject to section 733, order the offender to pay a fine of up to £1,000;

(b) if the reparation order was made by the Magistrate's Court or the Youth Court – revoke the order and deal with the offender, for the offence in respect of which the order was made, in any way in which the offender could have been dealt with for that offence by the court which made the order if the order had not been made; or

(c) if the reparation order was made by the Supreme Court – commit the offender in custody or release the offender on bail until he or she can be brought or appear before the Supreme Court.

(3) If a court deals with an offender under subsection (2)(c), it must send to the Supreme Court a certificate signed by a justice of the peace giving —

(a) particulars of the offender's failure to comply with the requirement in question; and

(b) any other particulars of the case that are appropriate.

(4) If —

(a) by virtue of subsection (2)(c) the offender is brought or appears before the Supreme Court; and

(b) it is proved to the satisfaction of the court that the offender has failed to comply with the requirement in question,

that court may deal with the offender, for the offence in respect of which the order was made, in any way in which it could have dealt with him or her for that offence if it had not made the order.

(5) If the Supreme Court deals with an offender under subsection (4), it must revoke the reparation order if it is still in force.

(6) A fine imposed under this section is deemed, for the purposes of any enactment, to be a sum adjudged to be paid upon a conviction.

(7) In dealing with an offender under this section, a court must take into account the extent to which the offender has complied with the requirements of the reparation order.

(8) A reparation made on appeal is, for the purposes of this section, deemed —

(a) if made on an appeal brought from the Magistrate's Court or the Youth Court – to have been made by that court;

(b) if made on an appeal brought from the Supreme Court or from the Court of Appeal – to have been made by the Supreme Court,

and in relation to such an order, subsection (2)(b) has effect as if the words "if the order had not been made" were omitted and subsection (4) has effect as if the words "if it had not made the order" were omitted.
[UK Powers of Criminal Courts (Sentencing) Act 2000 Sched.8 para. 2]

742. Revocation and amendment of reparation order
(1) If, while a reparation order is in force in respect of an offender, it appears to the court, on the application of the probation officer or the offender, that it is appropriate to make an order under this subsection, the court may make an order —

(a) revoking the reparation order; or

(b) amending it —

(i) by cancelling any provision included in it; or

(ii) by inserting in it (either in addition to or in substitution for any of its provisions) any provision which could have been included in the order if the court had then had power to make it and were exercising the power.

(2) If an application under subsection (1) for the revocation of a reparation order is dismissed, no further application for its revocation may be made under that subsection by any person except with the consent of the court.
[UK Powers of Criminal Courts (Sentencing) Act 2000 Sched.8 para. 5]

743. Presence of offender in court, remands, etc.
(1) If the probation officer makes an application under section 741 or 742 —

(a) the officer may bring the offender before the court; and

(b) subject to subsection (7), the court must not make an order under either of those sections unless the offender is present before the court.

(2) Without affecting any other power to issue a summons or warrant, the court to which an application under section 741 or 742 is made may issue a summons or warrant for the purpose of securing the attendance of the offender before it.

(3) If the offender is arrested pursuant to a warrant issued by virtue of subsection (2) and cannot be brought immediately before the court, the person in whose custody the offender is —

(a) may make arrangements for the detention of the offender in a place of safety for a period of up to 72 hours from the time of the arrest (and the offender may be detained pursuant to the arrangements); and

(b) must within that period bring the offender before the Youth Court.

(4) If an offender is brought before the Youth Court under subsection (3)(b), the court may —

(a) direct that the offender be released forthwith; or

(b) subject to subsection (6), remand the offender to segregated accommodation in the prison or other place of safety.

(5) Subject to subsection (6), if an application is made to a court under section 741, the court may remand (or further remand) the offender to segregated accommodation in the prison or other place of safety, if —

(a) a warrant has been issued under subsection (2) for the purpose of securing the attendance of the offender before the court; or

(b) the court considers that remanding (or further remanding) the offender will enable information to be obtained which is likely to assist the court in deciding whether and, if so, how to exercise its powers under section 742.

(6) If the offender is aged 18 or over at the time when he or she is brought before the Youth Court under subsection (3)(b), or is aged 18 or over at a time when (apart from this subsection) the court could exercise its powers under subsection (5) in respect of the offender, he or she must be remanded to segregated accommodation in the prison.

(7) A court may make an order under section 742 in the absence of the offender if the effect of the order is confined to —

(a) revoking the reparation order; or

(b) cancelling a requirement included in the reparation order.

[UK Powers of Criminal Courts (Sentencing) Act 2000 Sched.8 para. 6]

744. Reparation orders: Appeals

An offender may appeal to the Supreme Court against —

(a) any order made under section 741 or 742 except an order made, or which could have been made, in the offender's absence under section 743(7);

(b) the dismissal of an application under section 742(1) to revoke a reparation order.
[UK Powers of Criminal Courts (Sentencing) Act 2000 Sched.8 para.7]

Protection of youths: Schedule 12 offences

745. Presumption and determination of age
(1) If in any charge or indictment for any of the offences listed in Schedule 12 —

(a) it is alleged that the person by or in respect of whom the offence was committed was a youth or was under or had attained any specified age; and

(b) the person appears to the court, having regard to the provisions of section 758, to have been at the date of the commission of the alleged offence a youth, or to have been under or to have attained the specified age, as the case may be,

the person is for the purposes of this Ordinance presumed at that date to have been a youth or to have been under or to have attained that age, as the case may be, unless the contrary is proved.

(2) If in any charge or indictment for any of the offences listed in Schedule 12, it is alleged that the person in respect of whom the offence was committed was a youth, it is not a defence to prove that a person alleged to have been a child was a young person or that a person alleged to have been a young person was a child if the acts constituting the alleged offence would equally have been an offence if committed in respect of any youth.
[UK Children & Young Persons Act 1933 s.99 (part)]

746. Power to proceed with case in absence of youth
If in any proceedings with relation to any of the offences listed in Schedule 12 the court is satisfied that the attendance before the court of any youth in respect of whom the offence is alleged to have been committed is not essential to the just hearing of the case, the case may be proceeded with and decided in the absence of the youth.
[UK Children & Young Persons Act 1933 s.41]

747. Extension of power to take deposition of youth
(1) If a justice of the peace is satisfied by the evidence of a medical practitioner that the attendance before a court of any youth against whom any of the offences listed in Schedule 12 is alleged to have been committed would involve serious danger to the youth's life or health, the justice —

(a) may take in writing the deposition of the youth on oath; and

(b) must sign the deposition and add to it a statement of his or her reason for taking it and of the day when and place where it was taken, and of the names of the persons (if any) present at the taking of it.

(2) The justice of the peace taking a deposition pursuant to subsection (1) must send it with his or her statement —

(a) if the deposition relates to an offence for which an accused person is already sent for trial - to the Registrar; and

(b) in any other case - to the Clerk of the court.

[UK Children & Young Persons Act 1933 s.42]

748. Admission of deposition of youth in evidence

(1) If, in any proceedings in respect of any of the offences listed in Schedule 12, the court is satisfied by the evidence of a medical practitioner that the attendance before the court of any youth in respect of whom the offence is alleged to have been committed would involve serious danger to the youth's life or health, a deposition of the youth taken under this Ordinance is admissible in evidence either for or against the defendant without further proof of it if it purports to be signed by the justice of the peace by or before whom it purports to be taken.

(2) The deposition is not admissible in evidence against the defendant unless it is proved that reasonable notice of the intention to take the deposition has been served upon the defendant and that the defendant or his or her legal practitioner had, or would have had if present, an opportunity of cross-examining the youth making the deposition.

[UK Children & Young Persons Act 1933 s.43]

749. Mode of charging offences and limitation of time

(1) If a person is charged with committing any of the offences listed in Schedule 12 in respect of 2 or more youths, the same information or summons may charge the offence in respect of all or any of them, but the person charged is not, if he or she is summarily convicted, liable to a separate penalty in respect of each youth except upon separate informations or charges.

(2) The same information or summons may charge a person with the offences of assault, ill-treatment, neglect, abandonment or exposure, together or separately, and may charge a person with committing all or any of those offences in a manner likely to cause unnecessary suffering or injury to health, alternatively or together, but if those offences are charged together the person charged is not, if summarily convicted, liable to a separate penalty for each.

(3) If an offence listed in Schedule 12 charged against any person is a continuous offence, it is not necessary to specify in the information, summons or indictment the date of the acts constituting the offence.

(4) A person must not be summarily convicted of an offence listed in Schedule 12 unless the offence was wholly or partly committed within 6 months before the information was laid, but, subject to this section, evidence may be taken of acts constituting, or contributing to constitute, the offence, and committed at any previous time.

[UK Children & Young Persons Act 1933 s.14]

750. Warrant to search for youth suspected of being ill-treated, etc.
(1) If it appears to a justice of the peace on information on oath laid by any person who, in the opinion of the justice, is acting in the interests of a youth, that there is reasonable cause to suspect that —

(a) the youth has been or is being assaulted, ill-treated, or neglected in a manner likely to cause him or her unnecessary suffering, or injury to health; or

(b) any offence listed in Schedule 12 has been or is being committed in respect of the youth,

the justice may issue a warrant authorising any police officer as described in subsection (2).

(2) A warrant issued under subsection (1) in relation to a youth authorises the police officer to —

(a) search for the youth and, if it is found that he or she has been or is being assaulted, ill-treated or neglected in the manner described in subsection (1)(a), or that an offence as mentioned in subsection (1)(b) has been or is being committed in respect of the youth, to take the youth and detain him or her in a place of safety until he or she can be brought before the Youth Court; or

(b) remove the youth with or without search to a place of safety and detain him or her there until he or she can be brought before the Youth Court.

(3) A police officer authorised by warrant under this section to search for a youth, or to remove a youth with or without search, may enter, if need be by force, any house, building, or other place specified in the warrant, and may remove the youth from it.

(4) A warrant issued under this section must be executed by a police officer, who —

(a) must be accompanied by the person laying the information, if that person so desires, unless the justice of the peace by whom the warrant is issued otherwise directs; and

(b) may also, if the justice so directs, be accompanied by a medical practitioner.

(5) It is not necessary in an information or warrant under this section to name the youth.
[UK Children & Young Persons Act 1933 s.40]

Other protective provisions

751. Segregation of youths in detention
Arrangements must be made for —

(a) preventing as far as possible a youth while detained in a place of lawful custody, or while being conveyed to or from a criminal court, or while waiting before or after attendance in a criminal court, from associating with an adult, not being a relative, who is charged with any offence other than an offence with which the youth is jointly charged; and

(b) ensuring as far as possible that a girl who is a youth is while so detained, conveyed, or waiting, under the care of a woman.

[UK Children & Young Persons Act 1933 s.31]

752. Prohibition of unnecessary presence of children in court

(1) No child, other than an infant in arms, may be present in court during the trial of any other person charged with an offence, or during any proceedings preliminary to such a trial, except during any time that his or her presence is required as a witness or otherwise for the purposes of justice, or if the court consents to his or her presence.

(2) If a child is present in court when under this section he or she is not to be permitted to be so the court must order the child to be removed.

[Criminal Justice Ord. s.114; UK Children & Young Persons Act 1933 s.36 am. by Access to Justice Act 1999]

753. Power to clear court while youth is giving evidence

(1) If, in any proceedings in relation to an offence against, or any conduct contrary to, decency or morality, a person who, in the opinion of the court, is a youth is called as a witness, the court may direct that all or any persons, not being members or officers of the court or parties to the case, their legal practitioners, or persons otherwise directly concerned in the case, be excluded from the court during the taking of the evidence of that witness.

(2) Nothing in this section authorises the exclusion of genuine representatives of a news gathering or news reporting organisation or a programme service.

(3) The powers conferred on a court by this section are in addition to and do not affect any other powers of the court to hear proceedings other than in open court.

[Criminal Justice Ord. s.111; UK Children & Young Persons Act 1933 s.37]

754. Evidence of child of tender years

(1) Section 352 (Reception of unsworn evidence) applies for the purpose of determining whether a child should give sworn or unsworn evidence.

(2) If a child whose evidence is received unsworn in any proceedings for an offence by virtue of section 352 wilfully gives false evidence in such circumstances that the child would, if the evidence had been given on oath, have been guilty of perjury, the child is liable to be dealt with for an offence under section 480 of the Crimes Ordinance 2014 (Penalty for giving false unsworn evidence).

[UK Children & Young Persons Act 1933 s.38]

755. Restrictions on reports of proceedings in which youths are concerned

(1) Subject to subsection (5), the following prohibitions apply in relation to any proceedings to which this section applies —

(a) no report may be published which reveals the name, address or school of any youth concerned in the proceedings or includes any particulars likely to lead to the identification of any youth concerned in the proceedings; and

(b) no picture may be published or included in a relevant programme as being or including a picture of any youth concerned in the proceedings.

(2) The proceedings to which this section applies are —

(a) proceedings in the Youth Court;

(b) proceedings on appeal from the Youth Court;

(c) proceedings for varying or revoking a youth rehabilitation order; and

(d) proceedings on appeal from the Magistrate's Court arising out of proceedings under section 528 (Youth rehabilitation orders).

(3) The reports to which this section applies are —

(a) reports in a newspaper;

(b) reports included in a relevant programme; and

(c) any pictures in a newspaper or relevant programme.

(4) For the purposes of this section a youth is "concerned" in any proceedings whether as being the person against or in respect of whom the proceedings are taken or as being a witness in the proceedings.

(5) If a court is satisfied that it is in the public interest to do so, it may, in relation to a youth who has been convicted of an offence, by order dispense to any specified extent with the requirements of this section in relation to any proceedings before it to which this section applies by virtue of subsection (2)(a) or (b), if they relate to —

(a) the prosecution or conviction of the youth for the offence;

(b) the manner in which the youth, or his or her parent or guardian, should be dealt with in respect of the offence; or

(c) the enforcement, amendment, variation, revocation or discharge of any order made in respect of the offence.

(6) A court must not exercise its power under subsection (5) without —

(a) giving the parties to the proceedings an opportunity to make representations; and

(b) taking into account any representations which are so made.

(7) Subject to subsections (8) and (9) a court may, in relation to proceedings before it to which this section applies, by order dispense to any specified extent with the requirements of this section in relation to a youth who is concerned in the proceedings if it is satisfied —

(a) that it is appropriate to do so for the purpose of avoiding injustice to the youth; or

(b) that, as respects a youth to whom this paragraph applies who is unlawfully at large, it is necessary to dispense with those requirements for the purpose of apprehending the youth and bringing him or her before a court or returning the youth to the place in which he or she was in custody.

(8) Subsection (7)(b) applies to any youth who is charged with or has been convicted of —

(a) an offence of violence;

(b) a sexual offence; or

(c) an offence punishable in the case of a person aged 21 or over with imprisonment for 14 years or more.

(9) The court must not exercise its power under subsection (7)(b) —

(a) except pursuant to an application by or on behalf of the Attorney General; and

(b) unless notice of the application has been given by the Attorney General to any legal practitioner of the youth.

(10) If a report or picture is published or included in a relevant programme in contravention of subsection (1), the following persons commit an offence —

(a) in the case of publication of a written report or a picture as part of a newspaper - any proprietor, editor or publisher of the newspaper;

(b) in the case of the inclusion of a report or picture in a relevant programme – any corporate body which provides the programme service and any person having functions in relation to the programme corresponding to those of an editor of a newspaper.

Penalty: A fine at level 5 on the standard scale.

[UK Children & Young Persons Act 1933 s.49 am. by Powers of Criminal Courts (Sentencing) Act 2000]

756. Power to prohibit publication of certain matter in newspapers

(1) In relation to any proceedings in any court, the court may direct that —

(a) no published report of the proceedings is to reveal the name, address or school, include any particulars likely to lead to the identification, of any youth concerned in the proceedings, either as being the person by or against or in respect of whom the proceedings are taken, or as being a witness in them;

(b) no picture is to be published or included in a programme service as being or including a picture of any youth so concerned in the proceedings,

unless to the extent (if at all) permitted by the direction of the court.

(2) If a report or picture is published or included in a relevant programme in contravention of subsection (1), the following persons commit an offence —

(a) in the case of publication of a written report or a picture as part of a newspaper - any proprietor, editor or publisher of the newspaper;

(b) in the case of the inclusion of a report or picture in a relevant programme – any corporate body which provides the programme service and any person having functions in relation to the programme corresponding to those of an editor of a newspaper.

Penalty: A fine at level 5 on the standard scale.

(3) This section is in addition to and does not derogate from the provisions of section 755 as regards the proceedings mentioned in subsection (2) of that section.
[UK Children & Young Persons Act 1933 s.39 as amended]

Miscellaneous provisions

757. Character evidence and procedure in relation to youths

(1) In any proceedings for an offence committed or alleged to have been committed by a person of or over 21 years of age —

(a) any offence of which the person was found guilty while under 14 years of age must be disregarded for the purpose of any evidence relating to the person's previous convictions; and

(b) the person must not be asked, and if asked is not required to answer, any question relating to such an offence, even if the question would otherwise be admissible under this Ordinance.

(2) If proceedings in respect of a youth are begun for an offence and the person attains 18 years of age before the conclusion of the proceedings, the court may deal with the case and make any order which it could have made if the person had not attained that age.

(3) Criminal proceedings against a child must not be commenced except by or with the consent of the Attorney General.
[Criminal Justice Ord. s.116; UK Children and Young Persons Act 1963 ss.16 & 29]

758. Ascertainment of age

(1) If a person, whether charged with an offence or not, is brought before any court otherwise than for the purpose of giving evidence, and it appears to the court that the person is a youth, the court must make due inquiry as to the age of that person.

(2) For the purpose of making due inquiry as to a person's age pursuant to subsection (1), a court must, if sufficient evidence is not readily available to the court, adjourn the proceedings for a proper age assessment to be carried out.

(3) An order or judgment of the court is not invalidated by any subsequent proof that the age of a person has not been correctly stated to the court, and —

(a) the age presumed or declared by the court to be the age of the person so brought before it is, for the purposes of this Ordinance, deemed to be the true age of that person; and

(b) if it appears to the court that the person so brought before it has attained the age of 18 years, that person is for the purposes of this Ordinance deemed not to be youth.

[Criminal Justice Ord. s.117; UK Children & Young Persons Act 1933 s.99 (part);

759. Relevant age for sentencing

(1) Unless otherwise provided in this Ordinance, the age of a young offender for the purpose of sentencing is the age at the date of conviction.

(2) If a young offender crosses a relevant age threshold between the date of the offence and the date of conviction the starting point is the likely sentence that would have been passed had the youth been sentenced on the day the offence was committed, unless there is good reason for using a different starting point in any particular case.

[Common law]

760. Regulations

(1) The Governor in Council, after consulting the Criminal Justice Council, may make regulations empowering a court, when a youth is detained by virtue of an order under this Part, after giving to the parent or guardian of the youth an opportunity to be heard, to make an order requiring a parent, guardian or other person to make periodic payments to be applied for the maintenance of the youth.

(2) Regulations under subsection (1) may prescribe the maximum amount of each such payment and the maximum period for which payments can be ordered and may regulate the manner in which, and the periods at which, such payments are to be made.

CHAPTER 12 – MENTALLY DISORDERED OFFENDERS

PART 34 – MENTALLY DISORDERED OFFENDERS

761. Interpretation of Part

(1) In this Part —

"approved doctor" has the meaning given to that term by sections 2 and 91 of the Mental Health Ordinance;

"hospital" means the King Edward VII Memorial Hospital in Stanley, any other hospital approved by the Governor by order for the purposes of the Mental Health Ordinance, and an approved medical centre as defined in that Ordinance;

"hospital treatment order" has the same meaning as a hospital treatment order under Part 3 of the Mental Health Ordinance and, subject to this Part, has the same effect;

"supervising officer" means the probation officer;

"supervision order" means an order made under section 768(1).

(2) This Part is in addition to and does not derogate from the provisions of Part 8 of the Mental Health Ordinance relating to persons concerned in criminal proceedings or under sentence.

(3) If a person who is detained in a hospital pursuant to an order or direction under this Part is further detained by virtue of a subsequent order or direction under this Part or a subsequent application for admission for treatment under the Mental Health Ordinance, the person must be treated as if the subsequent order, direction or application described him or her as suffering from the form or forms of mental disorder specified in the earlier order or direction.
[UK Criminal Procedure (Insanity) Act 1964 s.8; Mental Health Act 1983 s.55 etc.]

Fitness to be tried, etc.

762. Finding of unfitness to be tried
(1) This section applies if on the trial of a person the question arises, at the instance of the defence or otherwise, whether the defendant is under such a disability as would constitute a bar to his or her being tried.

(2) If the court has reason to believe that the defendant is suffering from mental disorder and is consequently incapable of making his or her defence, it must —

(a) cause the person to be medically examined; and

(b) thereafter take medical and any other available evidence regarding the state of the defendant's mind.

(3) If, having regard to the nature of the supposed disability, the court is of opinion that it is expedient to do so and in the interests of the defendant, it may postpone consideration of the question of fitness to be tried until any time up to the opening of the case for the defence.

(4) If, before the question of fitness to be tried falls to be decided —

(a) the jury (or, in the case of a judge sitting without a jury, the judge) returns a verdict of acquittal on the count or each of the counts on which the defendant is being tried; or

(b) in the case of the Magistrate's Court or the Summary Court, the court dismisses the information or each of the informations on which the defendant is being tried,

that question must not be decided.

(5) Subject to subsections (3) and (4), the question of fitness to be tried must be decided as soon as it arises.

(6) In a trial on indictment, the question of fitness to be tried must be decided by the court without a jury.

(7) The court must not make a decision on fitness to be tried except on the written or oral evidence of 2 or more approved doctors.

(8) If a court finds that the defendant is unfit to be tried, it must make a decision under section 766(2) and for that purpose may adjourn the case for further medical evidence to be adduced in accordance with this Part.
[UK Criminal Procedure (Insanity) Act 1964 ss.4 and 4A am by Criminal Procedure (Insanity and Unfitness to Plead) Act 1991]

763. Appeals against finding of unfitness

(1) For the purpose of providing an appeal against a finding of the Magistrate's Court or the Summary Court that the defendant is unfit to be tried, sections 667 and 668 apply as if references to a special finding included references to such a decision.

(2) For the purpose of providing an appeal against a finding of the Supreme Court that the defendant is unfit to be tried, section 4 of the Court of Appeal Ordinance applies as if references to a conviction included references to such a finding.

(3) Section 668 applies with necessary modifications to appeals to the Court of Appeal pursuant to subsection (2) as it applies to appeals to the Supreme Court on the question of fitness to be tried.

764. Finding that the defendant did the act or made the omission charged

(1) This section applies if under section 762(6) a court finds that the defendant is unfit to be tried.

(2) The trial must not proceed or further proceed but, in the case of a trial on indictment, the jury (or, in the case of a judge sitting without a jury, the judge) must decide —

(a) on the evidence (if any) already given in the trial; and

(b) on any evidence that is adduced or further adduced by the prosecution, or adduced by a person appointed by the court under this section to put the case for the defence,

whether the jury or judge, as the case may be, is satisfied, as respects the count or each of the counts on which the defendant was to be or was being tried, that the defendant did the act or made the omission charged against him or her as the offence.

(3) If as respects that count or any of those counts the jury are not so satisfied, they must return a verdict of acquittal as if on the count in question the trial had proceeded to a conclusion.

(4) If the question of disability was decided after the defendant was put in charge of the jury, the decision under subsection (2) must be made by the jury by whom the defendant was being tried.

(5) In the case of a summary trial, the trial must not proceed or further proceed, but the court must decide on the evidence as mentioned in subsection (2) whether it is satisfied as respects the information or each of the informations on which the defendant was being tried, that he or she did the act or made the omission charged against him or her as an offence.

(6) If as respects that information or any of those informations the court is not so satisfied, it must return a verdict of acquittal as if on the information in question the trial had proceeded to a conclusion.
[UK Criminal Procedure (Insanity) Act 1964 s.4A ins. by Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 as am. by Domestic Violence, Crime and Victims Act 2004 and Adapted]

765. Acquittal on ground of mental disorder
(1) If —

(a) an act or omission is charged against any person as an offence; and

(b) it is given in evidence on the trial of the person for that offence that he or she was suffering from mental disorder so as not to be responsible in law for his or her actions at the time when the act was done or omission made,

then, if it appears to the court before which the person is tried that he or she did the act or made the omission charged, but was suffering from mental disorder at the time when he or she did or made the same, the court must return a special verdict to the effect that the defendant was not guilty by reason of mental disorder.

(2) A court must not return a special verdict under this section except on the written or oral evidence of 2 or more approved doctors.
[UK Trial of Lunatics Act 1883 s.2; Criminal Procedure (Insanity) Act 1964 s.1; Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 s.1]

766. Powers to deal with persons not guilty by reason of mental disorder or unfit to be tried

(1) This section applies if —

(a) a verdict is returned under section 765 that the defendant is not guilty by reason of mental disorder; or

(b) findings are recorded —

(i) under section 762, that the defendant is unfit to be tried; and

(ii) under section 764, that he or she did the act or made the omission charged against him or her.

(2) The court must make in respect of the defendant —

(a) a hospital treatment order;

(b) a supervision order; or

(c) an order for his or her absolute discharge.

(3) Subsection (2) does not apply if the offence to which the special findings or verdict relate is an offence the sentence for which is fixed by law.

(4) If a person confined in hospital by a hospital treatment order is found by the responsible medical officer to be fit to be tried, the officer must forthwith send a certificate to that effect to the court which recorded the finding under section 762 in respect of the person.

(5) A certificate issued under subsection (4) is admissible in evidence and the court must upon receipt of it —

(a) order the removal of the person from the place where he or she is detained; and

(b) cause the person to be brought in custody before it and proceed as provided by section 767.

[UK Criminal Procedure (Insanity) Act 1964 s.5 replaced by Domestic Violence, Crime and Victims Act 2004]

767. Resumption of trial if defendant fit to be tried

(1) If, during any criminal proceedings in a court, the defendant appears to be fit to be tried, although it is alleged that, at the time when the act was committed in respect of which he or she is charged he or she was by reason of mental disorder incapable of knowing the nature of the act or that it was wrong or contrary to law, the court must proceed with the case.

(2) If a trial is adjourned pursuant to section 762(8), the court may at any time resume the trial and require the defendant to appear or be brought before it.

(3) If, when a person is brought before a court pursuant to subsection (2), the court considers the person fit to be tried, the trial must proceed, but if the court considers the defendant to be still unfit to be tried, it must take action as if the defendant were brought before it for the first time.

Supervision orders

768. Power to make supervision orders

(1) If —

(a) a verdict is returned under section 765 that the defendant is not guilty by reason of mental disorder; or

(b) findings are recorded —

(i) under section 762, that the defendant is unfit to be tried; and

(ii) under section 764, that the defendant did the act or made the omission charged against him or her,

and if the conditions mentioned in subsection (3) are satisfied, the court may make an order requiring the person in respect of whom it is made ("the supervised person") to be under the supervision of a supervising officer for a period specified in the order of not more than 2 years.

(2) A supervision order may require the supervised person to submit, during the whole of the period or a part specified in the order, to treatment by or under the direction of an approved doctor.

(3) The court must not make a supervision order unless it is satisfied —

(a) that, having regard to all the circumstances of the case, the making of the order is the most suitable means of dealing with the defendant; and

(b) that arrangements have been made for the treatment intended to be specified in the order.

(4) Before making an order under this section, the court must explain to the defendant in ordinary language —

(a) the effect of the order (including any requirements proposed to be included in the order in accordance with section 769 or 771; and

(b) that the court has power under section 772 to review the order on the application either of the defendant or of the supervising officer.

(5) Immediately after making such an order, the court must give copies of it to —

(a) the supervised person;

(b) the supervising officer; and

(c) the person in charge of any institution in which the supervised person is required by the order to reside.

(6) If such an order is made, the supervised person must keep in touch with the supervising officer in accordance with any instructions that the officer gives the person from time to time and must notify the officer of any change of address.
[UK Criminal Procedure (Insanity) Act 1964 s.5 and Sched.1A replaced by Domestic Violence, Crime and Victims Act 2004]

769. Requirements as to medical treatment
(1) A supervision order may, if the court is satisfied as mentioned in subsection (2), include a requirement that the supervised person must submit, during the whole of the period specified in the order or during a specified part of that period, to treatment by or under the direction of an approved doctor with a view to the improvement of his or her mental condition.

(2) The court may impose a requirement as mentioned in subsection (1) only if satisfied on the written or oral evidence of 2 or more approved doctors, that the mental condition of the supervised person —

(a) is such as requires and may be susceptible to treatment; but

(b) is not such as to warrant the making of a hospital treatment order under this Part.

(3) If the court is satisfied on the written or oral evidence of 2 or more approved doctors that —

(a) because of his or her medical condition, other than his or her mental condition, the supervised person is likely to pose a risk to himself or herself or others; and

(b) the condition may be susceptible to treatment,

the supervision order may (whether or not it includes a requirement under subsection (1)) include a requirement that the supervised person must submit, during the whole of the period specified in the order or during a specified part of that period, to treatment by or under the direction of an approved doctor with a view to the improvement of the condition.

(4) The treatment required by a supervision order must be either —

(a) treatment as a non-resident patient in or at an institution or place specified in the order; or

(b) treatment by or under the direction of an approved doctor so specified,

but the nature of the treatment must not be specified in the order.

(5) While the supervised person is under treatment as a resident patient pursuant to a requirement of a supervision order, the supervising officer must carry out the supervision only to the extent necessary for the purpose of the revocation or amendment of the order.
[UK Criminal Procedure (Insanity) Act 1964 Sched.1A replaced by Domestic Violence, Crime and Victims Act 2004]

770. Change of place of treatment
(1) If the approved doctor by whom or under whose direction the supervised person is being treated pursuant to a supervision order is of the opinion that part of the treatment can be better or more conveniently given in or at an institution or place which —

(a) is not specified in the order; and

(b) is one in or at which the treatment of the supervised person will be given by or under the direction of an approved doctor,

the doctor may, with the consent of the supervised person, make arrangements for the person to be treated accordingly.

(2) If any arrangements as mentioned in subsection (1) are made for the treatment of a supervised person —

(a) the approved doctor by whom the arrangements are made must give notice in writing to the supervising officer, specifying the institution or place in or at which the treatment is to be carried out; and

(b) the treatment provided for by the arrangements is deemed to be treatment to which the person is required to submit pursuant to the supervision and treatment order.

(3) Arrangements as mentioned in subsection (1) may provide for the supervised person to receive part of his or her treatment as a resident patient in or at an institution or place of any description, even if it is not one which could have been specified for that purpose in the supervision and treatment order.
[UK Criminal Procedure (Insanity) Act 1964 Sched.1A replaced by Domestic Violence, Crime and Victims Act 2004]

771. Requirement as to residence
(1) A supervision order may include requirements as to the residence of the supervised person.

(2) Before making an order containing any such requirement, the court must consider the home surroundings of the supervised person.

(3) If an order requires the supervised person to reside in a specified place, the period for which the person is so required to reside must be specified in the order.

[UK Criminal Procedure (Insanity) Act 1964 Sched.1A replaced by Domestic Violence, Crime and Victims Act 2004]

772. Revocation or amendment of a supervision order

(1) If a supervision order is in force in respect of any person and, on the application of the supervised person or the supervising officer, it appears to the court that made the order that, having regard to circumstances which have arisen since the order was made, it would be in the interests of the health or welfare of the supervised person that the order should be revoked, the court may revoke the order.

(2) The court by which a supervision order was made may on its own initiative revoke the order if, having regard to circumstances which have arisen since the order was made, it considers that it would be inappropriate for the order to continue.

(3) Subject to subsection (4), the court that made a supervision order may, on the application of the supervised person or the supervising officer, by order amend the order by —

(a) cancelling any of the requirements of the order; or

(b) inserting in the order (either in addition to or instead of any such requirement) any requirement which the court could have included when making it.

(4) The power of a court under subsection (3) does not include power to amend an order by extending the period specified in it beyond the end of 2 years from the date of the original order.

(5) If the approved doctor by whom or under whose direction the supervised person is being treated pursuant to any requirement of a supervision order —

(a) is of the opinion mentioned in subsection (6); or

(b) is for any reason unwilling to continue to treat or direct the treatment of the supervised person,

the doctor must make a report in writing to that effect to the supervising officer who must apply under subsection (2) to the court that made the order for the variation or cancellation of the requirement.

(6) The opinion referred to in subsection (5) is that —

(a) the treatment of the supervised person should be continued beyond the period specified in the supervision order;

(b) the supervised person needs different treatment, of a kind to which he or she could be required to submit pursuant to such an order;

(c) the supervised person is not susceptible to treatment; or

(d) the supervised person does not require further treatment.

(7) On the making of an order revoking or amending a supervision order, the Registrar, or Clerk of the court as the case may be, must give a copy of the revoking order to —

(a) the supervised person;

(b) the supervising officer; and

(c) the person in charge of any institution in which the supervised person was required by the original order to reside.

[UK Criminal Procedure (Insanity) Act 1964 Sched.1A replaced by Domestic Violence, Crime and Victims Act 2004]

Miscellaneous

773. Appeals against orders

(1) For the purpose of providing an appeal against a hospital treatment order or a supervision order made by the Magistrate's Court or the Summary Court under this Part, Part 31 (Appeals to the Supreme Court) applies as if references to a sentence included references to such an order.

(2) For the purpose of providing an appeal against a hospital treatment order or a supervision order made by the Supreme Court under this Part, the Court of Appeal Ordinance applies as if references to a sentence included references to such an order.

(3) An appeal under this section may be initiated by a legal practitioner instructed by or on behalf of the person in respect of whom the order was made.

(4) This section is to be read in addition to and not as limiting Part 7 of the Mental Health Ordinance which establishes the Mental Health Tribunal.

774. Evidence by prosecution of mental disorder or diminished responsibility

If on a trial for murder the defendant contends —

(a) that at the time of the alleged offence he or she was suffering from mental disorder so as not to be responsible according to law for his or her actions; or

(b) that at that time he or she was suffering from such abnormality of mental functioning as is specified in section 48 of the Crimes Ordinance 2014 (Diminished responsibility),

the court must allow the prosecution to adduce or elicit evidence tending to prove the other of those contentions, and may give directions as to the stage of the proceedings at which the prosecution may adduce such evidence.

[UK Criminal Procedure (Insanity) Act 1964 s.6 am. by Coroners & Justice Act 2009]

CHAPTER 13 – SUPPLEMENTARY PROVISIONS

PART 35 – CRIMINAL JUSTICE COUNCIL

775. Criminal Justice Council for the Falkland Islands – Schedule 13

(1) This section establishes a Criminal Justice Council for the Falkland Islands (in this Part referred to as "the Council".)

(2) The Council is to be an independent, statutory non-departmental body, but is not a corporate body with legal personality.

(3) The composition and procedure of the Council are as set out in Part 'A' of Schedule 13.

(4) The Governor, acting in his or her discretion, may provide the Council with such assistance, whether by provision of staff, accommodation, transport or otherwise, as the Council reasonably requests in connection with the performance of its functions.
For this purpose, the Government must make reasonable financial provision in the annual budget to enable the Council to fulfill its stated aims.

776. Aims and activities of the Council

(1) The aims of the Council are —

(a) to seek to make the criminal justice system more effective and efficient so that it —

(i) reduces crime;

(ii) reduces reoffending;

(iii) punishes offenders;

(iv) protects the public;

(v) encourages the making of reparation;

(vi) increases public confidence in the system; and

(vii) ensures that the system is fair and just;

(b) to maintain an overview of the working of the criminal justice system in the Falkland Islands;

(c) to ensure a 'whole system' approach is taken to tackling issues across the criminal justice system and to overcoming operational barriers;

(d) to provide accountability and co-ordination across the criminal justice system and to help overcome operational barriers.

(2) The powers of the Council are —

(a) to identify and report in accordance with its obligations in this section wherever necessary to ensure that the system provides an efficient and effective service to the people of the Falkland Islands;

(b) to regularly review performance, to comment upon whether current reforms are delivered on time and have their desired effect, and to recommend what further changes are necessary;

(c) to simplify and streamline the management of the criminal justice system by proposing appropriate procedural rules to the Chief Justice;

(d) to develop and deliver policy recommendations in accordance with the aims set out in this section;

(e) to advise the Governor and the Chief Justice on any matter, when called upon to do so;

(f) at the beginning of each financial year to prepare an action plan setting out a programme for continuing review and development of the criminal justice system in the Falkland Islands;

(g) to ensure that the action plan —

(i) meets the needs of victims and the public; and

(ii) develops and makes policy recommendations in accordance with the aims set out in this section.

777. Sentencing Guidelines Committee

(1) The Sentencing Guidelines Committee for the Falkland Islands (in this Part referred to as "the Committee" is a committee of the Council and consists of all the members of the Council.

(2) The aims of the Sentencing Guidelines Committee are —

(a) to promote greater consistency in sentencing in the Falkland Islands while maintaining the independence of the judiciary;

(b) to develop, implement and maintain a set of sentencing guidelines for use in the criminal courts of the Falkland Islands, applying the principles set out below.

(3) In developing sentencing guidelines, the Committee must have regard to the requirements of section 482 (Sentencing guidelines) and to the principles set out in Part 'B' of Schedule 13.

(4) Sentencing guidelines developed by the Committee —

(a) must be included in the Committee's annual report required by section 778(2);

(b) must be included in the annual report of the Council published pursuant to section 778(5); and

(c) have effect as provided by section 482 (Sentencing guidelines).

778. Annual reports

(1) The Council must, as soon as practicable after the end of each financial year, make to the Governor a report on the performance of the Council's functions during the year.

(2) The Committee must, as soon as practicable after the end of each financial year, make to the Council a report on the performance of the Committee's functions during the year.

(3) The Council's annual report required by subsection (1) must incorporate, with any comments the Council wishes to make, the report of the Committee required by subsection (2).

(4) The Governor must lay a copy of the Council's annual report before the Legislative Assembly.

(5) The Council must publish its report once a copy has been so laid.

(6) Schedule 13 makes further provision about the content of reports required by this section.

(7) If this section comes into force after the beginning of a financial year, the first report may relate to a period beginning with the day on which this section came into force and ending with the end of the next financial year.

779. Rules and early release guidelines

(1) The Council must develop —

(a) a set of rules of practice and procedure to be applied in the criminal courts of the Falkland Islands;

(b) a set of guidelines relating to the early release of prisoners and miscarriages of justice which may be used by the Advisory Committee and the Governor in the exercise of the discretion conferred by section 71 of the Constitution.

(2) The rules developed by the Council under subsection (1)(a) must be submitted to the Chief Justice for approval, and once approved, are to be made by the Chief Justice as criminal procedure rules, as provided by section 785.

(3) The guidelines developed under section (1)(b) do not affect the right of the Advisory Committee to adopt its own rules of procedure as provided by section 70(5) of the Constitution.

780. Application of Ordinance to other public officers

(1) Subject to subsection (2), and to the extent practicable, the provisions of this Ordinance relating to powers of arrest, the investigation of offences, the searching, questioning and detention of suspects, the seizure of property and the retention of evidence apply to all public officers who have power to investigate offences or charge offenders as they apply in relation to police officers.

(2) The Governor in Council, after consulting the Criminal Justice Council, may by order declare modifications to the manner in which provisions of this Ordinance apply to public officers mentioned in subsection (1) so as to harmonise the provisions with those of any other written law conferring powers of arrest and investigation of offences.

(3) For the avoidance of doubt, but without limiting subsection (1), this section confers the powers mentioned in that subsection on customs officers and immigration officers

(4) In this section —

"customs officer" has the same meaning as in section 7 of the Customs Ordinance;

"immigration officer" has the same meaning as in section 3 of the Immigration Ordinance.
[UK PACE Act 1984 s.114; Criminal Justice & Public Order Act 1994 s.36 adapted]

781. Police officers performing duties of higher rank

(1) For the purpose of any provision of this Ordinance or any other enactment under which a power in respect of the investigation of offences or the treatment of persons in police custody is exercisable only by or with the authority of a police officer of at least the rank of inspector, an officer of the rank of sergeant is to be treated as holding the rank of inspector if the officer —

(a) has been authorised by the Chief Police Officer to exercise the power or, as the case may be, to give his or her authority for its exercise; or

(b) is acting during the absence of an officer holding the rank of inspector who has authorised him or her, for the duration of that absence, to exercise the power or, as the case may be, to give his or her authority for its exercise.

(2) For the purpose of any provision of this Ordinance or any other enactment under which a power mentioned in subsection (1) is exercisable only by or with the authority of an officer of at least the rank of sergeant, an officer of the rank of constable is to be treated as holding the rank of sergeant if he or she has been authorised by the Chief Police Officer to exercise the power or, as the case may be, to give his or her authority for its exercise.
[UK PACE Act 1984 s.107]

782. Power of police officers and others to use reasonable force

(1) If any provision of this Ordinance —

(a) confers a power on a police officer or other public officer; and

(b) does not provide that the power may only be exercised with the consent of some person other than a police officer or public officer,

the police officer or other public officer may use reasonable force, if necessary, in the exercise of the power.

(2) A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large.

(3) Subsection (2) replaces the rules of the common law on the question as to when force used for a purpose mentioned in the subsection is justified by that purpose.
[UK PACE Act 1984 s.117; Criminal Law Act 1967 s.3]

783. 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.]

784. 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.

785. 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 provide for applications to be made and interlocutory matters to be disposed of while the Chief Justice is outside the Falkland Islands;

(e) 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.

786. Regulations

(1) The Governor in Council, after consulting the Criminal Justice Council, may make regulations generally for carrying out any of the purposes or provisions of this Ordinance or any matters incidental or consequential to those purposes as appear to the Governor to be necessary or proper for giving full effect to this Ordinance.

(2) The Governor, acting in his or her discretion, may make like regulations as appear to the Governor to be necessary or proper on order to give full effect to the obligations of Her Majesty's Government in the United Kingdom under international law.

(3) Without affecting sections 621 and 622 or section 51 of the Police Ordinance 2000 or section 90 of the Interpretation and General Clauses Ordinance, with regard to disposal of property, the regulations made under subsection (1) may —

(a) regulate the retention and safe keeping and the disposal and the destruction in prescribed circumstances of items seized by virtue of a power in this Ordinance or under the Crimes Ordinance 2014; and

(b) prescribe charges in respect of the removal, retention, disposal and destruction of items so seized.

(4) Regulations made under this section may make different provisions for different classes of item or for different circumstances.

(5) The power in subsections (1) and (2) are in addition to and do not derogate from any other power to make regulations conferred by this Ordinance or the Crimes Ordinance 2014.

(6) Regulations made under this section may create offences carrying a maximum penalty of 3 months' imprisonment or a fine at level 5 on the standard scale, or both.

787 Amendment of Schedules, etc.

(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.

(3) This section does not displace the requirement of section 122 as regards the amendment of a Code of Practice in Schedule 3.

(4) Subsection (2) applies to any other order having legislative effect that the Governor is empowered to make under this Ordinance.

788. Exercise of Governor's powers

(1) If under any provision of this Ordinance the Governor is required to consult some person or body other than the Executive Council before exercising a power or performing a duty —

(a) the Governor, after such consultation, must decide the matter and act in accordance with his or her own deliberate judgment;

(b) if the Governor decides to act contrary to any advice received as a result of any such consultation, he or she must notify the Legislative Assembly of the reasons for so doing.

(2) The failure of the Governor to consult any person or body before exercising a power or performing a duty under this Ordinance does not invalidate the exercise of that power or the performance of that duty.

(3) This section is in addition to and must be applied in a manner consistent with sections 66 and 67 of the Constitution as regards the Governor's obligation to consult the Executive Council.

789. Repeal, disapplication and savings – Schedule 14

(1) The Ordinances listed in Part 'A' of Schedule 14 (the "repealed Ordinances") are repealed.

(2) The imperial enactments listed in Part 'B' of Schedule 14 (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.

(3) 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.

(4) Subject to subsection (5), all items of subsidiary legislation made under any of the repealed Ordinances or disapplied Acts continue in force as if made under the corresponding provision of this Ordinance until amended or replaced under this Ordinance.

(5) If there is no corresponding provision of this Ordinance under which an item of subsidiary legislation referred to in subsection (4) 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 790.

(6) Any legislative instrument made by the Governor or Chief Justice under a repealed Ordinance 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.

(7) Any direction, exemption, notice or other non-legislative instrument made or issued by any person or body under any of the repealed Ordinances or 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.

(8) Any delegation made, direction given or other action taken by a person under any of the repealed Ordinances or disapplied 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.

790. 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) 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.

(3) A provision of this Ordinance applies —

(a) in relation to proceedings on indictment for an offence - only if the person charged with the offence appears on the indictment on or after the commencement of the relevant provision;

(b) in relation to proceedings in the Magistrate's Court or the Summary Court - only if the time when the court begins to receive evidence in the proceedings falls after the commencement of the relevant provision.

(4) If an offence committed before the commencement of this Ordinance is by any enactment in force that was passed before the commencement of this Ordinance made punishable only on summary conviction, it remains only so punishable.

(5) Any investigation of an offence conducted by a police officer or a customs officer or immigration officer which was in progress at the commencement of this Ordinance but had not resulted in the commencement of proceedings must continue under this Ordinance.

(6) 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.

(7) Probation orders made under Part III of the Criminal Justice Ordinance continue in force in accordance with that Ordinance until they expire or are revoked under that Ordinance.

(8) All witness summonses, orders for production of documents, recognisances and other orders made before the commencement of this Ordinance continue to have effect and may be varied or revoked as if this Ordinance had not been enacted.

(9) For purposes of this section, proceedings for an offence commence as provided in section 3(2).
[UK Criminal Justice & Public Order Act 1994 s.35]

791. Consequential amendments – Schedule 15
(1) A reference in any other enactment to a repealed Ordinance or to a disapplied 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 and the disapplication of the disapplied Acts.

(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 Ordinances listed in column 1 of Schedule 15 are amended in the manner set out in column 2 of that Schedule.

792. Ordinance binds the Crown
This Ordinance is binding on the Crown.

SCHEDULES

SCHEDULE 1
(section 14)

ACCESS TO SPECIAL PROCEDURE MATERIAL OR EXCLUDED MATERIAL
Making of orders

1. If on an application made by a police officer the judicial officer is satisfied that one or other of the sets of access conditions is fulfilled, the judicial officer may make an order under paragraph 4.

2. The first set of access conditions is fulfilled if —

(a) there are reasonable grounds for believing that —

(i) an imprisonable offence has been committed;

(ii) there is material which consists of special procedure material or includes special procedure material and does not also include excluded material on premises specified in the application, or on premises occupied or controlled by a person specified in the application;

(iii) the material is likely to be of substantial value (whether by itself or together with other material) to the investigation in connection with which the application is made; and

(iv) the material is likely to be relevant evidence;

(b) other methods of obtaining the material have —

(i) been tried without success; or

(ii) not been tried because it appeared that they were bound to fail; and

(c) it is in the public interest, having regard to —

(i) the benefit likely to accrue to the investigation if the material is obtained; and

(ii) the circumstances under which the person in possession of the material holds it,

that the material should be produced or that access to it should be given.

3. The second set of access conditions is fulfilled if —

(a) there are reasonable grounds for believing that there is material which consists of or includes excluded material or special procedure material on premises specified in the application, or on premises occupied or controlled by a person specified in the application;

(b) a search of such premises for that material could have been authorised before the commencement of Part 2 by the issue of a warrant to a police officer under an enactment other than this Schedule; and

(c) the issue of such a warrant would have been appropriate.

4. An order under this paragraph is an order that the person who appears to the judicial officer to be in possession of the material to which the application relates must —

(a) produce it to a police officer for the officer to take away; or

(b) give a police officer access to it,

not later than 7 days after the date of the order or the end of any longer period the order specifies.

5. If the material consists of information stored in any electronic form —

(a) an order under paragraph 4(a) has effect as an order to produce the material in a form —

(i) in which it can be taken away and in which it is visible and legible; or

(ii) from which it can readily be produced in a visible and legible form;

(b) an order under paragraph 4(b) has effect as an order to give a police officer access to the material in a form in which it is visible and legible.

6. For the purposes of sections 29 and 32, material produced in pursuance of an order under paragraph 4(a) is to be treated as if it were material seized by a police officer.

Notice of application for an order

7. An application for an order under paragraph 4 must be made on notice.

8. Notice of an application for such an order may be served on a person either by delivering it to the person or by leaving it at the person's proper address or by sending it by post to the person in a registered letter.

9. Such a notice may be served on —

(a) a corporate body - by serving it on the body's secretary or clerk or other similar officer; and

(b) a partnership - by serving it on one of the partners.

10. For the purposes of this Schedule the proper address of a person is —

(a) in the case of a secretary or clerk or other similar officer of a corporate body – that of the registered or principal office of that body;

(b) in the case of a partner of a firm - that of the principal office of the firm;

(c) in any other case - the last known address of the person to be served.

11. If notice of an application for an order under paragraph 4 has been served on a person, the person must not conceal, destroy, alter or dispose of the material to which the application relates except with —

(a) the leave of the judicial officer; or

(b) the written permission of a police officer,

until —

(i) the application is dismissed or abandoned; or

(ii) the person has complied with an order under paragraph 4 made on the application.

Issue of warrant

12. If on an application made by a police officer the judicial officer is satisfied —

(a) that —

(i) either set of access conditions is fulfilled; and

(ii) any of the further conditions set out in paragraph 14 is also fulfilled; or

(b) that —

(i) the second set of access conditions is fulfilled; and

(ii) an order under paragraph 4 relating to the material has not been complied with,

the judicial officer may issue a warrant authorising a police officer to enter and search the premises.

13. A police officer may seize and retain anything for which a search has been authorised under paragraph 12.

14. The further conditions mentioned in paragraph 12(a)(ii) are that —

(a) it is not practicable to communicate with any person entitled to grant entry to the premises;

(b) it is practicable to communicate with a person entitled to grant entry to the premises, but not practicable to communicate with any person entitled to grant access to the material;

(c) the material contains information which —

(i) is subject to a restriction or obligation such as is mentioned in section 16(2)(b); and

(ii) is likely to be disclosed in breach of it if a warrant is not issued;

(d) service of notice of an application for an order under paragraph 4 may seriously prejudice the investigation.

15. (1) If a person fails to comply with an order under paragraph 4 or contravenes paragraph 11, the judicial officer may deal with the person as if the person had committed a contempt of the court.

(2) Any enactment relating to contempt of the Supreme Court or of the Magistrates' Court or Summary Court has effect in relation to such a failure as if it were such a contempt.

16. In this Schedule, "judicial officer" means the Senior Magistrate, except that —

(a) if the Senior Magistrate is not available, owing to absence or indisposition, "judicial officer" means a judge in chambers;

(b) if neither the Senior Magistrate nor a judge is available, "judicial officer" means three justices of the peace, sitting together (whether in open court or otherwise) and agreeing by a majority.

SCHEDULE 2
(sections 47 and 95)

FINGERPRINTING AND SAMPLES:
ATTENDANCE AT A PLACE OF LAWFUL CUSTODY

Part 1 - Fingerprinting

Persons arrested and released

1. (1) A police officer may require a person to attend a place of lawful custody for the purpose of taking the person's fingerprints under section 91(10).

(2) The power under sub-paragraph (1) may not be exercised in a case falling within section 91(10)(b) (fingerprints taken on previous occasion insufficient, etc.) later than 6 months after the day on which the appropriate officer was informed that section 91(12)(a) or (b) applied.

Persons charged, etc.

2. (1) A police officer may require a person to attend a place of lawful custody for the purpose of taking the person's fingerprints under section 91(8).

(2) In a case falling within section 91(8)(a) (fingerprints not taken previously) the power under sub-paragraph (1) may not be exercised later than 6 months after the day on which the person was charged or informed that he or she would be reported.

(3) In a case falling within section 91(8)(b) (fingerprints taken on previous occasion insufficient, etc.) the power under sub-paragraph (1) may not be exercised later than the day on which the appropriate officer was informed that section 91(12)(a) or (b) applied.

Persons convicted, etc. of an offence in the Falkland Islands

3. (1) A police officer may require a person to attend a place of lawful custody for the purpose of taking the person's fingerprints under section 91(9).

(2) If the condition in section 91(9)(a) is satisfied (fingerprints not taken previously), the power under sub-paragraph (1) may not be exercised later than 2 years after the day on which the person was convicted or cautioned.

(3) If the condition in section 91(9)(b) is satisfied (fingerprints taken on previous occasion insufficient, etc.) the power under subparagraph (1) may not be exercised later than 2 years after the day on which an appropriate officer was informed that section 91(12)(a) or (b) applied.

(4) Sub-paragraphs (2) and (3) do not apply if the offence is a qualifying offence.

Persons convicted, etc. of an offence outside the Falkland Islands

4. A police officer may require a person to attend a place of lawful custody for the purpose of taking the person's fingerprints under section 91(11).

Multiple attendance

5. (1) If a person's fingerprints have been taken under section 91 on 2 occasions in relation to any offence, the person may not under this Schedule be required to attend a place of lawful custody to have his or her fingerprints taken under that section in relation to that offence on a subsequent occasion without the authorisation of an officer of the rank of inspector or above.

(2) If an authorisation is given under sub-paragraph (1) —

(a) the fact of the authorisation; and

(b) the reasons for giving it,

must be recorded as soon as practicable after it has been given.

Part 2 - Intimate samples

Persons suspected to be involved in an offence

6. A police officer may require a person to attend an approved place for the purpose of taking an intimate sample from the person under section 93(2) if, in the course of the investigation of an offence, 2 or more non-intimate samples suitable for the same means of analysis have been taken from the person but have proved insufficient.

Persons convicted, etc. of an offence outside the Falkland Islands

7. A police officer may require a person to attend an approved place for the purpose of taking an intimate sample from the person under section 93(4) if 2 or more non-intimate samples suitable for the same means of analysis have been taken from the person under section 94(9) but have proved insufficient.

Part 3 - Non-intimate samples

Persons arrested and released

8. (1) A police officer may require a person to attend a place of lawful custody for the purpose of taking a non-intimate sample from the person under section 94(6).

(2) The power under sub-paragraph (1) may not be exercised in a case falling within section 94(6)(b) (sample taken on a previous occasion not suitable, etc.) later than 6 months after the day on which the appropriate officer was informed of the matters specified in section 94(6)(b)(i) or (ii).

Persons charged. etc.

9. (1) A police officer may require a person to attend a place of lawful custody for the purpose of taking a non-intimate sample from the person under section 94(7).

(2) The power under sub-paragraph (1) may not be exercised in a case falling within section 94(7)(a) (sample not taken previously) later than 6 months after the day on which the person was charged or informed that he or she would be reported.

(3) The power under sub-paragraph (1) may not be exercised in a case falling within section 94(7)(b) (sample taken on a previous occasion not suitable, etc.) later than 6 months after the appropriate officer was informed of the matters specified in section 94(7)(b)(i) or (ii).

Persons convicted, etc. of an offence in the Falkland Islands

10. (1) A police officer may require a person to attend a place of lawful custody for the purpose of taking a non-intimate sample from the person under section 94(8)(a) or (b).

(2) If the condition in section 94(8)(c) is satisfied (sample not taken previously), the power under sub-paragraph (1) above may not be exercised later than 2 years after the day on which the person was convicted or cautioned.

(3) If the condition in section 94(8)(d) is satisfied (sample taken on a previous occasion not suitable, etc.), the power under subparagraph (1) may not be exercised later than 2 years after the day on which an appropriate officer was informed of the matters specified in section 94(8)(d)(i) or (ii).

(4) Sub-paragraphs (2) and (3) do not apply if the offence is a qualifying offence.

Persons convicted etc of an offence outside the Falkland Islands

11. A police officer may require a person to attend a place of lawful custody for the purpose of taking a non-intimate sample from the person under section 94(10).

Multiple exercise of power

12. (1) If a non-intimate sample has been taken from a person under section 94 on 2 occasions in relation to any offence, the person may not under this Schedule be required to attend a place of lawful custody to have another such sample taken from him or her under that section in relation to that offence on a subsequent occasion without the authorisation of an officer of the rank of inspector or above.

(2) If an authorisation is given under sub-paragraph (1) —

(a) the fact of the authorisation; and

(b) the reasons for giving it,

must be recorded as soon as practicable after it has been given.

Part 4 - General and supplementary

Requirement to have power to take fingerprints or sample

13. A power conferred by this Schedule to require a person to attend an approved place or a place of lawful custody for the purposes of taking fingerprints or a sample under any provision of this Part may be exercised only in a case where the fingerprints or sample may be taken from the person under that provision (and, in particular, if any necessary authorisation for taking the fingerprints or sample under that provision has been obtained).

Date and time of attendance

14. (1) A requirement under this Schedule —

(a) must give the person a period of at least 7 days within which he or she is to attend an approved place or a place of lawful custody; and

(b) may direct the person so to attend at a specified time of day or between specified times of day.

(2) A requirement under this Schedule may specify a period shorter than 7 days if —

(a) there is an urgent need for the fingerprints or sample for the purposes of the investigation of an offence; and

(b) the shorter period is authorised by an officer of the rank of sergeant or above.

(3) If an authorisation is given under sub-paragraph (2)(b) —

(a) the fact of the authorisation; and

(b) the reasons for giving it,

must be recorded as soon as practicable after it has been given.

(4) If the police officer giving a requirement under this Schedule and the person to whom it is given so agree, it may be varied so as to specify any period within which, or date or time at which, the person must attend; but a variation does not have effect unless confirmed by the police officer in writing.

Enforcement

15. A police officer may arrest without warrant a person who has failed to comply with a requirement under this Schedule.

SCHEDULE 3 – CODES OF PRACTICE

(sections 118 to 121)

CODE 'A'

CODE OF PRACTICE FOR THE EXERCISE BY POLICE OFFICERS OF STATUTORY POWERS OF STOP AND SEARCH

Contents

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Searches which do not result in an arrest
Searches which result in an arrest

A5. Monitoring and supervising the use of stop and search powers

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Authorising officers
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Annex A [Omitted]

Annex B - Self-defined ethnic classification categories

Annexes C to E [Omitted]

Annex F - Establishing gender of persons to be searched

General

This Code of Practice is a copy of the Code contained in Schedule 3 to the Criminal Procedure and Evidence Ordinance [2014] (in this Code referred to as "the Ordinance") and is to be read as one with the Ordinance.

This Code must be readily available at every police station and every other place of lawful custody for consultation by police officers, detained persons and members of the public.

The Code must also be published on the Falkland Islands Government and/or Royal Falkland Islands Police website, and is to be made available for consultation by members of the public in such civic locations as the Governor directs or, if there is no such direction, as the Chief Police Officer considers appropriate (e.g. community library).

The Notes for Guidance are not provisions of this Code, but are guidance to police officers and others about its application and interpretation. Provisions in the Annexes to the Code are provisions of this Code.

If this Code requires the prior agreement or authority of an officer of a specified rank, it may be given by an officer authorised to perform the functions of that rank under section 781 of the Ordinance.

This Code does not apply to the powers of stop and search under the UK Aviation Security Act 1982, section 27(2) as applied to the Falkland Islands.

A1. Principles governing stop and search

A1.1. This Code governs the exercise by police officers of statutory powers to search a person or a vehicle without first making an arrest. The main stop and search powers to which this Code applies are contained in Part 2 of the Ordinance, but that Part should not be regarded as definitive as individual statutes may contain other police powers of entry, search and seizure. In addition, this Code covers requirements on police officers to record encounters not governed by statutory powers.

A1.1A. Powers to stop and search must be used fairly, responsibly, with respect for people being searched and without unlawful discrimination. It is contrary to the human rights provisions of the Constitution for police officers to discriminate on the grounds of sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Police officers must have regard to the need to eliminate unlawful discrimination, harassment and victimisation and should seek to foster good relations in the community.

A1.2. The intrusion on the liberty of the person stopped or searched must be brief and detention for the purposes of a search must take place at or near the location of the stop.

A1.3. If these fundamental principles are not observed the use of powers to stop and search may be drawn into question. Failure to use the powers in the proper manner reduces their effectiveness. Stop and search can play an important role in the detection and prevention of crime, and using the powers fairly makes them more effective.

A1.4. The primary purpose of stop and search powers is to enable officers to allay or confirm suspicions about individuals without exercising their power of arrest. Officers may be required to justify the use or authorisation of such powers, in relation both to individual searches and the overall pattern of their activity in this regard, to their supervisory officers or in court. Any misuse of the powers is likely to be harmful to policing and lead to mistrust of the police. Officers must also be able to explain their actions to the member of the public searched. The misuse of these powers can lead to disciplinary action.

A1.5. An officer must not search a person, even with his or her consent, if there is no relevant power to search. Even if a person is prepared to submit to a search voluntarily, the person must not be searched unless the necessary legal power exists, and the search must be in accordance with the relevant power and the provisions of this Code. The only case in which an officer does not require a specific power is when searches of persons entering sports grounds or other premises are carried out with their consent given as a condition of entry.

A2. Explanation of powers to stop and search

A2.1. This Code applies to the following powers of stop and search —

(a) powers that require, before they can be exercised, reasonable grounds for suspicion that articles unlawfully obtained or possessed are being carried;

(b) powers authorised under section 8, based upon a reasonable belief that incidents involving serious violence may take place or that people are carrying dangerous instruments or offensive weapons within any locality in the Falkland Islands;

(c) powers to search persons, even though they are not arrested, in the course of a search of school premises for offensive weapons, or of a search for drugs (see Code B Note 2C).

Searches requiring reasonable grounds for suspicion

A2.2. Reasonable grounds for suspicion depend on the circumstances in each case. There must be an objective basis for that suspicion based on facts, information, and/or intelligence which are relevant to the likelihood of finding an article of a certain kind. Reasonable suspicion can never be supported on the basis of personal factors alone without reliable supporting intelligence or information or some specific behaviour by the person concerned. For example, a person's race, age, appearance, or the fact that the person is known to have a previous conviction, cannot be used alone or in combination with each other as the reason for searching that person.

Reasonable suspicion cannot be based on generalisations or stereotypical images of certain groups or categories of people as more likely to be involved in criminal activity. A person's religion cannot be considered as reasonable grounds for suspicion and should never be considered as a reason to stop or stop and search an individual.

A2.3. Reasonable suspicion can sometimes exist without specific information or intelligence and on the basis of some level of generalisation stemming from the behaviour of a person. For example, if an officer encounters someone on the street at night who is obviously trying to hide something, the officer may (depending on the other surrounding circumstances) base such suspicion on the fact that this kind of behaviour is often linked to stolen or prohibited articles being carried.

<u>Intelligence or information</u>

A2.4. However, reasonable suspicion should normally be linked to accurate and current intelligence or information, such as information describing an article being carried, a suspected offender, or a person who has been seen carrying a type of article known to have been stolen recently from premises in the area. Searches based on accurate and current intelligence or information are more likely to be effective.

Targeting searches in a particular area at specified crime problems increases their effectiveness and minimises inconvenience to law-abiding members of the public. It also helps in justifying the use of searches both to those who are searched and to the public. This does not however prevent stop and search powers being exercised in other locations where such powers may be exercised and reasonable suspicion exists.

A2.5. Searches are more likely to be effective and legitimate and to secure public confidence when reasonable suspicion is based on a range of factors. The overall use of these powers is

more likely to be effective when up to date and accurate intelligence or information is communicated to officers and they are well-informed about local crime patterns.

A2.6. Where there is reliable information or intelligence that members of a group or gang habitually carry knives unlawfully, or weapons or controlled drugs, and wear a distinctive item of clothing or other means of identification to indicate their membership of the group or gang, that distinctive item of clothing or other means of identification may provide reasonable grounds to stop and search a person (see Note 9).

Possession

A2.7. A police officer may have reasonable grounds to suspect that a person is in innocent possession of a stolen or prohibited article or other item for which he or she is empowered to search. In that case the officer may stop and search the person even though there would be no power of arrest.

[A2.8. Omitted]

Detention

A2.9. An officer who has reasonable grounds for suspicion may detain the person concerned in order to carry out a search. Before carrying out a search the officer may ask questions about the person's behaviour or presence in circumstances which gave rise to the suspicion. As a result of questioning the detained person, the reasonable grounds for suspicion necessary to detain that person may be confirmed or, because of a satisfactory explanation, be eliminated (see Notes 2 and 3). Questioning may also reveal reasonable grounds to suspect the possession of a different kind of unlawful article from that originally suspected. Reasonable grounds for suspicion, however, cannot be provided retrospectively by such questioning during a person's detention or by refusal to answer any questions put.

A2.10. If, as a result of questioning before a search, or other circumstances which come to the attention of the officer, there cease to be reasonable grounds for suspecting that an article is being carried of a kind for which there is a power to stop and search, no search may take place (see Note 3). In the absence of any other lawful power to detain, the person is free to leave at will and must be so informed.

A2.11. There is no power to stop or detain a person in order to find grounds for a search. Police officers have many encounters with members of the public which do not involve detaining people against their will. If reasonable grounds for suspicion emerge during such an encounter, the officer may search the person, even though no grounds existed when the encounter began. If an officer is detaining someone for the purpose of a search, he or she should inform the person as soon as detention begins.

Searches authorised under section 8

A2.12. Authority for a police officer in uniform to stop and search under section 8 of the Ordinance may be given if the authorising officer reasonably believes that —

(a) incidents involving serious violence may take place anywhere in the Falkland Islands, and it is expedient to use these powers to prevent their occurrence;

(b) an incident involving serious violence has taken place anywhere in the Falkland islands, a dangerous instrument or offensive weapon used in the incident is being carried by a person anywhere in the Falkland Islands, and it is expedient to use these powers to find the instrument or weapon; or

(c) persons are carrying dangerous instruments or offensive weapons without good reason anywhere in the Falkland Islands.

A2.13. An authorisation under section 8 may only be given by an officer of the rank of sergeant or above. It must be given in writing, or orally if it is not practicable to give the authorisation in writing, and must specify the grounds on which it was given and the period of time for which the powers remain in force. The authorisation must specify the grounds, the locality and the period for which it is in force. The period authorised must be no longer than appears reasonably necessary to prevent, or seek to prevent incidents of serious violence, or to deal with the problem of carrying dangerous instruments or offensive weapons. It must not exceed 24 hours (see Notes 10 to 13).

A2.14. A sergeant who gives an authorisation must as soon as practicable inform an officer of the rank of inspector or above. This officer or another officer of the rank of inspector or above may direct that the authorisation is to be extended for a further 24 hours, if violence or the carrying of dangerous instruments or offensive weapons has occurred, or is suspected to have occurred, and the continued use of the powers is considered necessary to prevent or deal with further such activity. That direction must also be given in writing at the time or as soon as practicable afterwards (see Note 12).

A2.14A. The selection of persons or vehicles to be stopped under section 8 and, if appropriate, searched should reflect an objective assessment of the nature of the incident or weapon in question and the individuals and vehicles thought likely to be associated with that incident or those weapons (see Notes 10 and 11) The powers must not be used to stop and search persons for reasons unconnected with the purpose of the authorisation. When selecting persons or vehicles to be stopped in response to a specific threat or incident, an officer must not discriminate unlawfully against anyone.

A2.14B. The driver of a vehicle which is stopped under section 8 and any person searched under that section is entitled to a written statement to that effect if they apply within 12 months from the date the vehicle was stopped or the person searched. This statement is a statement that the vehicle was stopped or the person searched under section 8 and may form part of the search record or be supplied as a separate record.

Power to require removal of face coverings
A2.15. Section 8(6) also provides a power to demand the removal of disguises. The officer exercising the power must reasonably believe that someone is wearing an item wholly or mainly for the purpose of concealing identity. There is also a power to seize such items if the officer

believes that a person intends to wear them for this purpose. There is no power to stop and search for disguises. An officer may seize any such item which is discovered when exercising a power of search for something else, or which is being carried, and which the officer reasonably believes is intended to be used for concealing anyone's identity. This power can only be used if an authorisation under section 8(1) is in force (see Note 4).

A2.16. Authority for a police officer in uniform to require the removal of disguises and to seize them under section 8(6) may be given if the authorising officer reasonably believes that activities may take place in any locality in the Falkland Islands that are likely to involve the commission of offences and it is expedient to use these powers to prevent or control these activities.

[A2.17 to A2.26 omitted]

Powers to search in the exercise of a power to search premises
A2.27. The following powers to search premises also authorise the search of a person, not under arrest, who is found on the premises during the course of the search —

(a) section 172 of the Crimes Ordinance [2014] under which a police officer may enter school premises and search the premises and any person on those premises for any bladed or pointed article or offensive weapon; and

(b) under a warrant issued under the Misuse of Drugs Ordinance to search premises for drugs or documents but only if the warrant specifically authorises the search of persons found on the premises.

A2.28. Before the power under section 172 of the Crimes Ordinance [2014] may be exercised, the officer must reasonably suspect that an offence under section 170 or 171 of that Ordinance (having a bladed or pointed article or offensive weapon on school premises) has been or is being committed. A warrant to search premises and persons found in them may be issued under Misuse of Drugs Ordinance if there are reasonable grounds to suspect that controlled drugs or certain documents are in the possession of a person on the premises.

A2.29. The powers in paragraph A2.27(a) or (b) do not require prior specific grounds to suspect that the person to be searched is in possession of an item for which there is an existing power to search. However, it is still necessary to ensure that the selection and treatment of those searched under these powers is based upon objective factors connected with the search of the premises, and not upon personal prejudice.

A3. Conduct of searches

A3.1. All stops and searches must be carried out with courtesy, consideration and respect for the person concerned. This has a significant impact on public confidence in the police. Every reasonable effort must be made to minimise the embarrassment that a person being searched may experience (see Note 4).

A3.2. The co-operation of the person to be searched must be sought in every case, even if the person initially objects to the search. A forcible search may be made only if it has been established that the person is unwilling to co-operate or resists. Reasonable force may be used as a last resort if necessary to conduct a search or to detain a person or vehicle for the purposes of a search.

A3.3. The length of time for which a person or vehicle may be detained must be reasonable and kept to a minimum. In cases where the exercise of the power requires reasonable suspicion, the thoroughness and extent of a search must depend on what is suspected of being carried, and by whom. If the suspicion relates to a particular article which is seen to be slipped into a person's pocket, then, in the absence of other grounds for suspicion or an opportunity for the article to be moved elsewhere, the search must be confined to that pocket. In the case of a small article which can readily be concealed, such as a drug, and which might be concealed anywhere on the person, a more extensive search may be necessary. In the case of searches mentioned in paragraph A2.1(b) and (c), which do not require reasonable grounds for suspicion, officers may make any reasonable search to look for items for which they are empowered to search (see Note 5).

A3.4. The search must be carried out at or near the place where the person or vehicle was first detained (see Note 6).

A3.5. There is no power to require a person to remove any clothing in public other than an outer coat, jacket or gloves, except under section 8(6) of the Ordinance (which empowers a police officer to require a person to remove any item worn to conceal identity). (See Notes 4 and 6). A search in public of a person's clothing which has not been removed must be restricted to superficial examination of outer garments. This does not, however, prevent an officer from placing his or her hand inside the pockets of the outer clothing, or feeling round the inside of collars, socks and shoes if this is reasonably necessary in the circumstances to look for the object of the search or to remove and examine any item reasonably suspected to be the object of the search.

For the same reasons, subject to the restrictions on the removal of headgear, a person's hair may also be searched in public (see paragraphs A3.1 and A3.3).

A3.6. If on reasonable grounds it is considered necessary to conduct a more thorough search (e.g. by requiring a person to take off a T-shirt), this must be done out of public view, for example in a police van (unless paragraph A3.7 applies) or place of lawful custody if there is one nearby (see Note 4). Any search involving the removal of more than an outer coat, jacket, gloves, headgear or footwear, or any other item concealing identity, must so far as practicable be made by an officer of the same gender as the person searched (see Notes 6 and 7).

A3.6A. If a search takes place in private it must so far as practicable not be made in the presence of anyone of the opposite gender unless the person being searched specifically so requests.

A3.7. Searches involving exposure of intimate parts of the body must not be conducted as a routine extension of a less thorough search, simply because nothing is found in the course of the initial search. Searches involving exposure of intimate parts of the body may be carried out only

at a nearby place of lawful custody or other nearby location which is out of public view (but not a police vehicle). These searches must be conducted in accordance with paragraph 11 of Annex A to Code C, except that an intimate search mentioned in paragraph 11(f) of Annex A to Code C may not be authorised or carried out under any stop and search powers. The other provisions of Code C do not apply to the conduct and recording of searches of persons detained at the place of lawful custody in the exercise of stop and search powers (see Note 7).

Steps to be taken prior to a search
A3.8. Before any search of a detained person or attended vehicle takes place, the police officer must take reasonable steps to give the person to be searched or in charge of the vehicle the following information —

(a) that the person is being detained for the purposes of a search;

(b) the officer's name (unless the officer reasonably believes that giving his or her name might put him or her in danger, in which case a warrant or other identification number must be given);

(c) the legal search power which is being exercised; and

(d) a clear explanation of —

(i) the purpose of the search in terms of the article or articles for which there is a power to search; and

(ii) in the case of the power under section 8 (see paragraph A2.1(b)) the nature of the power, the authorisation and the fact that is has been given;

(iii) in the case of powers requiring reasonable suspicion (see paragraph A2.1(a)) the grounds for the suspicion;

(e) that the person is entitled to a copy of the record of the search if one is made (see section 4 below) if the person asks within 12 months from the date of the search; and

(i) if the person is not arrested and taken to a place of lawful custody as a result of the search and it is practicable to make the record on the spot, that immediately after the search is completed the person will be given, on request, either a copy of the record, or a receipt which explains how the person can obtain a copy of the full record; or

(ii) if the person is arrested and taken to a place of lawful custody as a result of the search, that a record will be made at the station as part of the person's custody record and the person will be given, on request, a copy of the custody record, including a copy of the record of the search, as soon as practicable while the person is at the place of lawful custody.

A3.9. Stops and searches under the powers mentioned in paragraph 2.1(b) may be undertaken only by a police officer in uniform.

A3.10. The person should also be given information about police powers to stop and search and the individual's rights in these circumstances.

A3.11. If the person to be searched, or in charge of a vehicle to be searched, does not appear to understand what is being said, or there is any doubt about the person's ability to understand English, the officer must take reasonable steps to bring information regarding the person's rights and any relevant provisions of this Code to his or her attention. If the person is deaf or cannot understand English and is accompanied by someone, then the officer must try to establish whether that person can interpret or otherwise help the officer to give the required information.

A4. Recording requirements

(a) Searches which do not result in an arrest

A4.1. When an officer has carried out a search in the exercise of any power to which this Code applies, and the search does not result in the person searched or person in charge of the vehicle searched being arrested and taken to the place of lawful custody, a record must be made of it, electronically or on paper, unless there are exceptional circumstances which make this wholly impracticable (e.g. in situations involving public disorder or when the officer's presence is urgently required elsewhere). If a record is to be made, the officer carrying out the search must make the record on the spot unless this is not practicable, in which case the officer must make the record as soon as practicable after the search is completed.

A4.2. If the record has been made at the time, the person who has been searched or who is in charge of the vehicle that has been searched must be asked if he or she wishes a copy and if the person so requests, must be given immediately, either a copy of the record or a receipt which explains how the person can obtain a copy of the full record.

A4.2A. An officer is not required to provide a copy of the full record or of a receipt at the time if the officer is called to an incident of higher priority (see Note 21).

(b) Searches which result in an arrest

A4.2B. If a search in the exercise of a power to which this Code applies results in a person being arrested and taken to the place of lawful custody, the officer carrying out the search must ensure that a record of the search is made as part of the person's custody record. The custody officer must then ensure that the person is asked if he or she wishes a copy of the record, and provide one if requested as soon as practicable.

A4.3. The record of a search must always include the following information —

(a) a note of the self-defined ethnicity, and if different, the ethnicity as perceived by the officer making the search, of the person searched or in charge of the vehicle searched, as the case may be (see Note 18)

(b) the date, time, and place the person or vehicle was searched;

(c) the object of the search;

(d) in the case of the power under section 8, the nature of the power, the authorisation and the fact that it has been given;

(e) in the case of other powers requiring reasonable suspicion, the grounds for that suspicion;

(f) subject to paragraph A3.8(b), the identity of the officer carrying out the search.

A4.3A. For the purpose of completing the search record, there is no requirement to record the name, address and date of birth of the person searched or the person in charge of a vehicle that is searched and the person is under no obligation to provide this information.

A4.4. Nothing in paragraph A4.3 requires the names of police officers to be shown on the search record or any other record required to be made under this Code where an officer reasonably believes that recording names might endanger the officers. In such cases the record must show the officers' warrant or other identification number.

A4.5. A record is required for each person and each vehicle searched. However, if a person is in a vehicle and both are searched, and the object and grounds of the search are the same, only one record need be completed. If more than one person in a vehicle is searched, separate records for each search of a person must be made. If only a vehicle is searched, the self-defined ethnic background of the person in charge of the vehicle must be recorded, unless the vehicle is unattended.

A4.6. The record of the grounds for making a search must, briefly but informatively, explain the reason for suspecting the person concerned, by reference to the person's behaviour and/or other circumstances.

A4.7. If officers detain an individual with a view to performing a search, but the need to search is eliminated as a result of questioning the person detained, a search should not be carried out and a record is no required (see paragraph A2.10 and note 3).

A4.8. After searching an unattended vehicle, or anything in or on it, an officer must leave a notice in it (or on it, if things on it have been searched without opening it) recording the fact that it has been searched.

A4.9. The notice must state where a copy of the record of the search may be obtained, and where any application for compensation should be directed.

A4.10. The vehicle must if practicable be left secure.

[A4.11. Omitted]

A4.12. There is no requirement for an officer who requests a person in a public place to account for his or her actions, behaviour, presence in an area, or his or her possession of anything, to make any record of the encounter or to give the person a receipt (see Note 22B).

A5. Monitoring and supervising the use of stop and search powers

A5.1. Supervising officers must monitor the use of stop and search powers and should consider in particular whether there is any evidence that they are being exercised on the basis of stereotyped images or inappropriate generalisations. Supervising officers should satisfy themselves that the practice of officers under their supervision in stopping, searching and recording is fully in accordance with this Code. Supervisors must also examine whether the records reveal any trends or patterns which give cause for concern, and if so take appropriate action to address this.

A5.2. [Omitted]

A5.3. Supervision and monitoring must be supported by the compilation of comprehensive statistical records of stops and searches. Any apparently disproportionate use of the powers by particular officers or groups of officers or in relation to specific sections of the community should be identified and investigated.
A5.4. In order to promote public confidence in the use of the powers, the Chief Police Officer must publish the statistics in the annual report required by section 12 of the Ordinance (see Note 19). The Chief Police Officer must be prepared to answer any questions raised upon publication of the report by community organisations or official representatives.

Notes for Guidance

Officers exercising stop and search powers
1. This Code does not affect the ability of an officer to speak to or question a person in the ordinary course of the officer's duties without detaining the person or exercising any element of compulsion. It is not the purpose of the Code to prohibit such encounters between the police and the community with the co-operation of the person concerned and neither does it affect the principle that all citizens have a duty to help police officers to prevent crime and discover offenders. This is a civic rather than a legal duty; but when a police officer is trying to discover whether, or by whom, an offence has been committed he or she may question any person from whom useful information might be obtained, subject to the restrictions imposed by Code C. A person's unwillingness to reply does not alter this entitlement, but in the absence of a power to arrest, or to detain in order to search, the person is free to leave at will and cannot be compelled to remain with the officer.

2. In some circumstances preparatory questioning may be unnecessary, but in general a brief conversation or exchange will be desirable not only as a means of avoiding unsuccessful searches, but to explain the grounds for the stop/search, to gain cooperation and reduce any tension there might be surrounding the stop/search.

3. If a person is lawfully detained for the purpose of a search, but no search in the event takes place, the detention will not thereby have been rendered unlawful.

4. Many people customarily cover their heads or faces for religious reasons – for example, Muslim women, Sikh men, Sikh or Hindu women, or Rastafarian men or women. A police officer cannot order the removal of a head or face covering except where there is reason to believe that the item is being worn by the individual wholly or mainly for the purpose of disguising identity, not simply because it disguises identity. Where there may be religious sensitivities about ordering the removal of such an item, the officer should permit the item to be removed out of public view. Where practicable, the item should be removed in the presence of an officer of the same gender as the person and out of sight of anyone of the opposite gender. (See Annex F.)

5. A search of a person in public should be completed as soon as possible.

6. A person may be detained under a stop and search power at a place other than where the person was first detained, but the place, whether the place of lawful custody or elsewhere, must be nearby. This applies to all searches under stop and search powers, whether or not they involve the removal of clothing or exposure of intimate parts of the body (see paragraphs A3.6 and A3.7) or take place in or out of public view. It means, for example, that a search under the powers in the Misuse of Drugs Ordinance which involves the compulsory removal of more than a person's outer coat, jacket or gloves cannot be carried out unless a place which is both near where the person was first detained and out of public view, is available. If a search involves exposure of intimate parts of the body and the place of lawful custody is not nearby, particular care must be taken to ensure that the location is suitable in that it enables the search to be conducted in accordance with the requirements of paragraph 11 of Annex A to Code C.

7. A search in the street itself should be regarded as being in public for the purposes of paragraphs A3.6 and A3.7, even though it may be empty at the time a search begins. Although there is no power to require a person to do so, there is nothing to prevent an officer from asking a person voluntarily to remove more than an outer coat, jacket or gloves in public.

8. [Omitted].

9. Other means of identification might include jewellery, insignias, tattoos or other features which are known to identify members of the particular gang or group.

Authorising officers

10. The powers under section 8 of the Ordinance are separate from and additional to the normal stop and search powers which require reasonable grounds to suspect an individual of carrying an offensive weapon (or other article). Their overall purpose is to prevent serious violence and the widespread carrying of weapons which might lead to persons being seriously injured by disarming potential offenders or finding weapons that have been used in circumstances where other powers would not be sufficient. They should not therefore be used to replace or circumvent the normal powers for dealing with routine crime problems. The purpose of the powers under

section 8(6) is to prevent those involved in intimidatory or violent protests using face coverings to disguise identity.

11. Authorisations under section 8 require a reasonable belief on the part of the authorising officer. This must have an objective basis, for example: intelligence or relevant information such as a history of antagonism and violence between particular groups; previous incidents of violence at, or connected with, particular events or locations; a significant increase in knife-point robberies; reports that individuals are regularly carrying weapons; information following an incident in which weapons were used about where the weapons might be found; or in the case of section 8(6), previous incidents of crimes being committed while wearing face coverings to conceal identity.

12. It is for the authorising officer to determine the period of time during which the powers mentioned in paragraph A2.1(b) may be exercised. The officer should set the minimum period he or she considers necessary to deal with the risk of violence, or the carrying of dangerous instruments or offensive weapons, or to find such instruments or weapons that have been used. A direction to extend the period authorised under the powers mentioned in paragraph A2.1(b) may be given only once. Thereafter further use of the powers requires a new authorisation.

13. It is for the authorising officer to determine the geographical area in which the use of the powers is to be authorised. In doing so the officer may wish to take into account factors such as the nature and venue of the anticipated incident, the number of people who may be in the immediate area of any possible incident, their access to surrounding areas and the anticipated or actual level of violence. The officer should not set a geographical area which is wider than that he or she believes necessary for the purpose of preventing anticipated violence, the carrying of dangerous instruments or offensive weapons, finding such an instrument or weapon that has been used or, in the case of section 8(6), preventing the commission of offences. It is particularly important to ensure that police officers exercising such powers are fully aware of where they may be used. If the area specified is smaller than the whole of the Falkland Islands, the authorising officer should specify the streets or other markers which form the boundary of the area.

14. [Omitted]

Recording

15. If a stop and search is conducted by more than one officer, the identity of all the officers engaged in the search must be recorded on the record. Nothing prevents an officer who is present but not directly involved in searching from completing the record during the course of the encounter.

16. If a search results in the person searched or in charge of a vehicle which is searched being arrested, the requirement to make a record of the search as part of the person's custody record does not apply if the person is granted 'street bail' (i.e. bail at a place than a place of lawful custody) after arrest (see section 51) to attend the place of lawful custody and is not taken into custody to the place of lawful custody. An arrested person's entitlement to a copy of the search

record which is made as part of the custody record does not affect the person's entitlement to a copy of the custody record or any other provisions of section 2 of Code C in this Schedule.

17. [Omitted]

18. Officers should record the self-defined ethnicity of every person stopped according to the categories listed in Annex B. Respondents should be asked to select one of the five main categories representing broad ethnic groups and then a more specific cultural background from within this group. The ethnic classification should be coded for recording purposes using the coding system in Annex B. An additional "Not stated" box is available but should not be offered to respondents explicitly. Officers should be aware and explain to members of the public, especially if concerns are raised, that this information is required to obtain a true picture of stop and search activity and to help improve ethnic monitoring, tackle discriminatory practice, and promote effective use of the powers. If the person gives what appears to the officer to be an "incorrect" answer (e.g. a person who appears to be white states that he or she is black), the officer should record the response that has been given and then record the officer's own perception of the person's ethnic background by using the PNC classification system. If the 'Not stated' category is used, the reason for this must be stated on the form.

19. Arrangements for publication of records should take account of the right to confidentiality of those stopped and searched. Anonymised forms and/or statistics generated from records should be the focus of the examinations by community representatives and members of the public.

20. [Omitted].

21. In situations where it is not practicable to provide a copy of the full search record at the time (see paragraph 4.2A), the officer should consider giving the person details of the place at which the person may attend for a copy of the record. A receipt may be a simple business card with sufficient information to locate the record if the person asks for a copy.

22 and 22A. [Omitted]

22B. A person who is asked to account for himself or herself should, if he or she requests, be given information about how to report dissatisfaction with the way the person has been treated.

23. [Omitted]

ANNEX A –
SUMMARY OF MAIN STOP AND SEARCH POWERS

[Omitted – UK application only]

ANNEX B –
SELF-DEFINED ETHNIC CLASSIFICATION CATEGORIES

White W

A. White – British W1
B. White – Irish W2
C. Any other White background W9

Mixed M
D. White and Black Caribbean M1
E. White and Black African M2
F. White and Asian M3
G. Any other Mixed Background M9

Asian /Asian – British A
H. Asian – Indian A1
I. Asian – Pakistani A2
J. Asian – Bangladeshi A3
K. Any other Asian background A9

Black / Black – British B
L. Black – Caribbean B1
M. Black African B2
N. Any other Black background B9

Other O
O. Chinese O1
P. Saint Helenian O2
Q. South American O3
R. Any Other O9

Not Stated NS

ANNEX C –
SUMMARY OF POWERS OF COMMUNITY SUPPORT OFFICERS TO SEARCH AND SEIZE

[Omitted]

ANNEXES D AND E

[Omitted]

ANNEX F –
ESTABLISHING GENDER OF PERSONS TO BE SEARCHED

1. Certain provisions of this and other Codes explicitly state that searches and other procedures may only be carried out by, or in the presence of, persons of the same gender as the person subject to the search or other procedure.

2. All searches should be carried out with courtesy, consideration and respect for the person concerned. Police officers should show particular sensitivity when dealing with transsexual or transvestite persons (see Notes F1 and F2). The following approach is designed to minimise embarrassment and secure the co-operation of the person subject to the search.

A. Consideration

3. At law, the gender of an individual is his or her gender as registered at birth, unless the person possesses a gender recognition certificate issued under section 9 of the UK Gender Recognition Act 2004, in which case the person's gender is the acquired gender.

(a) If there is no doubt as to the gender of a person, or there is no reason to suspect that the person is not the gender that the person appears appear to be, the person should be dealt with as that gender.

(b) A person who possesses a gender recognition certificate must be treated as of the acquired gender.

(c) If a person does not possess a gender recognition certificate and there is doubt as to the person's gender, the person should be asked what gender the person considers himself or herself to be. If the person expresses a preference to be dealt with as of a particular gender, the person should be asked to sign the search record, the officer's notebook or, if applicable, the custody record, to indicate and confirm the preference. If appropriate, the person should be treated as being of that gender.

(d) If a person is unwilling to make such an election, efforts should be made to determine the predominant lifestyle of the person. For example, if the person appears appear to live predominantly as a woman, the person should be treated as such.

(e) If there is still doubt, the person should be dealt with according to the gender that the person was born with.

5. Once a decision has been made about which gender an individual is to be treated as, if possible before an officer searches the person, the officer should be advised of the doubt as to the person's gender. This is important so as to maintain the dignity of the officer(s) concerned.

B. Documentation

6. If the gender of the detainee is established under paragraphs 2(b) to (e) above the decision should be recorded either on the search record, in the officer's notebook or, if applicable, in the person's custody record.

7. If the person elects which gender the person considers himself or herself to be under paragraph 2(c) but is not treated as of that gender, the reason must be recorded in the search record, in the officer's notebook or, if applicable, in the person's custody record.

Notes for Guidance

F1. Transsexual means a person who is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of gender reassignment by changing physiological or other attributes of the person's gender. It would apply to a woman making the transition to being a man and a man making the transition to being a woman as well as to a person who has only just started out on the process of gender reassignment and to a person who has completed the process. Both would share the characteristic of gender reassignment with each having the characteristics of one gender, but with certain characteristics of the other gender.

F2. Transvestite means a person of one gender who dresses in the clothes of a person of the opposite gender.

F3. Similar principles will apply to police officers and police staff whose duties involve carrying out, or being present at, any of the searches and other procedures mentioned in paragraph 1 above. The Chief Police Officer must provide corresponding operational guidance and instructions for the deployment of any transsexual officers and staff under his or her direction and control.

CODE 'B'

CODE OF PRACTICE FOR SEARCHES OF PREMISES BY POLICE OFFICERS AND THE SEIZURE OF PROPERTY FOUND BY POLICE OFFICERS ON PERSONS OR PREMISES

Contents

B1. Introduction

B1.0. This Code of Practice is a copy of the Code contained in Schedule 3 to the Criminal Procedure and Evidence Ordinance [2014] (in this Code referred to as "the Ordinance") and is to be read as one with the Ordinance.

B1.1. This Code of Practice deals with police powers to —

(a) search premises;

(b) seize and retain property found on premises and persons.

B1.1A.These powers may be used to find —

(a) property and material relating to a crime;

(b) wanted persons;

(c) youths who have been remanded or detained under the Ordinance.

B1.2. The Senior Magistrate or two justices of the peace may issue a search warrant granting powers of entry, search and seizure, e.g. warrants to search for stolen property, drugs, firearms and evidence of serious offences. Police also have powers without a search warrant. The main ones provided by the Ordinance include powers to search premises —

(a) to make an arrest;

(b) after an arrest.

In the case of special procedure material (see Note 3B) an order of a judge, the Senior Magistrate or three justices of the peace is required for a search.

B1.3. The right to privacy and respect for personal property are key principles of the Constitution. Powers of entry, search and seizure should be fully and clearly justified before use because they may significantly interfere with the occupier's privacy. Officers should consider if the necessary objectives can be met by less intrusive means.

B1.3A. Powers to search and seize must be used fairly, responsibly, with respect for people occupying premises being searched or in charge of property being seized, and without unlawful discrimination on the grounds of sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Police officers when carrying out their functions must have regard to the need to eliminate unlawful discrimination, harassment and victimisation and to take steps to foster good relations.

B1.4. In all cases, police officers should —

(a) exercise their powers courteously and with respect for persons and property;

(b) only use reasonable force when this is considered necessary and proportionate to the circumstances.

B1.5. If the provisions of the Ordinance and this Code are not observed, evidence obtained from a search may be open to question.

B2. General

B2.1. This Code must be readily available at every police station and every other place of lawful custody for consultation by police officers, detained persons and members of the public.

The Code must also be published on the Falkland Islands Government and/or Royal Falkland Islands Police website, and is to be made available for consultation by members of the public in such civic locations as the Governor directs, or, if there is no such direction, as the Chief Police Officer considers appropriate (e.g. community library).

B2.2. The Notes for Guidance are not provisions of this Code, but are guidance to police officers and others about its application and interpretation.

B2.3 This Code applies to searches of premises —

(a) by police for the purposes of an investigation into an alleged offence, with the occupier's consent, other than —

(i) routine scene of crime searches;

(ii) calls to a fire or burglary made by or on behalf of an occupier or searches following the activation of fire or burglar alarms or discovery of insecure premises;

(iii) searches when paragraph B5.4 applies;

(iv) bomb threat calls;

(b) under powers conferred on police officers by the Ordinance;

(c) undertaken in pursuance of search warrants issued to and executed by police officers in accordance with the Ordinance (see Note 2A);

(d) subject to paragraph B2.6, under any other power given to police to enter premises with or without a search warrant for any purpose connected with the investigation into an alleged or suspected offence (see Note 2B).

For the purposes of this Code, 'premises' as defined in section 2 of the Ordinance includes any vehicle, vessel, aircraft or hovercraft, any stall, tent, caravan, portacabin or moveable structure (including an offshore installation) and any other place whatever, whether or not occupied as land (see Note 2D).

B2.4. A person who has not been arrested but is searched during a search of premises should be searched in accordance with Code A (see Note 2C).

B2.5. This Code does not apply to the exercise of a statutory power to enter premises or to inspect goods, equipment or procedures if the exercise of that power is not dependent on the existence of grounds for suspecting that an offence may have been committed and the person exercising the power has no reasonable grounds for such suspicion.

B2.6. This Code does not affect any directions of a search warrant or order lawfully executed in the Falkland Islands that any item or evidence seized under that warrant or order be handed over to a police force, court, tribunal, or other authority outside the Falkland Islands.

B2.7. When this Code requires the prior authority or agreement of an officer of the rank of inspector or above, the authority may be given by an officer authorised to perform the functions of the higher rank under section 781 of the Ordinance.

B2.8. Written records required under this Code not made in the search record must, unless otherwise specified, be made —

(a) in the recording officer's pocket book ('pocket book' includes any official report book issued to police officers); or

(b) on forms provided for the purpose.

B2.9. Nothing in this Code requires the identity of officers, or anyone accompanying them during a search of premises, to be recorded or disclosed if officers reasonably believe recording or disclosing their names might put them in danger. In this case officers should use warrant or other identification numbers (see Note 2E).

B2.10. The 'officer in charge of the search' means the officer assigned specific duties and responsibilities under this Code. Whenever there is a search of premises to which this Code applies one officer must act as the officer in charge of the search (see Note 2F).

B2.11 to 2.13 [Omitted]

Notes for Guidance

2A.Sections 20 and 21 of the Ordinance apply to all search warrants issued to and executed by police officers under any enactment, e.g. search warrants issued by —

(a) a justice of the peace under —

(i) section 362 of the Crimes Ordinance [2014] - stolen property;

(ii) Misuse of Drugs Ordinance - controlled drugs;

(iii) section 13 of this Ordinance - evidence of an imprisonable offence;

(b) a judicial officer (judge, Senior Magistrate or three justices of the peace) under Schedule 1 to the Ordinance.

2B. Examples of the other powers in paragraph B2.3(d) include —

(a) section 23 of the Road Traffic Ordinance giving police power to enter premises to —

(i) require a person to provide a specimen of breath; or

(ii) arrest a person following a positive breath test or failure to provide a specimen of breath;

(b) section 172 of the Crimes Ordinance [2014] giving police power to enter and search school premises for offensive weapons, bladed or pointed articles.

2C. Section 172 of the Crimes Ordinance [2014] provides that a police officer who reasonably suspects that an offence under section 170 or 171 has been or is being committed may enter school premises and search the premises and any persons on the premises for any bladed or pointed article or offensive weapon. Persons may be searched under a warrant issued under the Misuse of Drugs Ordinance to search premises for drugs or documents only if the warrant specifically authorises the search of persons on the premises.

2D. Various Ordinances give immigration officers, customs officers, fisheries protection officers and other enforcement officers powers to enter and search vessels and aircraft and other places without a search warrant. These are similar to the powers available to police under search warrants issued by the Senior Magistrate or 2 justices of the peace and without a warrant under the Ordinance, except that they only apply to the officers in question. When exercising these powers, the officers should have regard to this Code's provisions, as required by section 778 of the Ordinance.

2E. The purpose of paragraph B2.9 is to protect those involved in serious organised crime investigations or arrests of particularly violent suspects when there is reliable information that those arrested or their associates may threaten or cause harm to the officers or anyone accompanying them during a search of premises. In cases of doubt, an officer of the rank of inspector or above should be consulted.

2F. For the purposes of paragraph B2.10, the officer in charge of the search should normally be the most senior officer present. Some exceptions are —

(a) a supervising officer who attends or assists at the scene of a premises search may appoint an officer of lower rank as officer in charge of the search if that officer is —

(i) more conversant with the facts;

(ii) a more appropriate officer to be in charge of the search;

(b) when all officers in a premises search are the same rank, the supervising officer if available must make sure one of them is appointed officer in charge of the search, otherwise the officers themselves must nominate one of their number as the officer in charge;

(c) a senior officer assisting in a specialist role. This officer need not be regarded as having a general supervisory role over the conduct of the search or be appointed or expected to act as the officer in charge of the search.

Except in (c), nothing in this note diminishes the role and responsibilities of a supervisory officer who is present at the search or knows of a search taking place.

2G. An officer of the rank of sergeant or above may direct a designated investigating officer not to wear a uniform for the purposes of a specific operation.

B3. Search warrants and production orders

Before making an application
B3.1. When information appears to justify an application, the officer must take reasonable steps to check the information is accurate, recent and not provided maliciously or irresponsibly. An application may not be made on the basis of information from an anonymous source if corroboration has not been sought (see Note 3A).

B3.2. The officer must ascertain as specifically as possible the nature of the articles concerned and their location.

B3.3. The officer must make reasonable enquiries to —

(a) establish if —

(i) anything is known about the likely occupier of the premises and the nature of the premises themselves;

(ii) the premises have been searched previously and how recently; and

(b) obtain any other relevant information.

B3.4. An application to the Senior Magistrate or 2 justices of the peace for a search warrant or to a judicial officer (judge, Senior Magistrate or 3 justices of the peace) for a search warrant or production order under Schedule 1 to the Ordinance must be supported by a signed written authority from an officer of the rank of inspector or above.

B3.5. [Omitted]

Making an application
B3.6. The application for a search warrant must be supported in writing, specifying —

(a) the enactment under which the application is made (see Note B2A);

(b) whether the warrant is to authorise entry and search of —

(i) one set of premises; or

(ii) if the application is under section 13 or paragraph 12 of Schedule 1 to the Ordinance, more than one set of specified premises or all premises occupied or controlled by a specified person;

(c) the premises to be searched;

(d) the object of the search (see Note 3B);

(e) the grounds for the application, including, if the purpose of the proposed search is to find evidence of an alleged offence, an indication of how the evidence relates to the investigation;

(f) if the application is under section 13 or paragraph 12 of Schedule 1 to the Ordinance, for a single warrant to enter and search —

(i) more than one set of specified premises - each set of premises which it is desired to enter and search;

(ii) all premises occupied or controlled by a specified person —

(A) as many sets of premises which it is desired to enter and search as it is reasonably practicable to specify;

(B) the person who is in occupation or control of those premises and any others which it is desired to search;

(C) why it is necessary to search more premises than those which can be specified;

(D) why it is not reasonably practicable to specify all the premises which it is desired to enter and search;

(g) if an application under section 13 is for a warrant authorising entry and search on more than one occasion - the grounds for this and whether the desired number of entries authorised is unlimited or a specified maximum.

B3.6A. The warrant must —

(a) state that there are no reasonable grounds to believe the material to be sought, when making application to —

(i) a justice of the peace or judge - consists of or includes items subject to legal privilege;

(ii) a justice of the peace - consists of or includes excluded material or special procedure material;

(Note: This does not affect the additional powers of seizure in the Ordinance covered in paragraph B7.7; see Note B3B).

(b) if applicable, include a request for the warrant to authorise a person or persons to accompany the officer who executes the warrant (see Note 3C).

B3.7. A search warrant application under paragraph 12(a) of Schedule 1 to the Ordinance must if appropriate indicate why it is believed service of notice of an application for a production order may seriously prejudice the investigation.

B3.8. If a search warrant application is refused a further application may not be made for those premises unless supported by additional grounds.

Notes for Guidance

3A. The identity of an informant need not be disclosed when making an application, but the officer should be prepared to answer any questions the justice of the peace or judge may have about —

(a) the accuracy of previous information from that source;

(b) any other related matters.

3B. The information supporting a search warrant application should be as specific as possible, particularly in relation to the articles or persons being sought and where in the premises it is suspected they may be found. The meaning of ‘items subject to legal privilege’, ‘excluded material’ and ‘special procedure material’ are respectively defined in sections 15, 16 and 19 of the Ordinance.

3C. Under section 21(1) of the Ordinance, a search warrant may authorise persons other than police officers to accompany the officer who executes the warrant. This includes, e.g. any suitably qualified or skilled person or an expert in a particular field whose presence is needed to help accurately identify the material sought or to advise where certain evidence is most likely to be found and how it should be dealt with. It does not give the person any right to force entry, but it gives him or her the right to be on the premises during the search and to search for or seize property without the occupier’s permission.

B4. Entry without warrant - particular powers

B4.1. The conditions under which an officer may enter and search premises without a warrant are set out in section 44 of the Ordinance. It should be noted that this section does not create or confer any powers of arrest. (See other powers in Note 2B).

B4.2. When a person has been arrested for an imprisonable offence, a police officer has power under section 58 of the Ordinance to search the premises where the person was arrested or where the person was immediately before being arrested.

B4.3. The specific powers to search premises occupied or controlled by a person arrested for an imprisonable offence are set out in section 23 of the Ordinance. They may not be exercised, except if section 23(5) applies, unless an officer of the rank of inspector or above has given written authority. That authority should only be given when the authorising officer is satisfied the necessary grounds exist. If possible the authorising officer should record the authority on the Notice of Powers and Rights referred to in paragraph B6.7 and, subject to paragraph B2.9, sign the Notice. The record of the grounds for the search and the nature of the evidence sought as required by section 23(7) of the Ordinance should be made in —

(a) the custody record if there is one; otherwise

(b) the officer’s pocket book, or

(c) the search record.

B5. Search with consent

B5.1. Subject to paragraph B5.4, if it is proposed to search premises with the consent of a person entitled to grant entry, the consent must, if practicable, be given in writing on the Notice of Powers and Rights referred to in paragraph B6.7 before the search. The officer must make any

necessary enquiries to be satisfied the person is in a position to give such consent (see Notes 5A and 5B).

B5.2. Before seeking consent the officer in charge of the search must state the purpose of the proposed search and its extent. This information must be as specific as possible, particularly regarding the articles or persons being sought and the parts of the premises to be searched. The person concerned must be clearly informed he or she is not obliged to consent, that any consent given can be withdrawn at any time, including before the search starts or while it is underway, and anything seized may be produced in evidence. If at the time the person is not suspected of an offence, the officer must say this when stating the purpose of the search.

B5.3. An officer cannot enter and search or continue to search premises under paragraph B5.1 if consent is given under duress or withdrawn before the search is completed.
B5.4. It is unnecessary to seek consent under paragraphs B5.1 and B5.2 if this would cause disproportionate inconvenience to the person concerned (see Note 5C).

Notes for Guidance
5A. In a lodging house or similar accommodation, every reasonable effort should be made to obtain the consent of the tenant, lodger or occupier. A search should not be made solely on the basis of the landlord's consent unless the tenant, lodger or occupier is unavailable and the matter is urgent.

5B. If the intention is to search premises under the authority of a warrant or a power of entry and search without warrant, and the occupier of the premises co-operates in accordance with paragraph B6.4, there is no need to obtain written consent.

5C. Paragraph B5.4 is intended to apply when it is reasonable to assume innocent occupiers would agree to, and expect, police to take the proposed action, e.g. if —

(a) a suspect has fled the scene of a crime or to evade arrest and it is necessary quickly to check surrounding gardens and readily accessible places to see if the suspect is hiding;

(b) police have arrested someone in the night after a pursuit and it is necessary to make a brief check of gardens along the pursuit route to see if stolen or incriminating articles have been discarded.

B6. Searching premises - general considerations

A. Time of searches
B6.1. Searches made under warrant must be made within one calendar month of the date of issue of the warrant.

B6.2. Searches must be made at a reasonable hour unless this might frustrate the purpose of the search.

6.3. When the extent or complexity of a search means it is likely to take a long time, the officer in charge of the search may consider using the seize and sift powers referred to in section B7.

6.3A. A warrant under section 13 of the Ordinance may authorise entry to and search of premises on more than one occasion if, on an application, the Senior Magistrate is, or two justices of the peace are, satisfied that it is necessary to authorise multiple entries in order to achieve the purpose for which the warrant is issued. No premises may be entered or searched on any subsequent occasion without the prior written authority of an officer of the rank of inspector or above who is not involved in the investigation. All other warrants authorise entry on one occasion only.

6.3B. If a warrant under section 13 or paragraph 12 of Schedule 1 authorises entry to and search of all premises occupied or controlled by a specified person, no premises which are not specified in the warrant may be entered and searched without the prior written authority of an officer of the rank of inspector or above who is not involved in the investigation.

B. Entry without consent

B6.4. The officer in charge of the search must first try to communicate with the occupier, or any other person entitled to grant access to the premises, explain the authority under which entry is sought and ask the occupier to allow entry, unless —

(a) the search premises are unoccupied;

(b) the occupier and any other person entitled to grant access are absent;

(c) there are reasonable grounds for believing that alerting the occupier or any other person entitled to grant access would frustrate the object of the search or endanger officers or other people.

B6.5. Unless sub-paragraph B6.4(c) applies, if the premises are occupied the officer, subject to paragraph B2.9, must, before the search begins —

(a) identify himself or herself, show his or her warrant card (if not in uniform) and state the purpose of and grounds for the search;

(b) identify and introduce any person accompanying the officer on the search (such persons should carry identification for production on request) and briefly describe that person's role in the process.

B6.6. Reasonable and proportionate force may be used if necessary to enter premises, if the officer in charge of the search is satisfied the premises are those specified in any warrant, or in exercise of the powers described in paragraphs B4.1 to B 4.3, and if —

(a) the occupier or any other person entitled to grant access has refused entry;

(b) it is impossible to communicate with the occupier or any other person entitled to grant access; or

(c) any of the provisions of paragraph B6.4 apply.

C. Notice of powers and rights

B6.7. If an officer conducts a search to which this Code applies the officer must, unless it is impracticable to do so, provide the occupier with a copy of a Notice of Powers and Rights in a standard format —

(a) specifying if the search is made under warrant, with consent, or in the exercise of the powers described in paragraphs B4.1 to B4.3.
(Note: The notice format must provide for authority or consent to be indicated, see paragraphs B4.3 and B5.1)

(b) summarising the extent of the powers of search and seizure conferred by the Ordinance;

(c) explaining the rights of the occupier, and the owner of the property seized;

(d) explaining compensation may be payable in appropriate cases for damages caused entering and searching premises, and giving the address to send a compensation application (see Note 6A); and

(e) stating where this Code is available.

B6.8. If the occupier is —

(a) present - copies of the Notice and warrant must, if practicable, be given to the occupier before the search begins, unless the officer in charge of the search reasonably believes this would frustrate the object of the search or endanger officers or other people;

(b) not present - copies of the Notice and warrant must be left in a prominent place on the premises or appropriate part of the premises and endorsed, subject to paragraph B2.9, with the name of the officer in charge of the search, the date and time of the search.

The warrant must be endorsed to show this has been done.

D. Conduct of searches

B6.9. Premises may be searched only to the extent necessary to achieve the object of the search, having regard to the size and nature of whatever is sought.

B6.9A. A search may not continue under —

(a) a warrant’s authority once all the things specified in that warrant have been found;

(b) any other power once the object of that search has been achieved.

B6.9B. No search may continue once the officer in charge of the search is satisfied whatever is being sought is not on the premises (see Note 6B). This does not prevent a further search of the same premises if additional grounds come to light supporting a further application for a search warrant or exercise or further exercise of another power. For example, when, as a result of new information, it is believed articles previously not found or additional articles are on the premises.

B6.10. Searches must be conducted with due consideration for the property and privacy of the occupier and with no more disturbance than necessary. Reasonable force may be used only when necessary and proportionate because the co-operation of the occupier cannot be obtained or is insufficient for the purpose (see Note 6C).

B6.11. A friend, neighbour or other person must be allowed to witness the search if the occupier wishes unless the officer in charge of the search has reasonable grounds for believing the presence of the person asked for would seriously hinder the investigation or endanger officers or other people. A search need not be unreasonably delayed for this purpose. A record of the action taken should be made on the premises search record including the grounds for refusing the occupier's request.

B6.12. A person is not required to be cautioned prior to being asked questions that are solely necessary for the purpose of furthering the proper and effective conduct of a search, (see Code C, paragraph C10.1(c).) For example, questions to discover the occupier of specified premises, to find a key to open a locked drawer or cupboard or to otherwise seek co-operation during the search or to determine if a particular item is liable to be seized.

B6.12A. If questioning goes beyond what is necessary for the purpose of the exemption in Code C, the exchange is likely to constitute an interview as defined by Code C, paragraph C11.1A and would require the associated safeguards included in Code C, section C10.

E. Leaving premises

B6.13 If premises have been entered by force, before leaving the officer in charge of the search must make sure they are secure by —

(a) arranging for the occupier or their agent to be present; or

(b) any other appropriate means.

F. Searches under Schedule 1

B6.14. An officer must be appointed as the officer in charge of the search, see paragraph B2.10, in respect of any search made under a warrant issued under Schedule 1 to the Ordinance. The officer is responsible for making sure the search is conducted with discretion and in a manner that causes the least possible disruption to any business or other activities carried out on the premises.

B6.15. Once the officer in charge of the search is satisfied material cannot be taken from the premises without his or her knowledge, the officer must ask for the documents or other records concerned. The officer in charge of the search may also ask to see the index to files held on the

premises, and the officers conducting the search may inspect any files which, according to the index, appear to contain the material sought. A more extensive search of the premises may be made only if –

(a) the person responsible for them refuses to produce the material sought or allow access to the index;

(b) it appears the index is inaccurate or incomplete; or

(c) for any other reason the officer in charge of the search has reasonable grounds for believing such a search is necessary in order to find the material sought.

Notes for Guidance

6A. Whether compensation is appropriate depends on the circumstances in each case. Compensation for damage caused when effecting entry is unlikely to be appropriate if the search was lawful, and the force used can be shown to be reasonable, proportionate and necessary to effect entry. If the wrong premises are searched by mistake, everything possible should be done at the earliest opportunity to allay any sense of grievance and there will normally be a strong presumption in favour of paying compensation.

6B. It is important that, when possible, all those involved in a search are fully briefed about any powers to be exercised and the extent and limits within which it should be conducted.

6C. In all cases the number of officers and other persons involved in executing the warrant should be determined by what is reasonable and necessary according to the particular circumstances.

B7. Seizure and retention of property

A. Seizure

B7.1. Subject to paragraph B7.2, an officer who is searching any person or premises under any statutory power or with the consent of the occupier may seize anything —

(a) covered by a warrant;

(b) the officer has reasonable grounds for believing is evidence of an offence or has been obtained in consequence of the commission of an offence but only if seizure is necessary to prevent the items being concealed, lost, disposed of, altered, damaged, destroyed or tampered with;

(c) covered by the powers in the Ordinance allowing an officer to seize property from persons or premises and retain it for sifting or examination elsewhere.

(See Note 7B)

B7.2. No item may be seized which an officer has reasonable grounds for believing to be subject to legal privilege, as defined in section 15 of the Ordinance, other than under sections 31 to 43 of the Ordinance.

B7.3. Officers must be aware of the provisions in section 40 of the Ordinance allowing for applications to the judicial officer (judge, Senior Magistrate or three justices of the peace) for the return of property seized, and the subsequent duty to secure in sections 41 and 42 (see paragraph B7.12(c)).

B7.4. An officer may decide it is not appropriate to seize property because of an explanation from the person holding it, but may nevertheless have reasonable grounds for believing it was obtained in consequence of an offence by some person. In these circumstances, the officer should identify the property to the holder, inform him or her of the officer's suspicions and explain that the holder may be liable to civil or criminal proceedings if the holder disposes of, alters or destroys the property.

B7.5. An officer may arrange to photograph, image or copy, any document or other article that the officer has the power to seize in accordance with paragraph B7.1. This is subject to specific restrictions on the examination, imaging or copying of certain property seized under sections 31 to 43 of the Ordinance. An officer must have regard to the statutory obligation to retain an original document or other article only when a photograph, image or copy is not sufficient.

B7.6. If an officer considers information stored in any electronic form and accessible from the premises could be used in evidence, the officer may require the information to be produced in a form —

(a) which can be taken away and in which it is visible and legible; or

(b) from which it can readily be produced in a visible and legible form.

<u>B. Sections 31 to 43: Specific procedures for seize and sift powers</u>

B7.7. Sections 31 to 43 of the Ordinance give officers limited powers to seize property from premises or persons so they can sift or examine it elsewhere. Officers must be careful they only exercise these powers when it is essential and they do not remove any more material than necessary. The removal of large volumes of material, much of which may not ultimately be retainable, may have serious implications for the owners, particularly when they are involved in business or activities such as journalism or the provision of medical services. Officers must carefully consider if removing copies or images of relevant material or data would be a satisfactory alternative to removing originals. When originals are taken, officers must be prepared to facilitate the provision of copies or images for the owners when reasonably practicable (see Note 7C).

B7.8. Property seized under sections 31 to 43 must be kept securely and separately from any material seized under other powers. An examination under section 34 to determine which elements may be retained must be carried out at the earliest practicable time, having due regard

to the desirability of allowing the person from whom the property was seized, or a person with an interest in the property, an opportunity of being present or represented at the examination.

B7.8A. All reasonable steps should be taken to accommodate an interested person's request to be present, provided the request is reasonable and subject to the need to prevent harm to, interference with, or unreasonable delay to the investigatory process. If an examination proceeds in the absence of an interested person who asked to attend, or the person's representative, the officer who exercised the relevant seizure power must give that person a written notice of why the examination was carried out in those circumstances. If it is necessary for security reasons or to maintain confidentiality, officers may exclude interested persons from decryption or other processes which facilitate the examination but do not form part of it (see Note 7D).

B7.9. It is the responsibility of the officer in charge of the investigation to make sure property is returned in accordance with sections 34 to 36. Material which there is no power to retain must be—

(a) separated from the rest of the seized property;

(b) returned as soon as reasonably practicable after examination of all the seized property.

B7.9A. Delay is only warranted if very clear and compelling reasons exist, such as —

(a) the unavailability of the person to whom the material is to be returned;

(b) the need to agree a convenient time to return a large volume of material.

B7.9B. Legally privileged, excluded or special procedure material which cannot be retained must be returned —

(a) as soon as reasonably practicable;

(b) without waiting for the whole examination.

B7.9C. As set out in section 39, material must be returned to the person from whom it was seized, except when it is clear some other person has a better right to it (see Note 7E).

B7.10. If an officer involved in the investigation has reasonable grounds to believe a person with a relevant interest in property seized under section 31 or 32 intends to make an application under section 33 for the return of any legally privileged, special procedure or excluded material, the officer in charge of the investigation should be informed as soon as practicable and the material seized should be kept secure in accordance with section 42 (see Note 7C).

B7.11. The officer in charge of the investigation is responsible for making sure property is properly secured. Securing involves making sure the property is not examined, copied, imaged or put to any other use except at the request, or with the consent, of the applicant or in accordance with the directions of the appropriate judicial authority. Any request, consent or directions must

be recorded in writing and signed by both the initiator and the officer in charge of the investigation (see Notes 7F and G).

B7.12. When an officer exercises a power of seizure conferred by section 31 or 32 he or she must provide the occupier of the premises or the person from whom the property is being seized with a written notice —

(a) specifying what has been seized under the powers conferred by that section;

(b) specifying the grounds for those powers;

(c) setting out the effect of sections 40 to 42 covering the grounds for a person with a relevant interest in seized property to apply to a judicial authority for its return and the duty of officers to secure property in certain circumstances when an application is made;

(d) specifying the name and address of the person to whom —

(i) notice of an application to the appropriate judicial authority in respect of any of the seized property must be given;

(ii) an application may be made to allow attendance at the initial examination of the property.

B7.13. If the occupier is not present but there is someone in charge of the premises, the notice must be given to the occupier. If no suitable person is available, so that the notice will easily be found, it should either be —

(a) left in a prominent place on the premises; or

(b) attached to the exterior of the premises.

C. Retention

B7.14. Subject to paragraph B7.15, anything seized in accordance with the above provisions may be retained only for as long as is necessary. It may be retained, among other purposes —

(a) for use as evidence at a trial for an offence;

(b) to facilitate the use in any investigation or proceedings of anything to which it is inextricably linked (see Note 7H);

(c) for forensic examination or other investigation in connection with an offence;

(d) in order to establish its lawful owner when there are reasonable grounds for believing it has been stolen or obtained by the commission of an offence.

B7.15. Property must not be retained under paragraph B7.14(a), (b) or (c) if a copy or image would be sufficient.

D. Rights of owners, etc.

B7.16. If property is retained, the person who had custody or control of it immediately before seizure must, on request, be provided with a list or description of the property within a reasonable time.

B7.17. That person or his or her representative must be allowed supervised access to the property to examine it or have it photographed or copied, or must be provided with a photograph or copy, in either case within a reasonable time of any request and at the person's own expense, unless the officer in charge of an investigation has reasonable grounds for believing this would —

(a) prejudice the investigation of any offence or criminal proceedings; or

(b) lead to the commission of an offence by providing access to unlawful material such as pornography.

A record of the grounds shall be made when access is denied.

Notes for Guidance

7A. Any person claiming property seized by the police may apply to a judicial officer (judge, Senior Magistrate or three justices of the peace) under sections 41 and 42 of the Ordinance for its possession and should, if appropriate, be advised of this procedure.

7B. The powers of seizure conferred by section 23 of the Ordinance extend to the seizure of the whole premises when it is physically possible to seize and retain the premises in their totality and practical considerations make seizure desirable. For example, police may remove premises such as tents, vehicles or caravans to a place of lawful custody for the purpose of preserving evidence.

7C. Officers should consider reaching agreement with owners and/or other interested parties on the procedures for examining a specific set of property, rather than awaiting the judicial authority's determination. Agreement can sometimes give a quicker and more satisfactory route for all concerned and minimise costs and legal complexities.

7D. What constitutes a relevant interest in specific material may depend on the nature of that material and the circumstances in which it is seized. Anyone with a reasonable claim to ownership of the material and anyone entrusted with its safe keeping by the owner should be considered.

7E. Requirements to secure and return property apply equally to all copies, images or other material created because of seizure of the original property.

7F. The mechanics of securing property vary according to the circumstances; "bagging up", i.e. placing material in sealed bags or containers and strict subsequent control of access is the appropriate procedure in many cases.

7G. When material is seized under the powers of seizure conferred by the Ordinance, the duty to retain it under the Code of Practice on the Recording, Retention and Disclosure of Material is subject to the provisions on retention of seized material in section 30 of the Ordinance.

7H. Paragraph B7.14 (b) applies if inextricably linked material is seized under section 31 or 32 of the Ordinance. Inextricably linked material is material that it is not reasonably practicable to separate from other linked material without prejudicing the use of that other material in any investigation or proceedings. For example, it might not be possible to separate items of data held on computer disc without damaging their evidential integrity. Inextricably linked material must not be examined, imaged, copied or used for any purpose other than for proving the source and/or integrity of the linked material.

B8. Action after searches

B8.1. If premises are searched in circumstances where this Code applies, unless the exceptions in paragraph B2.3(a) apply, on arrival at the place of lawful custody the officer in charge of the search must make or have made a record of the search, to include —

(a) the address of the searched premises;

(b) the date, time and duration of the search;

(c) the authority used for the search, that is to say —

(i) if the search was made in exercise of a statutory power to search premises without warrant - the power which was used for the search;

(ii) if the search was made under a warrant or with written consent - a copy of the warrant and the written authority to apply for it, or the written consent, or a note of the location of the copy warrant or consent;

(d) subject to paragraph B2.9, the names of —

(i) the officer or officers in charge of the search;

(ii) all other officers and any authorised persons who conducted the search;

(e) the names of any people on the premises if they are known;

(f) any grounds for refusing the occupier’s request to have someone present during the search;

(g) a list of any articles seized or the location of a list and, if not covered by a warrant, the grounds for their seizure;

(h) whether force was used, and the reason;

(i) details of any damage caused during the search, and the circumstances;

(j) if applicable, the reason it was not practicable —

(i) to give the occupier a copy of the Notice of Powers and Rights as required by paragraph B6.7;

(ii) to give the occupier before the search a copy of the Notice, as required by paragraph B6.8;

(k) if the occupier was not present - the place where copies of the Notice of Powers and Rights and search warrant were left on the premises.

B8.2. On each occasion when premises are searched under a warrant, the warrant authorising the search on that occasion must be endorsed to show —

(a) whether any articles specified in the warrant were found and the address where they were found;

(b) whether any other articles were seized;

(c) the date and time the warrant was executed and if the occupier was present, his or her name, or, if the occupier was not present, the name of the person in charge of the premises;

(d) subject to paragraph B2.9, the names of the officers who executed it and any authorised persons who accompanied them;

(e) whether a copy of the warrant, together with a copy of the Notice of Powers and Rights required by paragraph B6.7, was —

(i) handed to the occupier; or

(ii) endorsed as required by paragraph B6.8 and left on the premises (and if so, where).

B8.3. Any warrant must be returned within 3 calendar months of its issue, or sooner on completion of the search or searches authorised by it, if the warrant was issued by —

(a) the Senior Magistrate or justices of the peace - to the Clerk of the court;

(b) a judge - to the Registrar.

B9. Search registers

B9.1. A search register must be maintained at each police station. All search records required under paragraph B8.1 must be made, copied, or referred to in the register (see Note 9A).

CODE ‘C’

CODE OF PRACTICE FOR THE DETENTION, TREATMENT AND QUESTIONING OF PERSONS BY POLICE OFFICERS

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C1. General

C1.01. This Code of Practice is a copy of the Code contained in Schedule 3 to the Criminal Procedure and Evidence Ordinance [2014] (in this Code referred to as "the Ordinance") and is to be read as one with the Ordinance.

C1.0. The powers and procedures in this Code must be used fairly, responsibly, with respect for the people to whom they apply, and without unlawful discrimination on the grounds of sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Police officers when carrying out their functions must have regard to the need to eliminate unlawful discrimination, harassment and victimisation and to take steps to foster good relations.

C1.1. All persons in custody must be dealt with expeditiously, and released as soon as the need for detention no longer applies.

C1.1A. A custody officer must perform the functions in this Code as soon as practicable. A custody officer will not be in breach of this Code if delay is justifiable and if reasonable steps are taken to prevent unnecessary delay. The custody record must show when a delay has occurred and the reason (see Note 1H).

C1.2. This Code of Practice must be readily available at every police station and every other place of lawful custody for consultation by police officers, detained persons and members of the public.

The Code must also be published on the Falkland Islands Government and/or Royal Falkland Islands Police website, and is to be made available for consultation by members of the public in such civic locations as the Governor directs or, in the absence of such a direction, as the Chief Police Officer considers appropriate (e.g. community library).

C1.3. The Notes for Guidance are not provisions of this Code, but are guidance to police officers and others about its application and interpretation. Provisions in the Annexes to the Code are provisions of this Code.

C1.4. If an officer has any suspicion, or is told in good faith, that a person of any age may be mentally disordered or otherwise mentally vulnerable, in the absence of clear evidence to dispel that suspicion, the person must be treated as such for the purposes of this Code (see Note 1G).

C1.5. Any person who appears to be under 18 must be treated as a youth for the purposes of this Code in the absence of clear evidence that he or she is older.

C1.6. A person who appears to be blind, seriously visually impaired, deaf, unable to read or speak or who has difficulty orally because of a speech impediment, must be treated as such for the purposes of this Code in the absence of clear evidence to the contrary.

C1.7. In this Code, 'appropriate adult' has the same meaning as in section 2 of the Ordinance, that is to say —

(a) in relation to a youth —

(i) the youth's parent or guardian;

(ii) if the youth is in the care of the Department - a person representing the Department; or

(iii) if a person described in (i) or (ii) is not available - any person over the age of 21 who is not a police officer or a person employed by the police and who is considered suitable by the custody officer;

(Note: The 'Department' means the Social Services Department.)

(b) in relation to a person who is mentally disordered or mentally vulnerable —

(i) a relative, guardian or other person responsible for the person's care or custody;

(ii) a person experienced in dealing with mentally disordered or mentally vulnerable people but who is not a police officer or person employed by the police; or

(iii) if a person described in (i) or (ii) is not available - any person over the age of 21 who is not a police officer or person employed by the police and who is considered suitable by the custody officer;

C1.8. If this Code requires a person be given certain information, the person does not have to be given it if at the time he or she is incapable of understanding what is said, is violent or may become violent or in urgent need of medical attention, but must be given it as soon as practicable.

C1.9. [Omitted]

C1.9A. If this Code requires the prior agreement or authority of an officer of a specified rank or above, it may be given by an officer authorised to perform the functions of that rank under section 781 of the Ordinance.

C1.10. Subject to paragraph C1.12, this Code applies to people detained or in custody at a place of lawful custody, whether or not the person has been arrested. Section C15 (Reviews and

extensions of detention) applies solely to people in police detention, e.g. those brought to a place of lawful custody under arrest or arrested at such a place for an offence after going there voluntarily.

C1.11 [Omitted]

C1.12. The provisions of this Code do not apply to people detained in custody for searches under stop and search powers, except as required by Code A.

The provisions on conditions of detention and treatment in sections C8 and C9 must be considered as the minimum standards of treatment for such detainees.

C1.13 to C1.16 [Omitted]

C1.17. References to pocket books include any official report book issued to police officers.

Notes for Guidance

1A. Although certain sections of this Code apply specifically to people in custody at a place of lawful custody, those there voluntarily to assist with an investigation should be treated with no less consideration, e.g. offered refreshments at appropriate times, and enjoy an absolute right to obtain legal advice or communicate with anyone outside the place of lawful custody.

1B. A person, including a parent or guardian, should not be an appropriate adult if he or she —

(a) is suspected of involvement in the offence;

(b) is the victim;

(c) is a witness;

(d) is involved in the investigation; or

(e) received admissions before attending to act as the appropriate adult.

(Note- If a youth's parent is estranged from the youth, he or she should not be asked to act as the appropriate adult if the youth expressly and specifically objects to his or her presence.)

1C. If a youth admits an offence to, or in the presence of, a probation officer a social worker, other than during the time that that person is acting as the youth's appropriate adult, another appropriate adult should be appointed in the interest of fairness.

1D. In the case of people who are mentally disordered or otherwise mentally vulnerable, it may be more satisfactory if the appropriate adult is someone experienced or trained in his or her care rather than a relative lacking such qualifications. But if the detainee prefers a relative to a better qualified stranger or objects to a particular person the detainee's wishes should, if practicable, be respected.

1E. A detainee should always be given an opportunity, when an appropriate adult is called to a place of lawful custody, to consult privately with a legal practitioner in the appropriate adult's absence if the detainee wants. An appropriate adult does not enjoy legal privilege.

1F. A legal practitioner present at a place of lawful custody in that capacity cannot be the appropriate adult.

1G. The term 'mentally vulnerable' applies to any detainee who, because of his or her mental state or capacity, may not understand the significance of what is said, of questions or of his or her replies. 'Mental disorder' is defined in the Mental Health Ordinance as any disorder or disability of the mind. If the custody officer has any doubt about the mental state or capacity of a detainee, the detainee should be treated as mentally vulnerable and an appropriate adult called.

1H. Paragraph C1.1A is intended to cover delays which may occur in processing detainees e.g. if—

(a) a large number of suspects are brought into a place of lawful custody simultaneously to be placed in custody;

(b) interview rooms are all being used;

(c) there are difficulties contacting an appropriate adult, legal practitioner or interpreter.

1I. The custody officer must remind the appropriate adult and detainee about the right to legal advice and record any reasons for waiving the right it in accordance with section C6 (Right to obtain legal advice).

1J. [Omitted]

1K. This Code does not affect the principle that all citizens have a duty to help police officers to prevent crime and discover offenders. This is a civic rather than a legal duty; but when a police officer is trying to discover whether, or by whom, an offence has been committed the officer entitled to question any person from whom he or she thinks useful information can be obtained, subject to the restrictions imposed by this Code. A person's declaration that he or she is unwilling to reply does not alter this entitlement.

C2. Custody records

C2.1A. When a person —

(a) is brought to a place of lawful custody;

(b) is arrested at a place of lawful custody having attended there voluntarily; or

(c) attends a place of lawful custody,

the person must be brought before the custody officer as soon as practicable after the person's arrival at the place of lawful custody or, if appropriate, following arrest after attending a place of lawful custody voluntarily. A person is deemed to be at a place of lawful custody for these purposes if he or she is within the boundary of any building or enclosed yard which forms part of that place.

C2.1. A separate custody record must be opened as soon as practicable for each person brought to a place of lawful custody under arrest, arrested at place of lawful custody having gone there voluntarily, or attending a place of lawful custody in answer to 'street bail' (i.e. bail at a place other than a place of lawful custody). All information recorded under this Code must be recorded as soon as practicable in the custody record unless otherwise specified. Any audio or video recording made in the custody area is not part of the custody record.

C2.2. If any action requires the authority of an officer of a specified rank or above, subject to paragraph C2.6A, the officer's name and rank must be noted in the custody record.

C2.3. The custody officer is responsible for the custody record's accuracy and completeness and for making sure the record or copy of the record accompanies a detainee if he or she is transferred to another place of lawful custody. The record must show the —

(a) time and reason for transfer;

(b) time a person is released from detention.

C2.3A. If a person is arrested and taken to a place of lawful custody as a result of a search in the exercise of any stop and search power to which Code A (Stop and search) applies, the officer carrying out the search is responsible for ensuring that the record of that stop and search is made as part of the person's custody record. The custody officer must then ensure that the person is asked if he or she wants a copy of the search record and if so that the person is given a copy as soon as practicable. The person's entitlement to a copy of the search record which is made as part of the custody record is in addition to, and does not affect, the entitlement to a copy of the custody record or any other provisions of section C2 (Custody records) of this Code. (See Code A *paragraph 4.2B)*.

C2.4. The detainee, his or her legal practitioner and/or an appropriate adult must be allowed to inspect the custody record on request as promptly as is practicable, at any time while the person is detained. Access to the custody record for the purposes of this paragraph must be arranged and agreed with the custody officer and must not unreasonably interfere with the custody officer's duties. A record must be made when access is allowed. This access is in addition to other requirements in this Code to provide information about the offence and reasons for arrest and detention and is also in addition to the requirement to give the detainee a copy of the information when an application for a warrant of further detention (or for an extension of such a warrant) is made.

C2.4A. When a detainee leaves police detention or is taken before a court, the detainee or his or her legal practitioner or appropriate adult must be given, if requested, a copy of the custody record as soon as practicable. This entitlement lasts for 12 months after release.

C2.5. The detainee, appropriate adult or legal practitioner must be permitted to inspect the original custody record after the detainee has left police detention, if the person gives reasonable notice of the request. Any such inspection must be noted in the custody record.

C2.6. Subject to paragraph C2.6A, all entries in custody records must be timed and signed by the maker. Records entered on computer must be timed and contain the operator's identification.

C2.6A. Nothing in this Code requires the identity of officers to be recorded or disclosed if the officer reasonably believes recording or disclosing his or her name might put him or her in danger. In these cases, the officer must use his or her warrant or other identification numbers (see Note 2A).

C2.7. The fact and time of any detainee's refusal to sign the custody record, when asked in accordance with this Code, must be recorded.

Note for Guidance

2A. The purpose of paragraph C2.6A is to protect those involved in serious organised crime investigations or arrests of particularly violent suspects when there is reliable information that those arrested or their associates may threaten or cause harm to those involved. In cases of doubt, an officer of the rank of inspector or above should be consulted.

C3. Initial action

A. Detained persons – normal procedure

C3.1. When a person is brought to a place of lawful custody under arrest or arrested at a placed of lawful custody having gone there voluntarily, the custody officer must make sure the person is told clearly about the following continuing rights which may be exercised at any stage during the period in custody —

(a) the right to have someone informed of his or her arrest as in section C5;

(b) the right to consult privately with a legal practitioner;

(c) the right to consult these Codes of Practice (see Note 3D);

(d) the right to be informed about the offence and (as the case may be) any further offences for which the person is arrested while in custody, and why he or she has been arrested and detained, in accordance with paragraphs C2.4 and C11.1A of this Code and paragraph G3.3 of Code G;

(e) the right to medical help;

(f) the right to remain silent as set out in the caution;

(g) if applicable, the right to interpretation and translation; and

(h) if applicable, the right to communication with the person's High Commission, Embassy or Consulate as mentioned in paragraph C12A.

C3.2. The detainee must also be given a written notice —

(a) setting out —

(i) his or her rights under paragraphs C3.1, C3.12 and C3.12A of this Code;

(ii) the arrangements for obtaining legal advice;

(iii) the right to a copy of the custody record as in paragraph C2.4A;

(iv) the caution in the terms prescribed in section C10;

(v) the rights to:
information about the offence and the reasons and grounds for the arrest and detention for that offence and (as the case may be) any further offences for which the person is arrested while in custody; and
access to materials and documents which are essential to effectively challenge the lawfulness of the arrest and detention for any such offence;

(vi) the maximum period for which the detainee may be kept in police detention without being charged; when detention must be reviewed and when release is required;

(vii) the detainee's right to communicate with his or her High Commission, Embassy or Consulate in accordance with section C7;

(viii) the right to medical assistance in accordance with section C9;

(ix) the right, if the detainee is prosecuted, to have access to the evidence in the case in accordance with the Ordinance;

(b) briefly setting out the detainee's other entitlements while in custody, by —

(i) mentioning:
the provisions relating to the conduct of interviews;
the circumstances in which an appropriate adult should be available to assist the detainee and the statutory rights to make representations whenever the need for detention is reviewed.

(ii) listing the entitlements in this Code, concerning:

~ reasonable standards of physical comfort;

~ adequate food and drink; access to toilets and washing facilities, clothing, medical attention, and exercise when practicable. (See Note 3A).

The detainee must be given an opportunity to read the notice and asked to sign the custody record to acknowledge receipt of this notice. Any refusal must be recorded on the custody record.

C3.3. [Omitted]

C3.3A. An audio version of the notice and an 'easy read' illustrated version should also be provided if they are available. (See Note 3A).

C3.4. The custody officer must —

(a) record on the custody record the offence or offences that the detainee has been arrested for and the reason or reasons for the arrest (see paragraph C10.3 and Code G paragraphs G2.2 and G4.3);.

(b) note on the custody record any comment the detainee makes in relation to the arresting officer's account, but must not invite comment. If the arresting officer is not physically present when the detainee is brought to the place of lawful custody, the arresting officer's account must be made available to the custody officer remotely or by a third party on the arresting officer's behalf. If the custody officer authorises a person's detention the detainee must be informed of the grounds as soon as practicable and before he or she is questioned about any offence;

(c) note any comment the detainee makes in respect of the decision to detain him or her, but must not invite comment;

(d) not put specific questions to the detainee regarding his or her involvement in any offence, nor in respect of any comments he or she may make in response to the arresting officer's account or the decision to place him or her in detention. Such an exchange is likely to constitute an interview as in paragraph C11.1A and require the associated safeguards in section C11;

Note: This sub-paragraph also applies to any further offences and grounds for detention which come to light while the person is detained. (See paragraph C11.13 in respect of unsolicited comments.)

(e) any available documents and materials which are essential to effectively challenge the lawfulness of the detainee's arrest and detention must be made available to the detainee or his or her legal practitioner. Documents and materials will be "essential" for this purpose if they are capable of undermining the reasons and grounds which make the detainee's arrest and detention necessary. The decision about what needs to be disclosed for the purpose of

this requirement rests with the custody officer after consulting the investigating officer who has the knowledge of the documents and materials in a particular case necessary to inform that decision. A note should be made in the detainee's custody record of the fact that action has been taken under this sub-paragraph and when. The investigating officer should make a separate note of what has been made available in a particular case. This also applies for the purposes of section C15. (See paragraph C15.0.)

C3.5. The custody officer must —

(a) ask the detainee, whether at this time, he or she —

(i) would like legal advice (see paragraph C6.5);

(ii) wants to have someone informed of his or her detention (see section C5);

(b) ask the detainee to sign the custody record to confirm his or her decisions in respect of (a);

(c) determine whether the detainee is, or might be, in need of medical treatment or attention (see section C9);

(ca) ascertain whether the detainee requires —

(i) an appropriate adult;

(ii) help to check documentation;

(iii) an interpreter (if necessary by electronic means);

(d) record the decision in respect of (c) and (ca).

C3.6. When determining these needs the custody officer is responsible for initiating an assessment to consider whether the detainee is likely to present specific risks to the custody officer or other police officers. Although such assessments are primarily the custody officer's responsibility, it may be necessary for the officer to consult and involve others, e.g. the arresting officer or an appropriate health care professional (see paragraph C9.13 and Note 9A).

Reasons for delaying the initiation or completion of the assessment must be recorded.

C3.7. The Chief Police Officer should ensure that arrangements for proper and effective risk assessments required by paragraph C3.6 are implemented in respect of all detainees in the Falkland Islands.

C3.8. Risk assessments must follow a structured process which clearly defines the categories of risk to be considered, and the results must be incorporated in the detainee's custody record. The custody officer is responsible for making sure those responsible for the detainee's custody are

appropriately briefed about the risks. If no specific risks are identified by the assessment, that should be noted in the custody record (see paragraph C9.14).

C3.8A. The content of any risk assessment and any analysis of the level of risk relating to the person's detention is not required to be shown or provided to the detainee or any person acting on behalf of the detainee. But information should not be withheld from any person acting on the detainee's behalf, for example, an appropriate adult, legal practitioner or interpreter, if to do so might put that person at risk.

C3.9. The custody officer is responsible for implementing the response to any specific risk assessment, such as —

(a) reducing opportunities for self-harm;

(b) calling a health care professional;

(c) increasing levels of monitoring or observation;

(d) reducing the risk for those who come into contact with the detainee.

C3.10. Risk assessment is an ongoing process and assessments must always be subject to review if circumstances change.

C3.11. If video cameras are installed in the custody area, notices must be prominently displayed showing cameras are in use. Any request to have video cameras switched off must be refused.

<u>B. Detained persons – special groups</u>

C3.12. If the detainee appears to be someone who does not speak or understand English or who has a hearing or speech impediment, the custody officer must ensure —

(a) that as soon as practicable, an interpreter is called for assistance in the action under paragraphs C3.1 to C3.5. if necessary by electronic means. (See section C13);

(b) that in addition to the rights set out in paragraph C3.1(a)(i) to (v), the detainee is told clearly about the right to interpretation and translation;

(c) that the written notice given to the detainee in accordance with paragraph C3.2 is in a language the detainee understands and includes the right to interpretation and translation together with information about the provisions in section C13 which explain how the right applies (see Note 3A); and

(d) that if the translation of the notice is not available, the information in the notice is given through an interpreter and a written translation provided without undue delay.

3.12A If the detainee is a citizen of an independent Commonwealth country or a national of a foreign country, including the Republic of Ireland, the custody officer must ensure that in addition to the rights set out in paragraph C3.1(i) to (v), the detainee is informed as soon as practicable about the rights of communication with a High Commission, Embassy or Consulate set out in section C7. This right must be included in the written notice given to the detainee in accordance with paragraph C3.2.

C3.13. If the detainee is a youth, the custody officer must, if it is practicable, ascertain the identity of a person responsible for the youth's welfare. That person may be —

(a) the parent or guardian;

(b) if the youth is in the care of the Crown or is otherwise being looked after under the Children Ordinance - a person with responsibility for the child's welfare;

(c) any other person who has, for the time being, assumed responsibility for the youth's welfare.

C3.13A. The person identified must be informed as soon as practicable that the youth has been arrested, why he or she has been arrested and where he or she is detained. This right is in addition to the youth's right in section C5 not to be held incommunicado (see Note 3C).

C3.14. If a youth is known to be subject to a court order under which a person or organisation is given any degree of statutory responsibility to supervise or otherwise monitor the youth, reasonable steps must also be taken to notify that person or organisation.

C3.15. If the detainee is a youth, mentally disordered or otherwise mentally vulnerable, the custody officer must, as soon as practicable —

(a) inform the appropriate adult, who in the case of a youth may or may not be a person responsible for his or her welfare, as in paragraph C3.13, of —

(i) the grounds for the youth's detention; and

(ii) his or her whereabouts;

(b) ask the adult to come to the place of lawful custody to see the detainee.

C3.15A. If the parent or guardian or other person who has assumed responsibility for a detained youth's welfare cannot be ascertained or does not want to see the detainee, the custody officer must inform the Social Services Department of the circumstances.

C3.16. [Omitted]

C3.17. If the appropriate adult is —

(a) already at the place of lawful custody - the provisions of paragraphs C3.1 to C3.5 must be complied with in the appropriate adult's presence;

(b) not at the place of lawful custody when these provisions are complied with - they must be complied with again in the presence of the appropriate adult when he or she arrives.

C3.18. The detainee must be advised that —

(a) the duties of the appropriate adult include giving advice and assistance;

(b) he or she can consult privately with the appropriate adult at any time.

C3.19. If the detainee, or appropriate adult on the detainee's behalf, asks for a legal practitioner to be called to give legal advice, the provisions of section C6 apply.

C3.20. If the detainee is blind, seriously visually impaired or unable to read, the custody officer must make sure his or her legal practitioner, relative, appropriate adult or some other person likely to take an interest in him or her and not involved in the investigation is available to help check any documentation. When this Code requires written consent or signing, the person assisting may be asked to sign instead, if the detainee prefers. This paragraph does not require an appropriate adult to be called solely to assist in checking and signing documentation for a person who is not a youth, or mentally disordered or otherwise mentally vulnerable (see paragraph C3.15).

C. Persons attending a place of lawful custody voluntarily

C3.21. A person attending a place of lawful custody voluntarily to assist police with the investigation of an offence may leave at will unless arrested (see Note 1K). The person may only be prevented from leaving at will if arresting the person on suspicion of committing an offence is necessary in accordance with Code G (See Code G Note 2G).

If during an interview it is decided that it is necessary to arrest a person, the person must —

(a) be informed at once that he or she is under arrest and of the grounds and reasons as required by Code G; and

(b) be brought before the custody officer at the place of lawful custody where the person is arrested or, as the case may be, at the place of lawful custody to which the person is taken after being arrested elsewhere. The custody officer is then responsible for making sure that a custody record is opened and that the person is notified of his or her rights in the same way as other detainees as required by this Code.

If a person is not arrested but is cautioned as in section C10, the person who gives the caution must, at the same time, inform the person that he or she is not under arrest and, is not obliged to remain at the place of lawful custody or other location. The person must also be given a copy of the notice explaining the right to obtain legal advice and told that the right to obtain legal advice includes the right to speak with a legal practitioner on the telephone

or by other electronic means and be asked if he or she wants advice. If advice is requested, the interviewer is responsible for securing its provision without delay by contacting a legal practitioner specified by the detainee. The interviewer must also ensure that other provisions of this Code and of Codes E and F concerning the conduct and recording of interviews of suspects and the rights and entitlements and safeguards for suspects who have been arrested and detained are followed insofar as they can be applied to suspects who are not under arrest. This includes:

- informing the suspect of the offence and, as the case may be, any further offences, the suspect is suspected of and the grounds and reasons for that suspicion and the right to be so informed (see paragraph C3.1(b);
- the caution as required in section C10;
- determining whether the suspect requires an appropriate adult and help to check documentation (See paragraph C3.5(c)(ii)); and
- determining whether the suspect requires an interpreter and the provision of interpretation and translation services and informing the suspect of that right.

(See paragraph C3.2 and Note 6B)

C3.22. If the other location mentioned in paragraph C3.21 is any place or premises for which the interviewer requires the person's informed consent to remain, for example, the person's home, then the references that the person is 'not obliged to remain' and 'may leave at will' mean that the person may also withdraw his or her consent and require the interviewer to leave.

D. Documentation

C3.23. The grounds for a person's detention must be recorded, in the person's presence if practicable.

C3.24. Action taken under paragraphs C3.12 to C3.20 must be recorded.

E. Persons answering street bail

C3.25. When a person is answering to 'street bail' (i.e. bail at a place other than a place of lawful custody), the custody officer should link any documentation held in relation to arrest with the custody record. Any further action must be recorded on the custody record in accordance with paragraphs C3.23 and C3.24 above.

F. Requirements for suspects to be informed of certain rights

C3.26 The provisions of this section identify the information which must be given to suspects who have been cautioned in accordance with section C10 of this Code according to whether or not the suspect has been arrested and detained. It includes information required by EU Directive 2012/13 on the right to information in criminal proceedings. If a complaint is made by or on behalf of such a suspect that the information and (as the case may be) access to records and documents has not been provided as required, the matter must be reported to an police officer of the rank of inspector or above to deal with as a complaint for the purposes of paragraph C9.2 or C12.9 if the challenge is made during an interview. This would include, for example:

(a) in the case of a detained suspect:
- not informing the suspect of his or her rights (see paragraph C3.1);
- not giving the suspect a copy of the Notice (see paragraph C3.2(a))
- not providing an opportunity to read the notice (see paragraph C3.2A)
- not providing the required information (see paragraphs C3.2(a), C3.12(b) and, C3.12A;
- not allowing access to the custody record (see paragraph C2.4);
- not providing a translation of the Notice (see paragraph C3.12(c) and (d)); and

(b) in the case of a suspect who is not detained:
- not informing the suspect of his or her rights or providing the required information (see paragraph C3.21(b));

Notes for Guidance
3A The notice required by paragraph C3.2(a) should —

(a) list the entitlements in this Code, including —

(i) visits and contact with outside parties, including special provisions for Commonwealth citizens and foreign nationals;

(ii) reasonable standards of physical comfort;

(iii) adequate food and drink;

(iv) access to toilets and washing facilities, clothing, medical attention, and exercise when practicable;

(b) mention the —

(i) provisions relating to the conduct of interviews;

(ii) circumstances in which an appropriate adult should be available to assist the detainee, and the detainee's statutory rights to make representations whenever the period of his or her detention is reviewed.

3B. [Omitted]

3C. If the youth is in care of the Crown but living with his or her parents or other adults responsible for his or her welfare, although there is no legal obligation to inform the youth, the parents or adults should normally be contacted, as well as the Social Services Department, unless suspected of involvement in the offence concerned. Even if the youth is not living with his or her parents, consideration should be given to informing them.

3D. The right to consult the Codes of Practice does not entitle the person concerned to delay unreasonably any necessary investigative or administrative action whilst he or she does so. Examples of action which need not be delayed unreasonably include —

(a) procedures requiring the provision of breath or other specimens under the Road Traffic Ordinance;

(b) searching detainees at a place of lawful custody;

(c) taking fingerprints, footwear impressions or non-intimate samples without consent for evidential purposes.

3E. and 3F. [Omitted]

C4. Detainee's property

A. Action

C4.1. The custody officer is responsible for ascertaining what property a detainee has with him or her when he or she comes to the place of lawful custody on —

(a) arrest or re-detention on answering to bail;

(b) commitment to prison custody on the order or sentence of a court;

(c) lodgement at the place of lawful custody with a view to his or her production in court from prison custody;

(d) transfer from detention at another place of lawful custody or hospital;

(e) remand into police custody on the authority of a court.

C4.1A. The custody officer is also responsible for —

(a) ascertaining what property a detainee might have acquired for an unlawful or harmful purpose while in custody;

(b) the safekeeping of any property taken from a detainee which remains at the place of lawful custody.

C4.1B. The custody officer may search the detainee or authorise his or her being searched to the extent the officer considers necessary, provided a search of intimate parts of the body or involving the removal of more than outer clothing is only made as in Annex A. In general, a search may only be carried out by an officer of the same gender as the detainee. (See Annex F to Code C for the rules for establishing gender and paragraph 11(aa) of Annex A for an exception to this rule).

C4.2. A detainee may retain clothing and personal effects at the detainee's own risk unless —

(a) the custody officer considers that the detainee may use them or any of them to cause harm to himself or herself or others, interfere with evidence, damage property or effect an escape; or

(b) any of them are needed as evidence,

in either of which cases the custody officer may withhold relevant articles and must tell the detainee why.

C4.3. Personal effects are those items a detainee may lawfully need, use or refer to while in detention but do not include cash and other items of value.

B. Documentation

C4.4. It is a matter for the custody officer to determine whether a record should be made of the property a detained person has with him or her or had taken from him or her on arrest. Any record made need not be kept as part of the custody record but the custody record should be noted as to where such a record exists. Whenever a record is made the detainee must be allowed to check and sign the record of property as correct. Any refusal to sign must be recorded.

C4.5. If a detainee is not allowed to keep any article of clothing or personal effects, the reason must be recorded.

Notes for Guidance

4A. Section 84 of the Ordinance and paragraph C4.1 require a detainee to be searched when it is clear that the custody officer will have continuing duties in relation to the detainee or when the detainee's behaviour or offence makes an inventory appropriate. They do not require every detainee to be searched, e.g. if it is clear that a person will only be detained for a short period and is not to be placed in a cell, the custody officer may decide not to search him or her. In such a case the custody record must be endorsed 'not searched', paragraph C4.4 does not apply, and the detainee must be invited to sign the entry. If the detainee refuses, the custody officer must ascertain what property the detainee has in accordance with paragraph C4.1.

4B. Paragraph C4.4 does not require the custody officer to record on the custody record property in the detainee's possession on arrest if, by virtue of its nature, quantity or size, it is not practicable to remove it to the place of lawful custody.

4C. Paragraph C 4.4 does not require items of clothing worn by the person to be recorded unless withheld by the custody officer as in paragraph C4.2.

C5. Right not to be held incommunicado

A. Action

C5.1. Any person arrested and held in custody at a place of lawful custody or other premises may, on request, have one person known to him or her, or likely to take an interest in his or her

welfare, informed at public expense of his or her whereabouts as soon as practicable. If the person cannot be contacted the detainee may choose up to two alternatives. If neither of them can be contacted, the person in charge of detention or the investigation may allow further attempts until the information has been conveyed (see Notes 5C and 5D).

C5.2. The exercise of this right in respect of each person nominated may be delayed only in accordance with Annex B.

C5.3. This right may be exercised each time a detainee is taken to another place of lawful custody.

C5.4. If the detainee agrees, he or she may at the custody officer's discretion receive visits from friends, family or others likely to take an interest in the welfare of the detainee, or in whose welfare the detainee has an interest (see Note 5B).

C5.5. If a friend, relative or person with an interest in the detainee's welfare enquires about his or her whereabouts, this information must be given if the detainee agrees and if Annex B does not apply (see Note 5D).

C5.6. The detainee must be given writing materials, on request, and allowed to telephone one person for a reasonable time (see Notes 5A and 5E). Either or both these privileges may be denied or delayed if an officer of the rank of inspector or above considers that sending a letter or making a telephone call might result in any of the consequences in Annex B paragraphs 1 and 2 and the person is detained in connection with an imprisonable offence.

Nothing in this paragraph permits the restriction or denial of the rights in paragraphs C5.1 and C6.1.

C5.7. Before any letter or message is sent, or telephone call made, the detainee must be informed that what he or she says in any letter, call or message (other than in a communication to a legal practitioner) may be read or listened to and may be given in evidence. A telephone call may be terminated if it is being abused. The costs can be at public expense at the custody officer's discretion.

C5.7A. Any delay or denial of the rights in this section should be proportionate and should last no longer than necessary.

C5.7B. [Omitted]

B. Documentation

C5.8. A record must be kept of any —

(a) request made under this section and the action taken;

(b) letters, messages or telephone calls made or received or visits received;

(c) refusal by the detainee to have information about him or her given to an outside enquirer.

The detainee must be asked to countersign the record accordingly and any refusal must be recorded.

Notes for Guidance

5A. A person may request an interpreter to interpret a telephone call or translate a letter, if necessary by electronic means.

5B. At the custody officer's discretion, subject to the detainee's consent, visits should be allowed when possible, if there are sufficient personnel to supervise a visit and if there would be no hindrance to the investigation.

5C. If the detainee does not know anyone to contact for advice or support or cannot contact a friend or relative, the custody officer should mention any local voluntary bodies or other organisations which might be able to help. Paragraph C6.1 applies if legal advice is required.

5D. In some circumstances it may not be appropriate to use the telephone to disclose information under paragraphs C5.1 and C5.5.

5E. The telephone call mentioned in paragraph C5.6 is in addition to any communication under paragraphs C5.1 and C6.1.

5F. If other electronic means are available and appropriate, a reference in this Code to use of the telephone includes use of those other means.

C6. Right to obtain legal advice

A. Action

C6.1. Unless Annex B applies, all detainees must be informed that they may at any time consult and communicate privately with a legal practitioner, either in person, in writing or by telephone, and that independent legal advice may be obtained from a legal practitioner (see paragraph C3.1, Notes 6B and 6J).

C6.2. [Omitted]

C6.3. A poster advertising the right to obtain legal advice must be prominently displayed in the place of lawful custody.

C6.4. No police officer should, at any time, do or say anything with the intention of dissuading a detainee from obtaining legal advice.

C6.5. The exercise of the right to obtain legal advice may be delayed only as in Annex B. Whenever legal advice is requested, and unless Annex B applies, the custody officer must act without delay to secure the provision of such advice. If, on being informed or reminded of this right, the detainee declines to speak to a legal practitioner in person, the officer should point out

that the right includes the right to speak with a legal practitioner on the telephone. If the detainee continues to waive this right the officer should ask him or her why and any reasons should be recorded on the custody record or the interview record as appropriate. Reminders of the right to obtain legal advice must be given as in paragraphs C3.5, C11.2, C15.4, C16.4 and C16.5, Annex A paragraph 2B, Annex K paragraph 3 of this Code, and paragraphs D3.17(b) and D6.3 of Code D. Once it is clear a detainee does not want to speak to a legal practitioner in person or by telephone he or she should cease to be asked the reasons (see Note 6K).

C6.5A. In the case of a detained person who is a youth or mentally disordered or otherwise mentally vulnerable, an appropriate adult should consider whether legal advice from a legal practitioner is required. If the youth indicates that he or she does not want legal advice, the appropriate adult has the right to ask for a legal practitioner to attend if this would be in the best interests of the youth. However, the youth cannot be forced to see the legal practitioner if he or she is adamant that he or she does not want to do so.

C6.6. A detainee who wants legal advice may not be interviewed or continue to be interviewed until he or she has received such advice unless —

(a) Annex B applies, in which case the restriction on drawing adverse inferences from silence in Annex C will apply because the detainee is not allowed an opportunity to consult a legal practitioner; or

(b) an officer of the rank of inspector or above has reasonable grounds for believing that —

(i) the resulting delay might —

- lead to interference with, or physical injury to, other people;
- lead to interference with, or harm to, evidence connected with an imprisonable offence;
- lead to alerting other people suspected of having committed such an offence but not yet arrested for it;
- hinder the recovery of property obtained as a result of such an offence;

(ii) if a legal practitioner has been contacted and has agreed to attend, awaiting his or her arrival would cause unreasonable delay to the process of investigation;

(<u>Note</u>: In these cases the restriction on drawing adverse inferences from silence in Annex C will *apply because the detainee is not allowed an opportunity to consult a legal practitioner.)*

(c) the legal practitioner the detainee wishes to contact —

(i) cannot be contacted;

(ii) has previously indicated he or she does not want to be contacted; or

(iii) having been contacted, has declined to attend.

In these circumstances the interview may be started or continued without further delay provided an officer of the rank of inspector or above has agreed to the interview proceeding. *(Note: The restriction on drawing adverse inferences from silence in Annex C will not apply because the detainee is allowed an opportunity to consult the duty legal practitioner.)*

(d) the detainee changes his or her mind about wanting legal advice or (as the case maybe) about wanting a legal practitioner present at the interview and states that he or she no longer wants to speak to a legal practitioner.

C6.6A. In the circumstances described in paragraph 6.6(d) the interview may be started or continued without delay provided that —

(a) an officer of the rank of inspector or above —

(i) speaks to the detainee to enquire about the reason for the change of mind (see Note 6K); and

(ii) makes reasonable efforts to ascertain the expected time of arrival of a legal practitioner if the detainee has requested to contact one;

(b) the reason for the detainee's change of mind (if given) and the outcome of the action in paragraph (a)(ii) are recorded in the custody record;

(c) the detainee, after being informed of the outcome of the action in paragraph (a)(ii), confirms in writing that he or she wants the interview to proceed without speaking or further speaking to a legal practitioner or without a legal practitioner being present and does not want to wait for a legal practitioner, by signing an entry to this effect in the custody record;

(d) an officer of the rank of inspector or above is satisfied that it is proper for the interview to proceed and —

(i) gives authority in writing for the interview to proceed;

(ii) if the authority is not recorded in the custody record, ensures that the custody record shows the date and time of the authority and where it is recorded; and

(iii) takes reasonable steps to inform the legal practitioner that the authority has been given and the time when the interview is expected to commence, and records the outcome of this action in the custody record;

(e) when the interview starts and the interviewer reminds the suspect of his or her right to legal advice (see paragraph C11.2 below, paragraph 4.5 of Code E and paragraph 4.5 of Code

F) the interviewer must then ensure that the following is recorded in the written interview record or the interview record made in accordance with Code E or Code F —

(i) confirmation that the detainee has changed his or her mind about wanting legal advice or (as the case may be) about wanting a legal practitioner present and the reasons for it if given;

(ii) the fact that authority for the interview to proceed has been given and, subject to paragraph C2.6A, the name of the authorising officer;

(iii) that if the legal practitioner arrives at the place of lawful custody before the interview is completed, the detainee will be so informed without delay and a break will be taken to allow the detainee to speak to the legal practitioner if the detainee wants to, unless paragraph C6.6(a) applies; and

(iv) that at any time during the interview, the detainee may again ask to obtain legal advice and that if he or she does, a break will be taken to allow him or her to speak to a legal practitioner, unless paragraph 6.6(a), (b) or (c) applies.

(Note: In these circumstances the restriction on drawing adverse inferences from silence in Annex C will not apply because the detainee is allowed an opportunity to consult a legal practitioner if he or she wants to).

C6.7. If paragraph C6.6(a) applies, if the reason for authorising the delay ceases to apply, there may be no further delay in permitting the exercise of the right in the absence of a further authorisation unless paragraph C6.6(b), (c) or (d) applies. If paragraph C6.6(b)(i) applies, once sufficient information has been obtained to avert the risk, questioning must cease until the detainee has received legal advice unless paragraph C6.6(a), (b)(ii), (c) or (d) applies.

C6.8. A detainee who has been permitted to consult a legal practitioner is entitled on request to have the legal practitioner present when he or she is interviewed unless one of the exceptions in paragraph C6.6 applies.

C6.9. The legal practitioner may only be required to leave the interview if his or her conduct is such that the interviewer is unable properly to put questions to the suspect (see Notes 6D and 6E).

C6.10. If the interviewer considers a legal practitioner is acting in such a way that the interviewer is unable properly to put questions to the suspect, the interviewer must stop the interview and consult an officer of the rank of inspector or above (being, if practicable, an officer who is not connected with the investigation). After speaking to the legal practitioner, the officer consulted must decide whether the interview should continue in the presence of that legal practitioner. If the officer decides it should not, the suspect must be given the opportunity to consult another legal practitioner before the interview continues and that legal practitioner must be given an opportunity to be present at the interview (see Note 6E).

C6.11. The removal of a legal practitioner from an interview is a serious step and, if it occurs, the officer who took the decision must report the matter to the Attorney General.

C6.12. In this Code, "legal practitioner" means a person who is entitled to practise as an advocate or as a solicitor, attorney or proctor in any court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland.

C6.12A. to C6.14. [Omitted]

C6.15. If a legal practitioner arrives at a place of lawful custody to see a particular person, that person must, unless Annex B applies, be so informed, even if he or she is being interviewed, and asked if he or she would like to see the legal practitioner . This applies even if the detainee has declined legal advice or, having requested it, subsequently agreed to be interviewed without receiving advice. The legal practitioner's attendance and the detainee's decision must be noted in the custody record.

B. Documentation

C6.16. Any request for legal advice and the action taken must be recorded.

C6.17. A record must be made in the interview record if a detainee asks for legal advice and an interview is begun either in the absence of a legal practitioner, or the legal practitioner has been required to leave an interview.

Notes for Guidance

6. A police officer must not indicate to any person who is a suspect, except to answer a direct question, that the period for which the person is liable to be detained, or if not detained, the time taken to complete the interview, might be reduced —

(a) if the person does not ask for legal advice or does not want a legal practitioner present when he or she is interviewed; or

(b) if the person has asked for legal advice or for a legal practitioner to be present when he or she is interviewed - changes his or her mind and agrees to be interviewed without waiting for a legal practitioner.

6A. In considering whether paragraph C6.6(b) applies, the officer should, if practicable, ask the legal practitioner for an estimate of how long it will take to come to the place of lawful custody and must relate this to the time for which detention is permitted, the time of day (i.e. whether the rest period under paragraph C12.2 is imminent) and the requirements of other investigations. If the legal practitioner is on the way or is to set off immediately, it will not normally be appropriate to begin an interview before he or she arrives. If it appears necessary to begin an interview before the legal practitioner's arrival, he or she should be given an indication of how long the police would be able to wait before paragraph C6.6(b) applies so that there is an opportunity to make arrangements for someone else to provide legal advice.

6B. A detainee who asks for legal advice to be paid for by himself or herself should be given an opportunity to consult a specific legal practitioner. If this legal practitioner is not available, the detainee may choose up to two alternatives. If these attempts are unsuccessful, the custody officer has discretion to allow further attempts until a legal practitioner has been contacted who agrees to provide legal advice. Otherwise, publicly funded legal advice must be made available.

Apart from carrying out these duties, an officer must not advise the detainee about any particular legal practitioner.

6C. [Omitted]

6D. The legal practitioner's only role at the place of lawful custody is to protect and advance the legal rights of his or her client. On occasions this may require the legal practitioner to give advice which has the effect of the client avoiding giving evidence which strengthens a prosecution case. The legal practitioner may intervene in order to seek clarification, challenge an improper question to his or her client or the manner in which it is put, advise his or her client not to reply to particular questions, or to give his or her client further legal advice. Paragraph C6.9 only applies if the legal practitioner's approach or conduct prevents or unreasonably obstructs proper questions being put to the suspect or the suspect's response being recorded. Examples of unacceptable conduct include answering questions on a suspect's behalf or providing written replies for the suspect to quote.

6E. An officer who takes the decision to exclude a legal practitioner must be in a position to satisfy the court the decision was properly made. In order to do this he or she may need to witness what is happening.

6F. [Omitted]

6G. Subject to the constraints of Annex B, a legal practitioner may advise more than one client in an investigation. Any question of a conflict of interest is for the legal practitioner under his or her professional code of conduct. If, however, waiting for a legal practitioner to give advice to one client may lead to unreasonable delay to the interview with another, the provisions of paragraph C6.6(b) may apply.

6H and I. [Omitted]

6J. Whenever a detainee exercises his or her right to legal advice by consulting or communicating with a legal practitioner, the detainee must be allowed to do so in private. This right to consult or communicate in private is fundamental. If the requirement for privacy is compromised because what is said or written by the detainee or legal practitioner for the purpose of giving and receiving legal advice is overheard, listened to, or read by others without the informed consent of the detainee, the right will effectively have been denied. When a detainee chooses to speak to a legal practitioner on the telephone, he or she should be allowed to do so in private unless this is impractical because of the design and layout of the custody area or the location of telephones. However, the normal expectation should be that facilities will be

available, unless they are being used, at the place of lawful custody to enable detainees to speak in private to a legal practitioner either face to face or over the telephone.

6K. A detainee is not obliged to give reasons for declining legal advice and should not be pressed to do so.

C7. Citizens of independent Commonwealth countries or foreign nationals

A. Action

C7.1. A detainee who is a citizen of an independent Commonwealth country or a national of a foreign country, including the republic of Ireland, has the right, upon request, to communicate at any time with the appropriate High Commission, Embassy or Consulate. The detainee must be informed as soon as practicable of this right and asked if he or she wants to have his or her High Commission, Embassy or Consulate told of his or her whereabouts and the grounds for his or her detention. Such a request should be acted upon as soon as practicable. (See Note 7A).

C7.2. A detainee who is a citizen of a country with which a bilateral consular convention or agreement is in force requiring notification of arrest must also be informed that, subject to paragraph C7.4, notification of the detainee's arrest will be sent to the appropriate High Commission, Embassy or Consulate as soon as practicable, whether or not the detainee requests it.

C7.2A. The following steps should be taken in relation to a foreign national who is in police detention —

- The custody officer must arrange for the Governor to be notified of the arrest and detention of any citizen of an independent Commonwealth country or a national of a foreign country, including the republic of Ireland.

- Such notification is required even in the case of a foreign national living in the Falkland Islands, unless he or she is also a British citizen or British Overseas Territories citizen.

- Such notification is not required if a British citizen or British Overseas Territories citizen is arrested and detained, unless he or she holds dual nationality and entered the Falkland Islands on the foreign passport.

- The Governor's office is responsible for arranging any notification required by paragraph C7.2.

- If a foreign national requests communication with his or her High Commission, Embassy or Consulate, the custody officer must arrange for the Governor to be notified of the request. The Governor's office is responsible for contacting the appropriate High Commission, Embassy or Consulate. The custody officer must take all practical steps needed to facilitate contact or visits in accordance with paragraph C7.3.

C7.3. Consular officers may, if the detainee agrees, visit one of their nationals in police detention to talk to the detainee and, if required, to arrange for legal advice. Such visits must take place out of the hearing of a police officer. They may be conducted by electronic means if necessary.

C7.4. Notwithstanding the provisions of consular conventions, if the detainee claims to be a refugee or has applied or intends to apply for asylum, the custody officer must ensure that the Governor is informed as soon as practicable and the Governor will advise the Chief Police Officer as to the action to be taken by the police.

B. Documentation
C7.5. A record must be made —

(a) when a detainee is informed of his or her rights under this section and of any requirement in paragraph C7.2;

(b) of any communication with a High Commission, Embassy or Consulate;

(c) of any communication with the Governor and the resulting action to be taken by the police.

Note for Guidance
7A. The exercise of the rights in this section may not be interfered with even if Annex B applies.

C8. Conditions of detention

A. Action
C8.1. So far as it is practicable, not more than one detainee should be detained in each cell.

C8.2. Cells in use must be adequately heated, cleaned and ventilated. They must be adequately lit. No additional restraints may be used within a locked cell unless absolutely necessary and then only restraint equipment, approved for use by the Chief Police Officer, which is reasonable and necessary in the circumstances, having regard to the detainee's demeanour and with a view to ensuring his or her safety and the safety of others. If a detainee is deaf, mentally disordered or otherwise mentally vulnerable, particular care must be taken when deciding whether to use any form of approved restraints.

C8.3. Blankets, mattresses, pillows and other bedding supplied must be of a reasonable standard and in a clean and sanitary condition.

C8.4. Access to toilet and washing facilities must be provided.

C8.5. If it is necessary to remove a detainee's clothes for the purposes of investigation, for hygiene, health reasons or cleaning, replacement clothing of a reasonable standard of comfort and cleanliness must be provided. A detainee may not be interviewed unless adequate clothing has been offered.

C8.6. At least two light meals and one main meal should be offered in any 24 hour period (see Note 8B). Drinks should be provided at meal times and upon reasonable request between meals. Whenever necessary, advice must be sought from the appropriate health care professional (see Note 9A) on medical and dietary matters. As far as practicable, meals provided must offer a varied diet and meet any specific dietary needs or religious beliefs the detainee has. The detainee may, at the custody officer's discretion, have meals supplied by his or her family or friends at his or her expense (see Note 8A).

C8.7. Brief outdoor exercise must be offered daily if practicable.

C8.8. Where reasonably practicable, youths will not be placed in cells with adults aged 21 or over, or with young offenders aged 18 or over.

B. Documentation
C8.9. A record must be kept of replacement clothing and meals offered.

C8.10. If a youth is placed in a cell, the reason must be recorded.

C8.11. The use of any restraints on a detainee while in a cell, the reasons for it and, if appropriate, the arrangements for enhanced supervision of the detainee while so restrained, must be recorded (see paragraph C3.9).

Notes for Guidance
8A. The provisions in paragraph C8.3 and C8.6 respectively are of particular importance in the case of a person likely to be detained for an extended period. In deciding whether to allow meals to be supplied by family or friends, the custody officer may take account of the risk of items being concealed in any food or package and of the officer's duties and responsibilities under food handling legislation.

8B. Meals should, so far as practicable, be offered at recognised meal times, or at other times that take account of when the detainee last had a meal.

8C. [Omitted]

C9. Care and treatment of detained persons

A. General
C9.1. Nothing in this section prevents the police from calling the police surgeon or, if appropriate, some other health care professional, to examine a detainee for the purposes of obtaining evidence relating to any offence in which the detainee is suspected of being involved (see Note 9A).

C9.2. If a complaint is made by, or on behalf of, a detainee about his or her treatment since arrest, or it comes to notice that a detainee may have been treated improperly, a report must be made as soon as practicable to an officer of the rank of inspector or above who is not connected with the investigation. If the matter concerns a possible assault or the possibility of the

unnecessary or unreasonable use of force, an appropriate health care professional must also be called as soon as practicable.

C9.3. Detainees should be visited at least every hour. If no reasonably foreseeable risk was identified in a risk assessment (see paragraphs C3.6 to C3.10), there is no need to wake a sleeping detainee. Those suspected of being intoxicated through drink or drugs or having swallowed drugs (see Note 9CA), or whose level of consciousness causes concern must, subject to any clinical directions given by the appropriate health care professional (see paragraph C9.13)—

(a) be visited and roused at least every half hour;

(b) have their condition assessed as in Annex H;

(c) have clinical treatment arranged if appropriate (see Notes 9B, 9C and 9H).

C9.4. When arrangements are made to secure clinical attention for a detainee, the custody officer must make sure all relevant information which might assist in the treatment of the detainee's condition is made available to the responsible health care professional. This applies whether or not the health care professional asks for such information. Any police officer with relevant information must inform the custody officer as soon as practicable.

B. Clinical treatment and attention

C9.5. The custody officer must make sure a detainee receives appropriate clinical attention as soon as reasonably practicable if the person —

(a) appears to be suffering from physical illness;

(b) is injured;

(c) appears to be suffering from a mental disorder; or

(d) appears to need clinical attention.

C9.5A. This applies even if the detainee makes no request for clinical attention and whether or not he or she has already received clinical attention elsewhere. If the need for attention appears urgent, e.g. when indicated as in Annex H, the nearest available health care professional or an ambulance must be called immediately.

C9.5B. The custody officer must also consider the need for clinical attention as set out in Note 9C in relation to those suffering the effects of alcohol or drugs.

C9.6. If it appears to the custody officer, or he or she is told, that a person brought to a place of lawful custody under arrest may be suffering from mental disorder or is mentally vulnerable (as to which see Note 1G in section C1), the custody officer must inform the most senior person on duty at the hospital and act on his or her instructions with regard to the arrested person. Nothing

in this Code is meant to prevent or delay the transfer to a hospital if necessary of a person who needs to be detained under Part 3 of the Mental Health Ordinance (see Note 9D).

C9.7. If it appears to the custody officer, or he or she is told, that a person brought to a place of lawful custody under arrest may be suffering from an infectious disease or condition, the custody officer must take reasonable steps to safeguard the health of the detainee and others at the place of lawful custody. In deciding what action to take, advice must be sought from an appropriate health care professional (see Note C9E). The custody officer may isolate the person and his or her property until clinical directions have been obtained.

C9.8. If a detainee requests a clinical examination, an appropriate health care professional must be called as soon as practicable to assess the detainee's clinical needs. If a safe and appropriate care plan cannot be provided, the police surgeon's advice must be sought. The detainee may also be examined by a medical practitioner of his or her choice at his or her expense.

C9.9. If a detainee is required to take or apply any medication in compliance with clinical directions prescribed before his or her detention, the custody officer must consult the appropriate health care professional before the use of the medication. Subject to the restrictions in paragraph C9.10, the custody officer is responsible for the safekeeping of any medication and for making sure the detainee is given the opportunity to take or apply prescribed or approved medication. Any such consultation and its outcome must be noted in the custody record.

C9.10. No police officer may administer or supervise the self-administration of medically prescribed controlled drugs of the types and forms listed as Class A drugs or Class B drugs in the Misuse of Drugs Ordinance. A detainee may only self-administer such drugs under the personal supervision of the health care professional authorising their use. Class C drugs listed in that Ordinance may be distributed by the custody officer for self-administration if the officer has consulted the health care professional authorising their use (which may be done by telephone) and both parties are satisfied self-administration will not expose the detainee, police officers or anyone else to the risk of harm or injury.

C9.11. When appropriate health care professionals administer drugs or other medications, or supervise their self-administration, or consult with the custody officer about allowing self-administration of drugs by detainees, it must be within current medicines legislation and the scope of practice as determined by the relevant professional body.

C9.12. If a detainee has in his or her possession, or claims to need, medication relating to a heart condition, diabetes, epilepsy or a condition of comparable potential seriousness then, even though paragraph C9.5 may not apply, the advice of the appropriate health care professional must be obtained.

C9.13. Whenever the appropriate health care professional is called in accordance with this section to examine or treat a detainee, the custody officer must ask for his or her opinion about—

(a) any risks or problems which police need to take into account when making decisions about the detainee's continued detention;

(b) when to carry out an interview if applicable; and

(c) the need for safeguards.

C9.14. When clinical directions are given by the appropriate health care professional, either orally or in writing, and the custody officer has any doubts or is in any way uncertain about any aspect of the directions, the officer must ask for clarification. It is particularly important that directions concerning the frequency of visits are clear, precise and capable of being implemented (see Note 9F).

C. Documentation

C9.15. A record must be made in the custody record of —

(a) the arrangements made for an examination by an appropriate health care professional under paragraph C9.2 and of any complaint reported under that paragraph, together with any relevant remarks by the custody officer;

(b) any arrangements made in accordance with paragraph C9.5;

(c) any request for a clinical examination under paragraph C9.8 and any arrangements made in response;

(d) the injury, ailment, condition or other reason which made it necessary to make the arrangements in (a) to (c) (see Note 9G);

(e) any clinical directions and advice, including any further clarifications, given to the police by a health care professional concerning the care and treatment of the detainee in connection with any of the arrangements made in (a) to (c) (see Note 9F);

(f) if applicable, the responses received when attempting to rouse a person using the procedure in Annex H (see Note 9H).

C9.16. If a health care professional does not record his or her clinical findings in the custody record, the record must show where they are recorded (see Note 9G). However, information which is necessary to custody officers to ensure the effective ongoing care and wellbeing of the detainee must be recorded openly in the custody record (see paragraph C3.8 and Annex G, paragraph 7).

C9.17. Subject to the requirements of section C4, the custody record must include —

(a) a record of all medication a detainee has in his or her possession on arrival at the place of lawful custody;

(b) a note of any such medication he or she claims to need but do not have with him or her.

Notes for Guidance

9A. A 'health care professional' means a person who is registered in the register of medical practitioners kept under the Medical Practitioners, Midwives and Dentists Ordinance, or a person who is registered in the register kept by the United Kingdom Central Council for Nursing, Midwifery and Health Visiting by virtue of qualifications in nursing.

Whether a health care professional is 'appropriate' depends on the circumstances of the duties he or she carries out at the time.

9B. Whenever possible, youths and mentally vulnerable detainees should be visited more frequently.

9C. A detainee who appears drunk or behaves abnormally may be suffering from illness or the effects of drugs or may have sustained injury, particularly a head injury which is not apparent. A detainee needing or dependent on certain drugs, including alcohol, may experience harmful effects within a short time of being deprived of a supply. In these circumstances, when there is any doubt, police officers should always act urgently to call an appropriate health care professional or an ambulance. Paragraph C9.5 does not apply to minor ailments or injuries which do not need attention. However, all such ailments or injuries must be recorded in the custody record and any doubt must be resolved in favour of calling the appropriate health care professional.

9CA. For healthcare needs of a person who has swallowed drugs, the custody officer, subject to any clinical directions, should consider the necessity for rousing the person every half hour. This does not negate the need for regular visiting of the suspect in the cell.

9D. Arrangements should be made for persons who need to be detained for assessment under Part 3 of the Mental Health Ordinance to be taken to a hospital as soon as practicable.

9E. It is important to respect a detainee's right to privacy, and information about a detainee's health must be kept confidential and only disclosed with his or her consent or in accordance with clinical advice when it is necessary to protect the detainee's health or that of others who come into contact with him or her.

9F. The custody officer should always seek to clarify directions that the detainee requires constant observation or supervision and should ask the appropriate health care professional to explain precisely what action needs to be taken to implement such directions.

9G. Paragraphs C9.15 and C9.16 do not require any information about the cause of any injury, ailment or condition to be recorded on the custody record if the information appears capable of providing evidence of an offence.

9H. The purpose of recording a person's responses when attempting to rouse him or her using the procedure in Annex H is to enable any change in the individual's consciousness level to be noted and clinical treatment arranged if appropriate.

C10. Cautions

A. When a caution must be given

C10.1 A person whom there are grounds to suspect of an offence (see Note 10A) must be cautioned before any questions about an offence, or further questions if the answers provide the grounds for suspicion, are put to the person, if either the suspect's answers or silence (i.e. failure or refusal to answer or answer satisfactorily) may be given in evidence to a court in a prosecution. A person need not be cautioned if questions are for other necessary purposes, e.g.—

(a) solely to establish his or her identity or ownership of any vehicle;

(b) to obtain information in accordance with any relevant statutory requirement (see paragraph C10.9);

(c) in furtherance of the proper and effective conduct of a search, e.g. to determine the need to search in the exercise of powers of stop and search or to seek cooperation while carrying out a search;

(d) to seek verification of a written record as in paragraph C11.13.

C10.2. Whenever a person not under arrest is initially cautioned, or reminded that he or she is under caution, the person must at the same time be told that he or she is not under arrest and is free to leave if he or she wants to (see Note 10C).

C10.3. A person who is arrested, or further arrested, must be informed at the time, or as soon as practicable, that he or she is under arrest and the grounds for his or her arrest (see paragraph C3.4 and Note 10B of this Code, and paragraphs G2.2 and 4.3 of Code G).

C10.4. As in section G3 of Code G, a person who is arrested, or further arrested, must also be cautioned unless —

(a) it is impracticable to caution by reason of his or her condition or behaviour at the time;

(b) he or she has already been cautioned immediately prior to arrest as in paragraph C10.1.

B. Terms of the cautions

C10.5. The caution which must be given on —

(a) arrest;

(b) all other occasions before a person is charged or informed that he or she may be prosecuted (see section C16),

should, unless the restriction on drawing adverse inferences from silence applies (see Annex C) be in the following terms —

"You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence." (See Note 10G)

C10.6. Annex C, paragraph 2 sets out the alternative terms of the caution to be used when the restriction on drawing adverse inferences from silence applies.

C10.7. Minor deviations from the words of any caution given in accordance with this Code do not constitute a breach of this Code, provided the sense of the relevant caution is preserved (see Note 10D).

C10.8. After any break in questioning under caution, the person being questioned must be made aware that he or she remains under caution. If there is any doubt, the relevant caution should be given again in full when the interview resumes (see Note 10E).

C10.9. When, despite being cautioned, a person fails to co-operate or to answer particular questions which may affect his or her immediate treatment, the person should be informed of any relevant consequences and that those consequences are not affected by the caution. Examples are when a person's refusal to provide —

(a) his or her name and address when charged may make him or her liable to detention;

(b) particulars and information in accordance with a statutory requirement, e.g. under the Road Traffic Ordinance, may amount to an offence or may make the person liable to a further arrest.

C. Special warnings under sections 367 and 368

C10.10. If a suspect interviewed at a place of lawful custody after arrest fails or refuses to answer certain questions, or to answer satisfactorily, after due warning (see Note 10F), a court may draw such inferences as appear proper under sections 367 and 368 of the Ordinance (failure or refusal to account for objects or presence). Such inferences may only be drawn when —

(a) the restriction on drawing adverse inferences from silence (see Annex C) does not apply; and

(b) the suspect is arrested by a police officer and fails or refuses to account for any objects, marks or substances, or marks on such objects found —

(i) on his or her person;

(ii) in or on his or her clothing or footwear;

(iii) otherwise in his or her possession; or

(iv) in the place he or she was arrested;

(c) the arrested suspect was found by a police officer at a place at or about the time the offence for which that officer has arrested him or her is alleged to have been committed, and the suspect fails or refuses to account for his or her presence there.

C10.10A. If the restriction on drawing adverse inferences from silence applies, the suspect may still be asked to account for any of the matters in paragraph C10.10(b) or (c) but the special warning described in paragraph C10.11 will not apply and must not be given.

C10.11. For an inference to be drawn when a suspect fails or refuses to answer a question about one of these matters or to answer it satisfactorily, the suspect must first be told in ordinary language —

(a) what offence is being investigated;

(b) what fact he or she is being asked to account for;

(c) that this fact may be due to him or her taking part in the commission of the offence;

(d) that a court may draw a proper inference if he or she fails or refuses to account for this fact;

(e) that a record is being made of the interview and it may be given in evidence if he or she is brought to trial.

D. Youths and persons who are mentally disordered or otherwise mentally vulnerable

C10.11A. The information required by paragraph C10.11 must not be given to a suspect who is a youth or who is mentally disordered or otherwise mentally vulnerable unless the appropriate adult is present.

C10.12. If a youth or a person who is mentally disordered or otherwise mentally vulnerable is cautioned in the absence of the appropriate adult, the caution must be repeated in the appropriate adult's presence.

E. Documentation

C10.13. A record must be made when a caution is given under this section, either in the interviewer's pocket book or in the interview record.

Notes for Guidance

10A. There must be some reasonable, objective grounds for the suspicion, based on facts or information relevant to the likelihood that the offence has been committed and that the person to be questioned committed it.

10B. An arrested person must be given sufficient information to enable the person to understand that he or she has been deprived of his or her liberty and the reason why he or she has been arrested. For example, when a person is arrested on suspicion of committing an offence, he or she must be informed of the nature of the suspected offence and when and where it was

committed. The suspect must also be informed of the reason or reasons why the arrest is considered necessary. Vague or technical language should be avoided.

10C. The restriction on drawing inferences from silence (see Annex C, paragraph 1) does not apply to a person who has not been detained and who therefore cannot be prevented from seeking legal advice if he or she wants to (see paragraph C3.21).

10D. If it appears that a person does not understand the caution, the person giving it should explain it in his or her own words.

10E. It may be necessary to show to the court that nothing occurred during an interview break or between interviews which influenced the suspect's recorded evidence. After a break in an interview or at the beginning of a subsequent interview, the interviewing officer should summarise the reason for the break and confirm this with the suspect.

10F. Sections 367 and 368 of the Ordinance apply only to suspects who have been arrested by a police officer and are given the relevant warning by the police officer who made the arrest or who is investigating the offence. They do not apply to any interviews with suspects who have not been arrested.

10G. Nothing in this Code requires a caution to be given or repeated when informing a person not under arrest that he or she may be prosecuted for an offence. However, a court will not be able to draw any inferences under section 367or 368 of the Ordinance if the person was not cautioned.

C11. Interviews - general

A. Action

C11.1A. An interview is the questioning of a person regarding his or her involvement or suspected involvement in a criminal offence or offences which, under paragraph C10.1, must be carried out under caution. Whenever a person is interviewed, the person and his or her legal practitioner must be given sufficient information to enable the person to understand the nature of any such offence, and why the person is suspected of committing it (see paragraphs C3.4(a) and C10.3), in order to allow for the effective exercise of the rights of the defence. However, while the information must always be sufficient for the person to understand the nature of any offence, this does not require the disclosure of details at a time which might prejudice the criminal investigation. The decision about what needs to be disclosed for the purpose of this requirement therefore rests with the investigating officer who has sufficient knowledge of the case to make that decision. The officer who discloses the information must make a record of the information disclosed and when it was disclosed. This record may be made in the interview record, in the officer's pocket book or in some other form provided for the purpose.

Procedures under the Road Traffic Ordinance do not constitute interviewing for the purposes of this Code.

C11.1. Following a decision to arrest a suspect, he or she must not be interviewed about the relevant offence except at a place of lawful custody, unless the consequent delay would be likely to —

- lead to interference with, or physical injury to, other people;
- lead to interference with, or harm to, evidence connected with an imprisonable offence;
- lead to alerting other people suspected of having committed such an offence but not yet arrested for it;
- hinder the recovery of property obtained as a result of such an offence.

Interviewing in any of these circumstances must cease once the relevant risk has been averted or the necessary questions have been put in order to attempt to avert that risk.

C11.2. Immediately prior to the commencement or re-commencement of any interview at the place of lawful custody or other authorised place of detention, the interviewer must remind the suspect that he or she is entitled to obtain legal advice and that the interview can be delayed for legal advice to be obtained, unless one of the exceptions in paragraph C6.6 applies.

The interviewer must ensure that all reminders are recorded in the interview record.

C11.3. [Omitted]

C11.4. At the beginning of an interview the interviewer, after cautioning the suspect (see section C10), must put to him or her any significant statement or silence which occurred in the presence and hearing of a police officer before the start of the interview and which have not been put to the suspect in the course of a previous interview (see Note 11A). The interviewer must ask the suspect whether he or she confirms or denies that earlier statement or silence and if he or she wants to add anything.

C11.4A. A significant statement is one which appears capable of being used in evidence against the suspect, in particular a direct admission of guilt. A significant silence is a failure or refusal to answer a question or answer satisfactorily when under caution, which might, allowing for the restriction on drawing adverse inferences from silence (see Annex C) give rise to an inference under section 367 or 368 of the Ordinance (failure or refusal to account for objects or presence).

C11.5. An interviewer must not try to obtain answers or elicit a statement by the use of oppression. Except as in paragraph C10.9, an interviewer must not indicate, except to answer a direct question, what action will be taken by the police if the person being questioned answers questions, makes a statement or refuses to do either. If the person asks directly what action will be taken if he or she answers questions, makes a statement or refuses to do either, the interviewer may inform the person what action the police propose to take, provided that action is itself proper and warranted.

C11.6. The interview or further interview of a person about an offence with which the person has not been charged, or for which he or she has not been informed that he or she may be prosecuted, must cease when —

(a) the officer in charge of the investigation is satisfied all the questions he or she considers relevant to obtaining accurate and reliable information about the offence have been put to the suspect (which includes allowing the suspect an opportunity to give an innocent explanation and asking questions to test if the explanation is accurate and reliable, e.g. to clear up ambiguities or clarify what the suspect said);

(b) the officer in charge of the investigation has taken account of any other available evidence; and

(c) the officer in charge of the investigation, or in the case of a detained suspect, the custody officer (see paragraph C16.1), is informed by the Attorney General, pursuant to section 62 of the Ordinance, that there is sufficient evidence to provide a realistic prospect of conviction for that offence (see Notes 11AA and 11B).

B. Interview records

C11.7. —

(a) An accurate record must be made of each interview, whether or not the interview takes place at a place of lawful custody.

(b) The record must state the place of interview, the time it begins and ends, any interview breaks and, subject to paragraph C2.6A, the names of all those present. The record must be made on the forms provided for this purpose or in the interviewer's pocket book or in accordance with the Codes of Practice E or F.

(c) Any written record must be made and completed during the interview, unless this would not be practicable or would interfere with the conduct of the interview, and must constitute either a verbatim record of what has been said or, failing this, an account of the interview which adequately and accurately summarises it.

C11.8. If a written record is not made during the interview it must be made as soon as practicable after its completion.

C11.9. Written interview records must be timed and signed by the maker.

C11.10. If a written record is not completed during the interview, the reason must be recorded in the interview record.

C11.11. Unless it is impracticable, the person interviewed must be given the opportunity to read the interview record and to sign it as correct, or to indicate how he or she considers it inaccurate. If the person interviewed cannot read or refuses to read the record or sign it, the senior interviewer present must read it to the person and ask whether he or she would like to sign it as

correct or make his or her mark or to indicate how he or she considers it inaccurate. The interviewer must certify on the interview record itself what has occurred (see Note 11E).

C11.12. If the appropriate adult or the person's legal practitioner is present during the interview, that person should also be given an opportunity to read and sign the interview record or any written statement taken down during the interview.

C11.13. A written record must be made of any comments made by a suspect, including unsolicited comments, which are outside the context of an interview but which might be relevant to the offence. Any such record must be timed and signed by the maker. When practicable, the suspect must be given the opportunity to read the record and to sign it as correct or to indicate how he or she considers it inaccurate (see Note 11E).

C11.14. Any refusal by a person to sign an interview record when asked in accordance with this Code must itself be recorded.

C. Youths and mentally disordered or otherwise mentally vulnerable people

C11.15. A youth or person who is mentally disordered or otherwise mentally vulnerable must not be interviewed regarding his or her involvement or suspected involvement in a criminal offence or offences, or asked to provide or sign a written statement under caution or record of interview, in the absence of the appropriate adult unless paragraphs C11.1 and C11.18 to C11.20 apply (see Note 11C).

C11.16. A youth may only be interviewed at his or her place of education in exceptional circumstances and only when the principal or his or her nominee agrees. Every effort should be made to notify the parent or other person responsible for the youth's welfare and the appropriate adult, if this is a different person, that the police want to interview the youth. Reasonable time should be allowed to enable the appropriate adult to be present at the interview. If awaiting the appropriate adult would cause unreasonable delay, and unless the youth is suspected of an offence against the educational establishment, the principal or his or her nominee can act as the appropriate adult for the purposes of the interview.

C11.17. If an appropriate adult is present at an interview, he or she must be informed that —

(a) he or she is not expected to act simply as an observer; and

(b) the purpose of his or her presence is to —

(i) advise the person being interviewed;

(ii) observe whether the interview is being conducted properly and fairly;

(iii) facilitate communication with the person being interviewed.

D. Vulnerable suspects – urgent interviews at a place of lawful custody

C11.18. The following persons may not be interviewed unless an officer of the rank of inspector or above considers delay will lead to the consequences in paragraph C11.1(a) to (c), and is satisfied the interview would not significantly harm the person's physical or mental state (see Annex G) —

(a) a youth or person who is mentally disordered or otherwise mentally vulnerable if at the time of the interview the appropriate adult is not present;

(b) anyone other than in (a) who at the time of the interview appears unable to —

(i) appreciate the significance of questions and his or her answers; or

(ii) understand what is happening because of the effects of drink, drugs or any illness, ailment or condition;

(c) a person who has difficulty understanding English or has a hearing disability, if at the time of the interview an interpreter is not present.

C11.19. These interviews may not continue once sufficient information has been obtained to avert the consequences in paragraph C11.1(a) to (c).

C11.20. A record must be made of the grounds for any decision to interview a person under paragraph C11.18.

Notes for Guidance

11A. Paragraph C11.4 does not prevent the interviewer from putting significant statements and silences to a suspect again at a later stage or a further interview.

11AA. As required by section 62 of the Ordinance, the officer in charge of the investigation must as soon as practicable send to the Attorney General information in writing about the case to enable the Attorney General to decide whether there is sufficient evidence to charge the person with an offence.

11B. The Code of Practice on the Recording, Retention and Disclosure of Material paragraph 3.5 states "In conducting an investigation, the investigator should pursue all reasonable lines of inquiry, whether these point towards or away from the suspect. What is reasonable in each case will depend on the particular circumstances." Interviewers should keep this in mind when deciding what questions to ask in an interview.

11C. Although youths or people who are mentally disordered or otherwise mentally vulnerable are often capable of providing reliable evidence, they may, without knowing they are doing so, or wanting to do so, be particularly prone in certain circumstances to provide information that may be unreliable, misleading or self-incriminating. Special care should always be taken when questioning such a person, and the appropriate adult should be involved if there is any doubt

about a person's age, mental state or capacity. Because of the risk of unreliable evidence it is also important to obtain corroboration of any facts admitted whenever possible.

11D. Youths should not be arrested at their place of education unless this is unavoidable. When a youth is arrested at his or her place of education, the principal or his or her nominee must be informed.

11E. Significant statements described in paragraph C11.4 will always be relevant to the offence and must be recorded. When a suspect agrees to read records of interviews and other comments and sign them as correct, he or she should be asked to endorse the record with, e.g. "I agree that this is a correct record of what was said" and add his or her signature. If the suspect does not agree with the record, the interviewer should record the details of any disagreement and ask the suspect to read these details and sign them to the effect that they accurately reflect his or her disagreement. Any refusal to sign should be recorded.

C12. Interviews in a place of lawful custody

A. Action

C12.1. If a police officer wants to interview or conduct enquiries which require the presence of a detainee, the custody officer is responsible for deciding whether to deliver the detainee into the officer's custody. An investigating officer who is given custody of a detainee takes over responsibility for the detainee's care and safe custody for the purposes of this Code until the officer returns the detainee to the custody officer when the officer must report the manner in which he or she complied with the Code while having custody of the detainee.

C12.2. Except as below, in any period of 24 hours a detainee must be allowed a continuous period of at least 8 hours for rest, free from questioning, travel or any interruption in connection with the investigation concerned. This period should normally be at night or other appropriate time which takes account of when the detainee last slept or rested. If a detainee is arrested at a place of lawful custody after going there voluntarily, the period of 24 hours runs from the time of his or her arrest and not the time of arrival at the place of lawful custody. The period may not be interrupted or delayed, except —

(a) when there are reasonable grounds for believing not delaying or interrupting the period would —

(i) involve a risk of harm to people or serious loss of, or damage to, property;

(ii) delay unnecessarily the person's release from custody;

(iii) otherwise prejudice the outcome of the investigation;

(b) at the request of the detainee or his or her appropriate adult or legal practitioner;

(c) when a delay or interruption is necessary in order to —

(i) comply with the legal obligations and duties arising under section C15;

(ii) to take action required under section C9 of this Code or in accordance with medical advice.

If the period is interrupted in accordance with (a), a fresh period must be allowed. Interruptions under (b) and (c) do not require a fresh period to be allowed.

C12.3. Before a detainee is interviewed the custody officer, in consultation with the officer in charge of the investigation and appropriate health care professionals as necessary, must assess whether the detainee is fit enough to be interviewed. This means determining and considering the risks to the detainee's physical and mental state if the interview took place, and determining what safeguards are needed to allow the interview to take place (see Annex G). The custody officer must not allow a detainee to be interviewed if the custody officer considers it would cause significant harm to the detainee's physical or mental state. Vulnerable suspects listed at paragraph C11.18 must be treated as always being at some risk during an interview and these persons may not be interviewed except in accordance with paragraphs C11.18 to C11.20. (See also Note 12C)

C12.4. As far as practicable interviews must take place in interview rooms which are adequately heated, lit and ventilated.

C12.5. A suspect whose detention without charge has been authorised under the Ordinance, because the detention is necessary for an interview to obtain evidence of the offence for which he or she has been arrested, may choose not to answer questions, but police do not require the suspect's consent or agreement to interview him or her for this purpose. If a suspect takes steps to prevent himself or herself being questioned or further questioned, e.g. by refusing to leave his or her cell to go to a suitable interview room or by trying to leave the interview room, the suspect must be advised that his or her consent or agreement to interview is not required.

The suspect must be cautioned as in section C10, and informed that if he or she fails or refuses to co-operate, the interview may take place in the cell and that his or her failure or refusal to cooperate may be given in evidence. The suspect must then be invited to co-operate and go into the interview room (see Note 12D).

C12.6. People being questioned or making statements must not be required to stand.

C12.7. Before the interview commences, each interviewer must, subject to paragraph C2.6A, identify himself or herself and any other persons present to the interviewee.

C12.8. Breaks from interviewing should be made at recognised meal times or at other times that take account of when an interviewee last had a meal. Short refreshment breaks must be provided at approximately 2-hour intervals, but the interviewer may delay a break if there are reasonable grounds for believing it would —

(a) involve a —

(i) risk of harm to people;

(ii) serious loss of, or damage to, property;

(b) unnecessarily delay the detainee's release;

(c) otherwise prejudice the outcome of the investigation.

(See Note 12B)

C12.9. If during the interview a complaint is made by or on behalf of the interviewee concerning the provisions of any of the Codes, or it comes to the interviewer's notice that the interviewee may have been treated improperly, the interviewer should —

(a) record the matter in the interview record;

(b) inform the custody officer, who must then deal with it as in section C9 of this Code.

B. Documentation

C12.10. A record must be made of —

(a) the time for which a detainee is not in the custody of the custody officer, and why;

(b) the reason for any refusal to deliver the detainee out of that custody.

C12.11. A record must be made of —

(a) the reasons why it was not practicable to use an interview room; and

(b) any action taken as in paragraph C12.5.

The record must be made on the custody record or in the interview record for action taken while an interview record is being kept, with a brief reference to this effect in the custody record.

C12.12. Any decision to delay a break in an interview must be recorded, with reasons, in the interview record.

C12.13. All written statements made at a place of lawful custody under caution must be written on forms provided for the purpose.

C12.14. All written statements made under caution must be taken in accordance with Annex D. Before a person makes a written statement under caution at the place of lawful custody he or she must be reminded about the right to legal advice (see Note 12A).

Notes for Guidance
12A. It is not normally necessary to ask for a written statement if the interview was recorded in writing and the record signed in accordance with paragraph C11.11, or audibly or visually recorded in accordance with Code E or F. Statements under caution should normally be taken in these circumstances only at the person's express request. A person may however be asked if he or she wants to make such a statement.

12B. Meal breaks should normally last at least 45 minutes and shorter breaks after 2 hours should last at least 15 minutes. If the interviewer delays a break in accordance with paragraph C12.8 and prolongs the interview, a longer break should be provided. If there is a short interview, and another short interview is contemplated, the length of the break may be reduced if there are reasonable grounds to believe this is necessary to avoid any of the consequences in paragraph C12.8(a) to (c).

12C. A detainee should not be supplied with intoxicating liquor except on medical directions, and a note should be kept in the custody record of any such liquor supplied.

12D. The purpose of any interview is to obtain from the detainee his or her explanation of the facts, and not necessarily to obtain an admission.

C13. Interpreters

A. General
C13.1. The Chief Police Officer must ensure that appropriate arrangements are in place for provision of suitably qualified interpreters, if necessary by electronic means, for people who —

(a) are deaf;

(b) do not understand English.

B. Foreign languages
C13.2. Unless paragraphs C11.1 and C11.18 to C11.20 apply, a person must not be interviewed in the absence of a person capable of interpreting if —

(a) the person has difficulty understanding English;

(b) the interviewer cannot speak the person's own language; and

(c) the person wants to have an interpreter present.

C13.3. The interviewer must make sure the interpreter makes a note of the interview at the time in the person's language for use in the event of the interpreter being called to give evidence, and certifies its accuracy. The interviewer should allow sufficient time for the interpreter to note each question and answer after each is put, given and interpreted. The person should be allowed to read the record or have it read to him or her and sign it as correct or indicate the respects in

which he or she considers it inaccurate. If the interview is audibly recorded or visually recorded, the arrangements in Code E or F apply.

C13.4. In the case of a person making a statement to a police officer other than in English —

(a) the interpreter must record the statement in the language it is made;

(b) the person must be invited to sign it;

(c) an English translation must be made in due course.

C. Deaf people and people with speech difficulties

C13.5. If a person appears to be deaf or there is doubt about his or her hearing or speaking ability, the person must not be interviewed in the absence of an interpreter unless he or she agrees in writing to being interviewed without one or paragraphs C11.1 and C11.18 to C11.20 apply.

C13.6. An interpreter should also be called if a youth is interviewed and the parent or guardian present as the appropriate adult appears to be deaf or there is doubt about his or her hearing or speaking ability, unless the parent or guardian agrees in writing to the interview proceeding without an interpreter or paragraphs C11.1 and C11.18 to C11.20 apply.

C13.7. The interviewer must make sure the interpreter is allowed to read the interview record and to certify its accuracy in the event of the interpreter being called to give evidence. If the interview is audibly recorded or visually recorded, the arrangements in Code E or F apply.

D. Additional rules for detained persons

C13.8. All reasonable attempts should be made to make the detainee understand that an interpreter will be provided at public expense, if necessary by electronic means.

C13.9. If paragraph C6.1 applies and the detainee cannot communicate with the legal practitioner because of language, hearing or speech difficulties, an interpreter must be called. The interpreter cannot be a police officer when interpretation is needed for the purposes of obtaining legal advice. In all other cases a police officer may interpret but only if the detainee and the appropriate adult, if applicable, agree in writing or if the interview is audibly recorded or visually recorded as in Code E or F.

C13.10. When the custody officer cannot establish effective communication with a person charged with an offence who appears deaf or there is doubt about his or her ability to hear, speak or understand English, arrangements must be made as soon as practicable for an interpreter to explain the offence and any other information given by the custody officer.

E. Documentation

C13.11. Action taken to call an interpreter under this section and any agreement to be interviewed in the absence of an interpreter must be recorded.

Note for Guidance
13A. [Omitted]

C14. Questioning – special restrictions

C14.1. [Omitted]

C14.2. A person who is in police detention at a hospital may not be questioned without the agreement of a responsible doctor (see Note 14A)

Note for Guidance
14A. If questioning takes place at a hospital under paragraph C14.2, or on the way to or from a hospital, the period of questioning counts towards the total period of detention permitted.

C15. Reviews and extensions of detention

A. Persons detained under the Ordinance
C15.0 The requirement in paragraph C3.4(b) that documents and materials essential to challenging the lawfulness the detainee's arrest and detention must be made available to the detainee or his or her legal practitioner, applies for the purposes of this section.

C15.1. The reviewing officer is responsible under section 67 of the Ordinance for periodically determining if a person's detention, before or after charge, continues to be necessary. This requirement continues throughout the detention period and except as in paragraph C15.10, the reviewing officer must be present at the place of lawful custody holding the detainee (see Notes 15A and 15B).

C15.2. Under section 70 of the Ordinance, an officer of inspector rank or above may give authority at any time after the second review to extend the maximum period for which the person may be detained without charge by up to 12 hours. Further detention without charge may be authorised only by a court in accordance with sections 71 and 72 of the Ordinance (see Notes 15C, 15D and 15E).

C15.2A. Section 70(1) of the Ordinance extends the maximum period of detention for imprisonable offences from 24 hours to 36 hours. Detaining a youth or mentally vulnerable person for longer than 24 hours will be dependent on the circumstances of the case and with regard to the person's —

(a) special vulnerability;

(b) the legal obligation to provide an opportunity for representations to be made prior to a decision about extending detention;

(c) the need to consult and consider the views of any appropriate adult; and

(d) any alternatives to police custody.

C15.3. Before deciding whether to authorise continued detention the officer responsible under paragraphs C15.1 or C15.2 must give an opportunity to make representations about the detention to —

(a) the detainee, unless in the case of a review as in paragraph C15.1, the detainee is asleep;

(b) the detainee's legal practitioner if available at the time; and

(c) the appropriate adult if available at the time.

C15.3A. Other people having an interest in the detainee's welfare may also make representations at the authorising officer's discretion.

C15.3B. Subject to paragraph C15.10, the representations may be made orally in person or by electronic means or in writing. The authorising officer may, however, refuse to hear oral representations from the detainee if the officer considers the detainee unfit to make representations because of his or her condition or behaviour (see Note 15C).

C15.3C. The decision on whether the review takes place in person or by electronic means is a matter for the reviewing officer. In determining the form the review may take, the reviewing officer must always take full account of the needs of the person in custody. The benefits of carrying out a review in person should always be considered, based on the individual circumstances of each case with specific additional consideration if the person is —

(a) a youth (and the age of the youth);

(b) mentally vulnerable;

(c) has been subject to medical attention for other than routine minor ailments; or

(d) there are presentational or community issues around the person's detention.

C15.4. Before conducting a review or determining whether to extend the maximum period of detention without charge, the officer responsible must make sure the detainee is reminded that he or she is entitled to obtain legal advice (see paragraph C6.5), unless in the case of a review the person is asleep.

C15.5. If, after considering any representations, the officer decides to keep the detainee in detention or extend the maximum period he or she might be detained without charge, any comment made by the detainee must be recorded. If applicable, the officer responsible under paragraph C15.1 or C15.2 must be informed of the comment as soon as practicable (see also paragraphs C11.4 and C11.13).

C15.6. An officer must not put specific questions to the detainee —

(a) regarding his or her involvement in any offence; or

(b) in respect of any comments he or she may make —

(i) when given the opportunity to make representations; or

(ii) in response to a decision to keep him or her in detention or extend the maximum period of detention.

Such an exchange could constitute an interview as in paragraph C11.1A and would be subject to the associated safeguards in section C11 and, in respect of a person who has been charged, paragraph C16.5 (see also paragraph C11.13).

C15.7. A detainee who is asleep at a review (see paragraph C15.1) and whose continued detention is authorised must be informed about the decision and reason as soon as practicable after waking.

C15.7A. When an application is made to a court under section 71 of the Ordinance for a warrant of further detention to extend detention without charge of a person arrested for an imprisonable offence, or under section 72 to extend or further extend that warrant, the detainee —

(a) must be brought to court for the hearing of the application;

(b) is entitled to be legally represented if he or she wishes, in which case, the legal practitioner must be given a copy of the information which supports the application and which states —

(i) the nature of the offence for which the person to whom the application relates has been arrested;

(ii) the general nature of the evidence on which the person was arrested;

(iii) what inquiries about the offence have been made and what further inquiries are proposed;

(iv) the reasons for believing continued detention is necessary for the purposes of the further inquiries.

Note: A warrant of further detention can only be issued or extended if the court has reasonable grounds for believing that the person's further detention is necessary for the purpose of obtaining evidence of an imprisonable offence for which the person has been arrested and that the investigation is being conducted diligently and expeditiously.

C15.8. [Omitted]

B. Telephone review of detention

C15.9. Section 68 of the Ordinance provides that the officer responsible under section 67 for reviewing the detention of a person who has not been charged does not need to attend the place of lawful custody holding the detainee and may carry out the review by electronic means.

C15.9A. and B. [Omitted]

C15.9C. The reviewing officer can decide at any stage that an electronic review should be terminated and that the review will be conducted in person. The reasons for doing so should be noted in the custody record (see Note 15F).

C15.10. When an electronic review is carried out, an officer at the place of lawful custody holding the detainee must be required by the reviewing officer to fulfil that officer's obligations under section 67 of the Ordinance or this Code by —

(a) making any record connected with the review in the detainee's custody record;

(b) if applicable, making a record in (a) in the presence of the detainee; and

(c) giving the detainee information about the review.

C15.11. When an electronic review is carried out, the requirement in paragraph C15.3 will be satisfied —

(a) if facilities exist for the immediate transmission of written representations to the reviewing officer, e.g. fax or e-mail message, by giving the detainee an opportunity to make representations —

(i) orally by telephone; or

(ii) in writing using those facilities; and

(b) in all other cases, by giving the detainee an opportunity to make his or her representations orally by telephone.

C. Documentation

C15.12. The custody officer must make sure that all reminders given under paragraph C15.4 are noted in the custody record.

C15.13. The grounds for, and extent of, any delay in conducting a review must be recorded.

C15.14. When a telephone review is carried out, a record must be made of —

(a) the reason the reviewing officer did not attend the place of lawful custody holding the detainee;

(b) where the reviewing officer was;

(c) how representations, oral or written, were made to the reviewing officer (see paragraph C15.11).

C15.15. Any written representations must be retained.

C15.16. A record must be made as soon as practicable of —

(a) the outcome of each review of detention before or after charge, and if paragraph C15.7 applies, when the person was informed and by whom;

(b) the outcome of any determination by an officer under section 70 whether to extend the maximum period of detention without charge beyond 24 hours from the relevant time; if an authorisation is given, the record must state the number of hours and minutes by which the detention period is extended or further extended;

(c) the outcome of each application under section 71 for a warrant of further detention, or under section 72 for an extension or further extension of that warrant; if a warrant for further detention is granted under section 71 or extended or further extended under section 72, the record must state the detention period authorised by the warrant and the date and time when it was granted or (as the case may be) the period by which the warrant is extended or further extended.

Notes for Guidance

15A. For the purposes of Part 5, 'reviewing officer' for a place of lawful custody means an officer of the rank of sergeant or above who is on call for that place when decisions about detention fall to be reviewed under that Part.

15B. The detention of persons in police custody not subject to the statutory review requirement in paragraph C15.1 should still be reviewed periodically as a matter of good practice. Such reviews must be carried out by a reviewing officer. The purpose of such reviews is to check the particular power under which a detainee is held continues to apply, any associated conditions are complied with and to make sure appropriate action is taken to deal with any changes. This includes the detainee's prompt release when the power no longer applies, or his or her transfer if the power requires the detainee to be taken elsewhere as soon as the necessary arrangements are made. Examples include a person —

(a) arrested on warrant because he or she failed to answer bail to appear at court;

(b) arrested under section 158 of the Ordinance for breaching a condition of bail granted after charge;

(c) detained to prevent him or her causing a breach of the peace.

The detention of persons remanded into police detention by order of a court under section 140 of the Ordinance (remand) is subject to a statutory requirement to review that detention. This is to make sure the detainee is taken back to court no later than the end of the period authorised by the court or when the need for his or her detention by police ceases, whichever is the sooner.

15C. In the case of a review of detention, but not an extension, the detainee need not be woken for the review. However, if the detainee is likely to be asleep, e.g. during a period of rest allowed as in paragraph C12.2, at the latest time a review or authorisation to extend detention may take place, the officer should, if the legal obligations and time constraints permit, bring forward the procedure to allow the detainee to make representations.

A detainee not asleep during the review must be present when the grounds for his or her continued detention are recorded and must at the same time be informed of those grounds unless the reviewing officer considers the person is incapable of understanding what is said, violent or likely to become violent or in urgent need of medical attention.

15CA. In paragraph C15.3(b) and (c), 'available' includes being contactable in time to enable the person to make representations remotely by telephone or other electronic means or in person by attending the place of lawful custody. Reasonable efforts should therefore be made to give the legal practitioner and appropriate adult sufficient notice of the time the decision is expected to be made so that they can make themselves available.

15D. An application to the Magistrate's Court or Summary Court under section 71 or 72 of the Ordinance for a warrant of further detention or its extension should be made if possible during normal court hours. If it appears a special sitting may be needed outside normal court hours, the Clerk of the court should be given notice and informed of this possibility.

15E. [Omitted]

15F. The provisions of section 68 of the Ordinance allowing telephone reviews do not apply to reviews of detention after charge by the custody officer. The officer must allow the use of a telephone to carry out a review of detention before charge. The procedure under section 70 must be done in person.

15G. [Omitted]

15H. Any period during which a person is released on bail does not count towards the maximum period of detention without charge.

C16. Charging detained persons

A. Action

C16.1. When the officer in charge of the investigation is informed by the Attorney General, pursuant to section 62 of the Ordinance, that there is sufficient evidence to provide a realistic prospect of conviction for the offence (see paragraph C11.6), he or she must without delay, and subject to the following qualification, inform the custody officer who will be responsible for considering whether the detainee should be charged (see Notes 11B and 16A). When a person is detained in respect of more than one offence it is permissible to delay informing the custody officer until the above conditions are satisfied in respect of all the offences (but see paragraph C11.6). If the detainee is a youth, mentally disordered or otherwise mentally vulnerable, any

resulting action must be taken in the presence of the appropriate adult if he or she is present at the time (see Notes 16B and 16C).

C16.1A. If guidance issued by the Attorney General under section 62(9) of the Ordinance is in force the custody officer must comply with that Guidance in deciding how to act in dealing with the detainee.

C16.2. When a detainee is charged with or informed that he or she may be prosecuted for an offence (see Note 16B), the detainee must, unless the restriction on drawing adverse inferences from silence applies (see Annex C) be cautioned as follows —

> "You do not have to say anything. But it may harm your defence if you do not mention now something which you later rely on in court. Anything you do say may be given in evidence."

Annex C, paragraph 2 sets out the alternative terms of the caution to be used when the restriction on drawing adverse inferences from silence applies.

C16.3. When a detainee is charged, he or she must be given a written notice showing particulars of the offence and, subject to paragraph C2.6A, the officer's name and the case reference number. As far as possible the particulars of the charge must be stated in simple terms, but they must also show the precise offence in law with which the detainee is charged. The notice must begin – "You are charged with the offence(s) shown below," followed by the caution.

If the detainee is a youth, mentally disordered or otherwise mentally vulnerable, the notice should be given to the appropriate adult as well as to the youth or mentally disordered/mentally vulnerable person.

C16.4. If, after a detainee has been charged with or informed that he or she may be prosecuted for an offence, an officer wants to tell him or her about any written statement or interview with another person relating to such an offence, either the detainee must be given a true copy of the written statement or the content of the interview record must be brought to his or her attention. Nothing must be done to invite any reply or comment except to —

(a) caution the detainee, "You do not have to say anything, but anything you do say may be given in evidence."; and

(b) remind the detainee about his or her right to legal advice.

C16.4A. If the detainee —

(a) cannot read - the document may be read to him or her;

(b) is a youth, mentally disordered or otherwise mentally vulnerable - the appropriate adult must also be given a copy, or the interview record must be brought to his or her attention.

C16.5. A detainee may not be interviewed about an offence after he or she has been charged with, or informed that he or she may be prosecuted for it, unless the interview is necessary —

(a) to prevent or minimise harm or loss to some other person, or the public;

(b) to clear up an ambiguity in a previous answer or statement;

(c) in the interests of justice for the detainee to have put to him or her, and have an opportunity to comment on, information concerning the offence which has come to light since he or she was charged or informed that he or she may be prosecuted.

Before any such interview, the interviewer must —

(a) caution the detainee, "You do not have to say anything, but anything you do say may be given in evidence.";

(b) remind the detainee about his or her right to legal advice.
(See Note 16B)

C16.6. The provisions of paragraphs C16.2 to C16.5 must be complied with in the appropriate adult's presence if he or she is already at the place of lawful custody. If he or she is not at that place, these provisions must be complied with again in his or her presence when he or she arrives unless the detainee has been released (see Note 16C).

C16.7. When a youth is charged with an offence and the custody officer authorises his or her continued detention after charge, paragraph C8.8 applies.

B. Documentation
C16.8. A record must be made of anything a detainee says when charged.

C16.9. Any questions put in an interview after charge and answers given relating to the offence must be recorded in full during the interview on forms for that purpose and the record signed by the detainee or, if he or she refuses, by the interviewer and any third parties present. If the questions are audibly recorded or visually recorded the arrangements in Code E or F apply.

C16.10. [Omitted]

Notes for Guidance
16A. The custody officer must take into account guidance on the cautioning of offenders, for persons aged 18 and over.

16AA. [Omitted]

16AB. If a custody officer is informed by the Attorney General, pursuant to section 62 of the Ordinance, that there is sufficient evidence to charge the detainee, the officer may detain the detainee person for no longer than is reasonably necessary to decide how that person is to

be dealt with under section 61(7). The period is subject to the maximum period of detention before charge determined by sections 69 to 72.

16B. [Omitted]

16C. There is no power under the Ordinance to detain a person and delay action under paragraphs C16.2 to C16.5 solely to await the arrival of the appropriate adult. Reasonable efforts should therefore be made to give the appropriate adult sufficient notice of the time the decision (charge etc.) is to be implemented so that the adult can be present. If the appropriate adult is not, or cannot be, present at that time, the detainee should be released on bail to return for the decision to be implemented when the adult is present, unless the custody officer determines that the absence of the appropriate adult makes the detainee unsuitable for bail for this purpose.

After charge, bail cannot be refused, or release on bail delayed, simply because an appropriate adult is not available, unless the absence of that adult provides the custody officer with the necessary grounds to authorise detention after charge under section 65 of the Ordinance.

16D. Omitted]

C17. Testing persons for the presence of specified Class A drugs or Class B drugs

A. Action
C17.1. [Omitted]

C17.2. A sample of urine or a non-intimate sample may be taken from a person in police detention for the purpose of ascertaining whether he or she has any specified Class A drug or Class B drug in his or her body only if the person has been brought before the custody officer and —

(a) either the arrest condition (see paragraph C17.3) or the charge condition (see paragraph C17.4) is met;

(b) the age condition (see paragraph C17.5) is met;

(c) the notification condition is met in relation to the arrest condition, the charge condition, or the age condition, as the case may be; and
Notes: Testing on charge and/or arrest must be specifically provided for in the notification for the power to apply. The fact that testing of under-18s is authorised must be expressly provided for in the notification before the power to test such persons applies.

(d) a police officer has requested the person concerned to give the sample (the request condition).

C17.3. The arrest condition is that the person concerned has been arrested for an imprisonable offence but has not been charged with that offence and either —

(a) the offence is an offence under the Misuse of Drugs Ordinance; or

(b) a police officer of the rank of inspector or above has reasonable grounds for suspecting that the misuse by the person of a Class A drug or Class B drug caused or contributed to the offence and has authorised the sample to be taken.

C17.4. The charge condition is that the person —

(a) has been charged with an imprisonable offence under the Misuse of Drugs Ordinance; or

(b) has been charged with any imprisonable offence and a police officer of the rank of inspector or above, who has reasonable grounds for suspecting that the misuse by the person of any Class A drug or Class B drug caused or contributed to the offence, has authorised the sample to be taken.

C17.5. The age condition is met if —

(a) in the case of a detainee who has been arrested but not charged as in paragraph C17.3, he or she is aged 18 or over;

(b) in the case of a detainee who has been charged as in paragraph C17.4, he or she is aged 14 or over.

C17.6. Before requesting a sample from the person concerned, an officer must —

(a) inform him or her that the purpose of taking the sample is for drug testing under the Ordinance;
(Note: This is to ascertain whether he or she has a specified Class A drug or Class B drug present in his or her body.)

(b) warn him or her that if, when so requested, he or she fails without good cause to provide a sample he or she might be liable to prosecution;

(c) where the taking of the sample has been authorised by an inspector or above in accordance with paragraph C17.3(b) or C17.4(b) above, inform him or her that the authorisation has been given and the grounds for giving it;

(d) remind him or her of the following rights, which may be exercised at any stage during the period in custody —

(i) the right to have someone informed of his or her arrest (see section C5);

(ii) the right to consult privately with a legal practitioner (see section C6); and

(iii) the right to consult these Codes of Practice (see section C3).

C17.7. In the case of a person who has not attained the age of 18 —

(a) the making of the request for a sample under paragraph C17.2(d);

(b) the giving of the warning and the information under paragraph C17.6; and

(c) the taking of the sample,

may not take place except in the presence of an appropriate adult.

C17.8. Authorisation by an officer of the rank of inspector or above within paragraph C17.3(b) or C17.4(b) may be given orally or in writing but, if it is given orally, it must be confirmed in writing as soon as practicable.

C17.9. If a sample is taken from a detainee who has been arrested for an offence but not charged with that offence as in paragraph C17.3, no further sample may be taken during the same continuous period of detention. If during that same period the charge condition is also met in respect of that detainee, the sample which has been taken must be treated as being taken by virtue of the charge condition (see paragraph C17.4) being met.

C17.10. A detainee from whom a sample may be taken may be detained for up to 6 hours from the time of charge if the custody officer reasonably believes the detention is necessary to enable a sample to be taken. Where the arrest condition is met, a detainee whom the custody officer has decided to release on bail without charge may continue to be detained, but not beyond 24 hours from the relevant time (as defined in section 69(2) of the Ordinance), to enable a sample to be taken.

C17.11. A detainee in respect of whom the arrest condition is met, but not the charge condition (see paragraphs C17.3 and C17.4), and whose release would be required before a sample can be taken had he or she not continued to be detained as a result of being arrested for a further offence which does not satisfy the arrest condition, may have a sample taken at any time within 24 hours after the arrest for the offence that satisfies the arrest condition.

B. Documentation

C17.12. The following must be recorded in the custody record —

(a) if a sample is taken following authorisation by an officer of the rank of inspector or above, the authorisation and the grounds for suspicion;

(b) the giving of a warning of the consequences of failure to provide a sample;

(c) the time at which the sample was given; and

(d) the time of charge or, where the arrest condition is being relied upon, the time of arrest and, where applicable, the fact that a sample taken after arrest but before charge is to be

treated as being taken by virtue of the charge condition, where that is met in the same period of continuous detention (see paragraph C17.9).

C. General

C17.13. A sample other than a urine sample may only be taken by a registered dentist (in the case of a dental impression) or a health care professional (in any other case). See section 93 of the Ordinance.

C17.14. Force may not be used to take any sample for the purpose of drug testing.

C17.15. The terms “Class A drug”, “Class B drug” and “misuse” have the same meanings as in the Misuse of Drugs Ordinance.

C17.16. Any sample taken —

(a) may not be used for any purpose other than to ascertain whether the person concerned has a specified Class A drug or Class B drug present in his or her body; and

(b) can be disposed of as clinical waste unless it is to be sent for further analysis in cases where the test result is disputed at the point when the result is known, including on the basis that medication has been taken, or for quality assurance purposes.

D. Assessment of misuse of drugs

C17.17 to C17.22 [Omitted]

Notes for Guidance

17A. When warning a person who is asked to provide a urine or non-intimate sample in accordance with paragraph C17.6(b), the following form of words may be used —

“You do not have to provide a sample, but I must warn you that if you fail or refuse without good cause to do so, you will commit an offence for which you may be imprisoned, or fined, or both.”

17B. A sample has to be sufficient and suitable. A sufficient sample is sufficient in quantity and quality to enable drug-testing analysis to take place. A suitable sample is one which by its nature, is suitable for a particular form of drug analysis.

17C. [Omitted]

17D. The retention of the sample in paragraph C17.16(b) allows for the sample to be sent for confirmatory testing and analysis if the detainee disputes the test.

17E. to 17.F [Omitted]

17G. The definition of ‘appropriate adult’ as used in paragraph C17.7 is given in paragraph C1.7.

ANNEX A –
INTIMATE AND STRIP SEARCHES

I. Intimate search

1. An intimate search consists of the physical examination of a person's body orifices other than the mouth. The intrusive nature of such searches means the actual and potential risks associated with intimate searches must never be underestimated.

A. Action

2. Body orifices other than the mouth may be searched only —

(a) if authorised by an officer of the rank of inspector or above who has reasonable grounds for believing that the person may have concealed on himself or herself —

(i) anything which he or she could and might use to cause physical injury to himself or herself or others at the place of lawful custody; or

(ii) a Class A drug or Class B drug which he or she intended to supply to another or to export,

and the officer has reasonable grounds for believing that an intimate search is the only means of removing those items; and

(b) if the search is under paragraph 2(a)(ii) (a drug offence search), the detainee's appropriate consent has been given in writing.

2A. Before the search begins, a police officer must tell the detainee —

(a) that the authority to carry out the search has been given;

(b) the grounds for giving the authorisation and for believing that the article cannot be removed without an intimate search.

2B. Before a detainee is asked to give appropriate consent to a search under paragraph 2(a)(ii) (a drug offence search), the detainee must be warned that if he or she refuses without good cause the refusal may harm his or her case if it comes to trial (see Note A6). In the case of youths, mentally vulnerable or mentally disordered suspects the seeking and giving of consent must take place in the presence of the appropriate adult. A youth's consent is only valid if the parent's or guardian's consent is also obtained unless the youth is under 14, when the parent's or guardian's consent is sufficient in its own right. A detainee who is not legally represented must be reminded that he or she is entitled to obtain legal advice (see paragraph C6.5 above) and the reminder noted in the custody record.

3. An intimate search may only be carried out by a health care professional, unless an officer of the rank of inspector or above considers this is not practicable and the search is to take place

under paragraph 2(a)(i), in which case a police officer may carry out the search (see Notes A1 to A5).

3A. Any proposal for a search under paragraph 2(a)(i) to be carried out by someone other than a health care professional must only be considered as a last resort and when the authorising officer is satisfied the risks associated with allowing the item to remain with the detainee outweigh the risks associated with removing it (see Notes A1 to A5).

4. An intimate search under paragraph 2(a) may take place only at a police station or the prison, or at a hospital, surgery or other medical premises; and if under paragraph 2(a)(ii) must be carried out by a health care professional.

5. An intimate search at a place of lawful custody of a youth or mentally disordered or otherwise mentally vulnerable person may take place only in the presence of an appropriate adult of the same gender, unless the detainee specifically requests a particular adult of the opposite gender who is readily available. In the case of a youth the search may take place in the absence of the appropriate adult only if the youth signifies in the presence of the appropriate adult that he or she does not want the adult present during the search and the adult agrees. A record must be made of the youth's decision and signed by the appropriate adult.

6. When an intimate search under paragraph 2(a)(i) is carried out by a police officer, the officer must be of the same gender as the detainee. A minimum of two people, other than the detainee, must be present during the search. Subject to paragraph 5, no person of the opposite gender who is not a health care professional must be present, nor must anyone whose presence is unnecessary. The search must be conducted with proper regard to the sensitivity and vulnerability of the detainee.

B. Documentation

7. In the case of an intimate search, the following must as soon as practicable be recorded in the detainee's custody record —

(a) for searches under paragraphs 2(a)(i) and (ii) —

(i) the authorisation to carry out the search;

(ii) the grounds for giving the authorisation;

(iii) the grounds for believing the article could not be removed without an intimate search;

(iv) which parts of the detainee's body were searched;

(v) who carried out the search;

(vi) who was present; and

(vii) the result.

(b) for searches under paragraph 2(a)(ii) —

(i) the giving of the warning required by paragraph 2B;

(ii) the fact that the appropriate consent was given or (as the case may be) refused, and if refused, the reason given for the refusal (if any).

8. If an intimate search is carried out by a police officer, the reason why it was impracticable for a health care professional to conduct it must be recorded.

II. Strip search

9. A strip search is a search involving the removal of more than outer clothing. In this Code, outer clothing includes shoes and socks.

A. Action

10. A strip search may take place only if it is considered necessary to remove an article which a detainee would not be allowed to keep, and the officer reasonably considers the detainee might have concealed such an article. Strip searches must not be routinely carried out if there is no reason to consider that articles are concealed.

11. When strip searches are conducted —

(a) a strip search should whenever practicable be conducted by a police officer of the same gender as the detainee;

(b) a strip search involving exposure of intimate body parts can only be conducted by a police officer of the same gender as the detainee;

(c) the search must take place in an area where the detainee cannot be seen by anyone who does not need to be present, nor by a member of the opposite gender except an appropriate adult who has been specifically requested by the detainee;

(d) except in cases of urgency, where there is risk of serious harm to the detainee or to others, whenever a strip search involves exposure of intimate body parts, there must be at least two people present other than the detainee, and if the search is of a youth or mentally disordered or otherwise mentally vulnerable person, one of the people must be the appropriate adult. Except in urgent cases as above, a search of a youth may take place in the absence of the appropriate adult only if the youth signifies in the presence of the appropriate adult that he or she does not want the adult to be present during the search and the adult agrees. A record must be made of the youth's decision and signed by the appropriate adult. The presence of more than two people, other than an appropriate adult, can be permitted only in the most exceptional circumstances;

(e) the search must be conducted with proper regard to the sensitivity and vulnerability of the detainee in these circumstances and every reasonable effort must be made to secure the detainee's co-operation and minimise embarrassment. A detainee who is searched must not normally be required to remove all his or her clothes at the same time, e.g. a person should be allowed to remove clothing above the waist and redress before removing further clothing;

(f) if necessary to assist the search, the detainee may be required to hold his or her arms in the air or to stand with his or her legs apart and bend forward so that a visual examination may be made of the genital and anal areas provided no physical contact is made with any body orifice;

(g) if articles are found, the detainee must be asked to hand them over. If articles are found within any body orifice other than the mouth, and the detainee refuses to hand them over, their removal would constitute an intimate search, which must be carried out as in Part A;

(h) a strip search must be conducted as quickly as possible, and the detainee allowed to dress as soon as the procedure is complete.

B. Documentation

12. A record must be made on the custody record of a strip search including the reason it was considered necessary, those present and any result.

Notes for Guidance

A1. Before authorising any intimate search, the authorising officer must make every reasonable effort to persuade the detainee to hand the article over without a search. If the detainee agrees, a health care professional should whenever possible be asked to assess the risks involved and, if necessary, attend to assist the detainee.

A2. If the detainee does not agree to hand the article over without a search, the authorising officer must carefully review all the relevant factors before authorising an intimate search. In particular, the officer must consider whether the grounds for believing an article may be concealed are reasonable.

A3. If authority is given for a search under paragraph 2(a)(i), a health care professional must be consulted whenever possible. The presumption should be that the search will be conducted by the health care professional and the authorising officer must make every reasonable effort to persuade the detainee to allow the health professional to conduct the search.

A4. A police officer should only be authorised to carry out a search as a last resort and when all other approaches have failed. In these circumstances, the authorising officer must be satisfied that the detainee might use the article for one or more of the purposes in paragraph 2(a)(i) and that the physical injury likely to be caused is sufficiently severe to justify authorising a police officer to carry out the search.

A5. If an officer has any doubts whether to authorise an intimate search by a police officer, the officer should seek advice from an officer of the rank of inspector or above.

A6. In warning a detainee who is asked to consent to an intimate drug offence search, as in paragraph 2B, the following form of words may be used —

"You do not have to allow yourself to be searched, but I must warn you that if you refuse without good cause, your refusal may harm your case if it comes to trial."

ANNEX B –
DELAY IN NOTIFYING ARREST OR ALLOWING ACCESS TO LEGAL ADVICE

A. Action

1. The exercise of the rights in section C5 or section C6, or both, may be delayed if the person is in police detention, as defined in section 2(4) of the Ordinance, in connection with an imprisonable offence, has not yet been charged with an offence and an officer of the rank of inspector or above, has reasonable grounds for believing their exercise will —

(a) lead to —

(i) interference with, or harm to, evidence connected with an imprisonable offence; or

(ii) interference with, or physical injury to, other people; or

(b) lead to alerting other people suspected of having committed an imprisonable offence but not yet arrested for it; or

(c) hinder the recovery of property obtained in consequence of the commission of such an offence.

2. These rights may also be delayed if the officer has reasonable grounds to believe that —

(a) the person detained for an imprisonable offence has benefited from his or her criminal conduct (decided in accordance with the Proceeds of Crime Ordinance (governing the proceeds of crime); and

(b) the recovery of the value of the property constituting that benefit will be hindered by the exercise of either right.

3. Authority to delay a detainee's right to consult privately with a legal practitioner may be given only if the authorising officer has reasonable grounds to believe the legal practitioner the detainee wishes to consult will, inadvertently or otherwise, pass on a message from the detainee or act in some other way which will have any of the consequences specified under paragraphs 1 or 2. In these circumstances the detainee must be allowed to choose another legal practitioner (see Note B3).

4. If the detainee wants to see a legal practitioner, access to that legal practitioner may not be delayed on the grounds that he or she might advise the detainee not to answer questions or that the legal practitioner was initially asked to attend the place of lawful custody by someone else. In

the latter case the detainee must be told that the legal practitioner has come to the place of lawful custody at another person's request, and must be asked to sign the custody record to signify whether he or she wants to see the legal practitioner.

5. The fact the grounds for delaying notification of arrest may be satisfied does not automatically mean the grounds for delaying access to legal advice will also be satisfied.

6. These rights may be delayed only for as long as grounds exist and in no case beyond 36 hours after the relevant time as defined in section 69 of the Ordinance. If the grounds cease to apply within this time, the detainee must, as soon as practicable, be asked if he or she wants to exercise either right, the custody record must be noted accordingly, and action taken in accordance with the relevant section of the Code.

7. A detained person must be permitted to consult a legal practitioner for a reasonable time before any court hearing.

8. to 12. [Omitted]

B. Documentation

13. The grounds for action under this Annex must be recorded and the detainee informed of them as soon as practicable.

14. Any reply given by a detainee under paragraph 6 must be recorded and the detainee asked to endorse the record in relation to whether he or she wants to receive legal advice at this point.

C. Cautions and special warnings

15. When a suspect detained at a place of lawful custody is interviewed during any period for which access to legal advice has been delayed under this Annex, the court may not draw adverse inferences from his or her silence.

Notes for Guidance

B1. Even if this Annex applies in the case of a youth, or a person who is mentally disordered or otherwise mentally vulnerable, action to inform the appropriate adult and the person responsible for a youth's welfare if that is a different person, must nevertheless be taken as in paragraphs C3.13 and C3.15.

B2. In the case of Commonwealth citizens and foreign nationals, see Note 7A.

B3. A decision to delay access to a specific legal practitioner is likely to be a rare occurrence and only made when it can be shown that the suspect is capable of misleading that particular legal practitioner and there is more than a substantial risk that the suspect will succeed in causing information to be conveyed which will lead to one or more of the specified consequences.

ANNEX C –
RESTRICTION ON DRAWING ADVERSE INFERENCES FROM SILENCE
AND TERMS OF THE CAUTION WHEN THE RESTRICTION APPLIES

A. The restriction on drawing adverse inferences from silence

1. Sections 365, 367 and 368 of the Ordinance describe the conditions under which adverse inferences may be drawn from a person's failure or refusal to say anything about his or her involvement in the offence when interviewed, after being charged or informed that he or she may be prosecuted. These provisions are subject to an overriding restriction on the ability of a court to draw adverse inferences from a person's silence. This restriction applies —

(a) to any detainee at a place of lawful custody (see Note 10C) who, before being interviewed (see section C11) or being charged or informed that he or she may be prosecuted (see section C16) has —

(i) asked for legal advice (see section C6, paragraph C6.1);

(ii) not been allowed an opportunity to consult a legal practitioner as in this Code; and

(iii) not changed his or her mind about wanting to have legal advice (see section C6, paragraph 6.6(d)).

(Note: The condition in (ii) will –
(a) apply when a detainee who has asked for legal advice is interviewed before speaking to a legal practitioner as in section C6, paragraph C6.6(a) or (b).
(b) not apply if the detained person declines to ask for legal advice (see section C6, paragraphs C6.6(c) and (d)).

(b) to any person charged with, or informed that he or she may be prosecuted for, an offence who —

(i) has had brought to his or her notice a written statement made by another person or the content of an interview with another person which relates to that offence (see section C16, paragraph C16.4);

(ii) is interviewed about that offence (see section C16, paragraph C16.5); or

(iii) makes a written statement about that offence (see Annex D paragraphs 4 and 9).

B. Terms of the caution when the restriction applies

2. When a requirement to caution arises at a time when the restriction on drawing adverse inferences from silence applies, the caution must be —

"You do not have to say anything, but anything you do say may be given in evidence."

3. Whenever the restriction either begins to apply or ceases to apply after a caution has already been given, the person must be re-cautioned in the appropriate terms. The changed position on drawing inferences and that the previous caution no longer applies must also be explained to the detainee in ordinary language (see Note C2).

Notes for Guidance

C1. The restriction on drawing inferences from silence does not apply to a person who has not been detained and who therefore cannot be prevented from seeking legal advice if he or she wants to.

C2. The following is suggested as a framework to help explain changes in the position on drawing adverse inferences.

(a) If the restriction on drawing adverse inferences from silence begins to apply, the caution should be in the form —

> "The caution you were previously given no longer applies. This is because after that caution [you asked to speak to a legal practitioner but have not yet been allowed an opportunity to speak to a legal practitioner][you have been charged with/informed you may be prosecuted]. This means that from now on, adverse inferences cannot be drawn at court and your defence will not be harmed just because you choose to say nothing. Please listen carefully to the caution I am about to give you because it will apply from now on. You will see that it does not say anything about your defence being harmed."

(b) If the restriction on drawing adverse inferences from silence ceases to apply before or at the time the person is charged or informed that he or she may be prosecuted, the caution should be in the form —

> "The caution you were previously given no longer applies. This is because after that caution you have been allowed an opportunity to speak to a legal practitioner. Please listen carefully to the caution I am about to give you because it will apply from now on. It explains how your defence at court may be affected if you choose to say nothing."

ANNEX D –
WRITTEN STATEMENTS UNDER CAUTION

A. Written by a person under caution

1. A person must always be invited to write down what he or she wants to say.

2. A person who has not been charged with, or informed that he or she may be prosecuted for, any offence to which the statement he or she wants to write relates, must —

> (a) unless the statement is made at a time when the restriction on drawing adverse inferences from silence applies (see Annex C) be asked to write out and sign the following before writing what he or she wants to say —

"I make this statement of my own free will. I understand that I do not have to say anything but that it may harm my defence if I do not mention when questioned something which I later rely on in court. This statement may be given in evidence.";

(b) if the statement is made at a time when the restriction on drawing adverse inferences from silence applies, be asked to write out and sign the following before writing what he or she wants to say —

"I make this statement of my own free will. I understand that I do not have to say anything. This statement may be given in evidence.".

3. If a person, when charged with or informed that he or she may be prosecuted for any offence, asks to make a statement which relates to the offence and wants to write it, the person must —

(a) unless the restriction on drawing adverse inferences from silence (see Annex C) applied when he or she was so charged or informed that he or she may be prosecuted, be asked to write out and sign the following before writing what he or she wants to say —

"I make this statement of my own free will. I understand that I do not have to say anything but that it may harm my defence if I do not mention when questioned something which I later rely on in court. This statement may be given in evidence.";

(b) if the restriction on drawing adverse inferences from silence applied when the person was so charged or informed that he or she may be prosecuted, be asked to write out and sign the following before writing what he or she wants to say —

"I make this statement of my own free will. I understand that I do not have to say anything. This statement may be given in evidence."

4. When a person, who has already been charged with or informed that he or she may be prosecuted for any offence, asks to make a statement which relates to the offence and wants to write it, the person must be asked to write out and sign the following before writing what he or she wants to say —

"I make this statement of my own free will. I understand that I do not have to say anything. This statement may be given in evidence."

5. Any person writing his or her own statement must be allowed to do so without any prompting except that a police officer may indicate to him or her which matters are material or question any ambiguity in the statement.

<u>B. Written by a police officer</u>

6. If a person says he or she would like someone to write the statement for him or her, a police officer must write the statement.

7. If the person has not been charged with, or informed that he or she may be prosecuted for, any offence to which the statement he or she wants to make relates, the person must, before starting, be asked to sign, or make his or her mark, to the following —

(a) if the statement is not made at a time when the restriction on drawing adverse inferences from silence applies (see Annex C) —

"I, ..., wish to make a statement. I wish someone to write down what I say. I understand that I do not have to say anything but that it may harm my defence if I do not mention when questioned something which I later rely on in court. This statement may be given in evidence.";

(b) if the statement is made at a time when the restriction on drawing adverse inferences from silence applies —

"I, ..., wish to make a statement. I wish someone to write down what I say. I understand that I do not have to say anything. This statement may be given in evidence".

8. If, when charged with or informed that he or she may be prosecuted for any offence, the person asks to make a statement which relates to the offence, the person must before starting be asked to sign, or make his or her mark to, the following —

(a) if the restriction on drawing adverse inferences from silence does not apply (see Annex C) when the person was charged or informed —

"I, ..., wish to make a statement. I wish someone to write down what I say. I understand that I do not have to say anything but that it may harm my defence if I do not mention when questioned something which I later rely on in court. This statement may be given in evidence.";

(b) if the restriction on drawing adverse inferences from silence applied when he or she was charged or informed —

"I, ..., wish to make a statement. I wish someone to write down what I say. I understand that I do not have to say anything. This statement may be given in evidence."

9. If, having already been charged with or informed that he or she may be prosecuted for any offence, a person asks to make a statement which relates to any such offence, the person must before starting, be asked to sign, or make his or her mark to —

"I, ..., wish to make a statement. I wish someone to write down what I say. I understand that I do not have to say anything. This statement may be given in evidence.".

10. The person writing the statement must take down the exact words spoken by the person making it and must not edit or paraphrase it. Any questions that are necessary, e.g. to make it more intelligible, and the answers given, must be recorded at the same time on the statement form.

11. When the writing of a statement is finished the person making it must be asked to read it and to make any corrections, alterations or additions he or she wants. When he or she has finished reading he or she must be asked to write and sign or make his or her mark on the following certificate at the end of the statement —

> "I have read the above statement, and I have been able to correct, alter or add anything I wish. This statement is true. I have made it of my own free will."

12. If the person making the statement cannot read, or refuses to read it, or to write the Certificate as in paragraph 11 at the end of it or to sign it, the person taking the statement must read it to him or her and ask him or her if he or she would like to correct, alter or add anything and to put his or her signature or make his or her mark at the end. The person taking the statement must certify on the statement itself what has occurred.

ANNEX E –
SUMMARY OF PROVISIONS RELATING TO MENTALLY DISORDERED AND OTHERWISE MENTALLY VULNERABLE PEOPLE

1. If a police officer has any suspicion, or is told in good faith, that a person of any age may be mentally disordered or otherwise mentally vulnerable, or mentally incapable of understanding the significance of questions or his or her replies, the person must be treated as mentally disordered or otherwise mentally vulnerable for the purposes of this Code (see paragraph C1.4).

2. In the case of a person who is mentally disordered or otherwise mentally vulnerable, 'the appropriate adult' is a person as defined in paragraph C1.7(b).

3. If the custody officer authorises the detention of a person who is mentally vulnerable or appears to be suffering from a mental disorder, the custody officer must as soon as practicable inform the appropriate adult of the grounds for detention and the person's whereabouts, and must ask the adult to come to the place of lawful custody to see the person. If the appropriate adult —

(a) is already at the place of lawful custody when information is given as in paragraphs C3.1 to 3.5 - the information must be given in his or her presence;

(b) is not at the place of lawful custody when the provisions of paragraph C3.1 to C3.5 are complied with - these provisions must be complied with again in his or her presence once he or she arrives.

(See paragraphs C3.15 to 3.17)

4. If the appropriate adult, having been informed of the right to legal advice, considers legal advice should be taken, the provisions of section C6 apply as if the mentally disordered or otherwise mentally vulnerable person had requested access to legal advice (see paragraph C3.19 and Note E1).

5. The custody officer must ensure that a person receives appropriate clinical attention as soon as reasonably practicable if the person appears to be suffering from a mental disorder, or in urgent cases immediately call the nearest health care professional or an ambulance (see paragraphs C9.5 and C9.6).

6. [Omitted]

7. If a mentally disordered or otherwise mentally vulnerable person is cautioned in the absence of the appropriate adult, the caution must be repeated in the appropriate adult's presence (see paragraph C10.12).

8. A mentally disordered or otherwise mentally vulnerable person must not be interviewed or asked to provide or sign a written statement in the absence of the appropriate adult unless the provisions of paragraphs C11.1 or C11.18 to C11.20 apply. Questioning in these circumstances may not continue in the absence of the appropriate adult once sufficient information to avert the risk has been obtained. A record must be made of the grounds for any decision to begin an interview in these circumstances. (See paragraphs C11.1, C11.15 and C11.18 to C11.20).

9. If the appropriate adult is present at an interview, he or she must be informed that he or she is not expected to act simply as an observer and the purposes of his or her presence are to —

(a) advise the interviewee;

(b) observe whether or not the interview is being conducted properly and fairly;

(c) facilitate communication with the interviewee.

(See paragraph C11.17)

10. If the detention of a mentally disordered or otherwise mentally vulnerable person is reviewed by a reviewing officer, the appropriate adult must, if available at the time, be given an opportunity to make representations to the officer about the need for continuing detention (see paragraph C15.3).

11. If the custody officer charges a mentally disordered or otherwise mentally vulnerable person with an offence or takes other appropriate action when there is sufficient evidence for a prosecution, this must be done in the presence of the appropriate adult.

The written notice embodying any charge must be given to the appropriate adult as well as to the youth or mentally disordered/mentally vulnerable person (see paragraphs C16.1 to C16.4A).

12. An intimate or strip search of a mentally disordered or otherwise mentally vulnerable person may take place only in the presence of the appropriate adult of the same gender, unless the detainee specifically requests the presence of a particular adult of the opposite gender. A strip search may take place in the absence of an appropriate adult only in cases of urgency when there is a risk of serious harm to the detainee or others (see Annex A, paragraphs 5 and 11(c)).

13. Particular care must be taken when deciding whether to use any form of approved restraints on a mentally disordered or otherwise mentally vulnerable person in a locked cell (see paragraph C8.2).

Notes for Guidance

E1. The purpose of the provision at paragraph C3.19 is to protect the rights of a mentally disordered or otherwise mentally vulnerable detained person who does not understand the significance of what is said to him or her. If the detained person wants to exercise the right to legal advice, the appropriate action should be taken and not delayed until the appropriate adult arrives. A mentally disordered or otherwise mentally vulnerable detained person should always be given an opportunity, when an appropriate adult is called to a place of lawful custody, to consult privately with a legal practitioner in the absence of the appropriate adult if he or she wants to do so.

E2. Although people who are mentally disordered or otherwise mentally vulnerable are often capable of providing reliable evidence, they may, without knowing they are doing so or wanting to do so, be particularly prone in certain circumstances to provide information that may be unreliable, misleading or self-incriminating. Special care should always be taken when questioning such a person, and the appropriate adult should be involved if there is any doubt about a person's mental state or capacity. Because of the risk of unreliable evidence, it is important to obtain corroboration of any facts admitted whenever possible.

E3. Because of the risks referred to in Note E2, which the presence of the appropriate adult is intended to minimise, officers of the rank of inspector or above should exercise their discretion to authorise the commencement of an interview in the appropriate adult's absence only in exceptional cases, if it is necessary to avert an immediate risk of serious harm (see paragraphs C11.1 and 11.18 to 11.20).

E4. [Omitted]

ANNEX F –
[Omitted]

ANNEX G –
FITNESS TO BE INTERVIEWED

1. This Annex contains general guidance to help police officers and health care professionals assess whether a detainee might be at risk in an interview.

2. A detainee may be at risk in an interview if it is considered that —

(a) conducting the interview could significantly harm the detainee's physical or mental state;

(b) anything the detainee says in the interview about his or her involvement or suspected involvement in the offence about which he or she is being interviewed might be considered unreliable in subsequent court proceedings because of his or her physical or mental state.

3. In assessing whether the detainee should be interviewed, the following must be considered —

(a) how the detainee's physical or mental state might affect his or her ability to understand the nature and purpose of the interview, to comprehend what is being asked, to appreciate the significance of any answers given and to make rational decisions about whether he or she wants to say anything;

(b) the extent to which the detainee's replies may be affected by his or her physical or mental condition rather than representing a rational and accurate explanation of his or her involvement in the offence;

(c) how the nature of the interview, which could include particularly probing questions, might affect the detainee.

4. It is essential that health care professionals who are consulted consider the functional ability of the detainee rather than simply relying on a medical diagnosis, e.g. it is possible for a person with severe mental illness to be fit for interview.

5. Health care professionals should advise on the need for an appropriate adult to be present, whether reassessment of the person's fitness for interview may be necessary if the interview lasts beyond a specified time, and whether a further specialist opinion may be required.

6. When a health care professional identifies risks, he or she should be asked to quantify the risks. He or she should inform the custody officer —

(a) whether the person's condition —

(i) is likely to improve;

(ii) will require or be amenable to treatment; and

(b) indicate how long it might take for such improvement to take effect.

7. The role of the health care professional is to consider the risks and advise the custody officer of the outcome of that consideration. The health care professional's determination and any advice or recommendations should be made in writing and form part of the custody record.

8. Once the health care professional has provided that information, it is a matter for the custody officer to decide whether or not to allow the interview to go ahead, and if the interview is to proceed, to determine what safeguards are needed. Nothing prevents safeguards being provided

in addition to those required under the Code. An example might be to have an appropriate health care professional present during the interview, in addition to an appropriate adult, in order constantly to monitor the person's condition and how it is being affected by the interview.

ANNEX H –
DETAINED PERSON OBSERVATION LIST

1. If any detainee fails to meet any of the following criteria, an appropriate health care professional or an ambulance must be called.

2. When assessing the level of rousability, consider —

Rousability – can he or she be woken?
- go into the cell
- call his or her name
- shake gently

Response to questions – can he or she give appropriate answers to questions such as —
- What's your name?
- Where do you live?
- Where do you think you are?

Response to commands – can he or she respond appropriately to commands such as –
- Open your eyes!
- Lift one arm, now the other arm!

3. Remember to take into account the possibility or presence of other illnesses, injury, or mental condition, a person who is drowsy and smells of alcohol may also have the following —
- Diabetes
- Epilepsy
- Head injury
- Drug intoxication or overdose
- Stroke

ANNEX I and J –
[Omitted]

ANNEX K –
X-RAYS AND ULTRASOUND SCANS

A. Action

1. Under section 87 of the Ordinance a person who has been arrested and is in police detention can have an X-ray taken of him or her or an ultrasound scan carried out on him or her (or both) if it is —

(a) authorised by an officer of the rank of inspector or above who has reasonable grounds for believing that the detainee —

(i) may have swallowed a Class A drug or Class B drug; and

(ii) was in possession of that Class A drug or Class B drug with the intention of supplying it to another or to export; and

(b) the detainee's appropriate consent has been given in writing.

2. Before an X-ray is taken or an ultrasound scan carried out, a police officer must tell the detainee —

(a) that the authority has been given; and

(b) the grounds for giving the authorisation.

3. Before a detainee is asked to give appropriate consent to an X-ray or an ultrasound scan he or she must be warned that if he or she refuses without good cause, his or her refusal may harm his or her case if it comes to trial (see Notes K1 and K2). In the case of youths, mentally vulnerable or mentally disordered suspects the seeking and giving of consent must take place in the presence of the appropriate adult. A youth's consent is only valid if the parent's or guardian's consent is also obtained unless the youth is under 14, when the parent's or guardian's consent is sufficient in its own right. A detainee who is not legally represented must be reminded that he or she is entitled to obtain legal advice (see Code C, paragraph 6.5) and the reminder noted in the custody record.

4. An X-ray may only be taken by a radiographer; an ultrasound scan may only be carried out by a radiographer or a health care professional. Either procedure may only be performed at a hospital, surgery or other medical premises.

B. Documentation

5. The following must be recorded as soon as practicable in the detainee's custody record —

(a) the authorisation to take the x-ray or carry out the ultrasound scan (or both);

(b) the grounds for giving the authorisation;

(c) the giving of the warning required by paragraph 3; and

(d) the fact that the appropriate consent was given or (as the case may be) refused, and if refused, the reason given for the refusal (if any); and

(e) if an X-ray is taken or an ultrasound scan carried out —

(i) where it was taken or carried out;

(ii) who took it or carried it out;

(iii) who was present;

(iv) the result.

6. Paragraphs C1.4 to C1.7 of this Code apply and an appropriate adult should be present when consent is sought to any procedure under this Annex.

Notes for Guidance

K1. If authority is given for an x-ray to be taken or an ultrasound scan to be carried out (or both), consideration should be given to asking a radiographer to explain to the detainee what is involved and to allay any concerns the detainee might have about the effect which taking an x-ray or carrying out an ultrasound scan might have on him or her. If appropriate consent is not given, evidence of the explanation may, if the case comes to trial, be relevant to determining whether the detainee had a good cause for refusing.

K2. In warning a detainee who is asked to consent to an X-ray being taken or an ultrasound scan being carried out (or both), as in paragraph 3, the following form of words may be used–

> "You do not have to allow an x-ray of you to be taken or an ultrasound scan to be carried out on you, but I must warn you that if you refuse without good cause, your refusal may harm your case if it comes to trial."

ANNEX L –
ESTABLISHING GENDER OF PERSONS TO BE SEARCHED

[Omitted – See Annex F to Code A.]

CODE 'D'

CODE OF PRACTICE FOR THE IDENTIFICATION OF PERSONS BY POLICE OFFICERS

Contents

D1. Introduction

D1.01. This Code of Practice is a copy of the Code contained in Schedule 3 to the Criminal Procedure and Evidence Ordinance [2014] (in this Code referred to as "the Ordinance") and is to be read as one with the Ordinance.

D1.1. This Code of Practice concerns the principal methods used by police to identify people in connection with the investigation of offences and the keeping of accurate and reliable criminal records.

D1.1A. The powers and procedures in this Code must be used fairly, responsibly, with respect for the people to whom they apply, and without unlawful discrimination on the grounds of sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Police officers when carrying out their functions must have regard to the need to eliminate unlawful discrimination, harassment and victimisation and to take steps to foster good relations.

D1.2. In this Code, identification by an eye-witness arises when a witness who has seen the offender committing the crime is given an opportunity to identify a person suspected of involvement in the offence in a video identification, identification parade or similar procedure. These eyewitness identification procedures (see Part A of section D3 below) are designed to —

(a) test the witness' ability to identify the suspect as the person the witness saw on a previous occasion;

(b) provide safeguards against mistaken identification.

While this Code concentrates on visual identification procedures, it does not preclude the police making use of aural identification procedures such as a "voice identification parade", where they judge that appropriate.

D1.2A. In this code, separate provisions in Part B of section D3 below apply when any person ('A'), including a police officer, is asked if A recognises anyone A sees in an image as being someone A knows and to test A's claim to recognise that person as someone who is known to A. Except where stated, these separate provisions are not subject to the eye-witnesses identification procedures described in paragraph D1.2.

D1.3. Identification by fingerprints applies when a person's fingerprints are taken to —

(a) compare with fingerprints found at the scene of a crime;

(b) check and prove convictions;

(c) help to ascertain a person's identity.

D1.3A. Identification using footwear impressions applies when a person's footwear impressions are taken to compare with impressions found at the scene of a crime.

D1.4. Identification by body samples and impressions includes taking samples such as blood or hair to generate a DNA profile for comparison with material obtained from the scene of a crime, or a victim.

D1.5. Taking photographs of arrested people applies to recording and checking identity and locating and tracing persons who —

(a) are wanted for offences;

(b) fail to answer their bail.

D1.6. Another method of identification involves searching and examining detained suspects to find, e.g., marks such as tattoos or scars which may help establish their identity or whether they have been involved in committing an offence.

D1.7. The provisions of the Ordinance and this Code are designed to make sure fingerprints, samples, impressions and photographs are taken, used and retained, and identification procedures carried out, only when justified and necessary for preventing, detecting or investigating crime. If these provisions are not observed, the application of the relevant procedures in particular cases may be open to question.

D2. General

D2.1. This Code of Practice must be readily available at every police station and every other place of lawful custody for consultation by police officers, detained persons and members of the public.

The Code must also be published on the Falkland Islands Government and/or Royal Falkland Islands Police website, and is to be made available for consultation by members of the public in such civic locations as the Governor directs or, in the absence of such a direction, as the Chief Police Officer considers appropriate (e.g. community library).

D2.2. The Notes for Guidance are not provisions of this Code, but are guidance to police officers and others about its application and interpretation. Provisions in the Annexes to the Code are provisions of this Code.

D2.3. If an officer has any suspicion, or is told in good faith, that a person of any age may be mentally disordered or otherwise mentally vulnerable, in the absence of clear evidence to dispel that suspicion, the person must be treated as such for the purposes of this Code (see Note 1G to Code C).

D2.4. Any person who appears to be under 18 must be treated as a youth for the purposes of this Code in the absence of clear evidence that he or she is older.

D2.5. A person who appears to be blind, seriously visually impaired, deaf, unable to read or speak or who has difficulty communicating orally because of a speech impediment, must be treated as such for the purposes of this Code in the absence of clear evidence to the contrary.

D2.6. In this Code, 'appropriate adult' and 'legal practitioner' have the meanings given those terms by section 2 of the Ordinance, that is to say —

"appropriate adult" means —

(a) in relation to a youth —

(i) the youth's parent or guardian;

(ii) if the youth is in the care of the Department - a person representing the Department; or

(iii) if a person described in (i) or (ii) is not available - any person over the age of 21 who is not a police officer or a person employed by the police and who is considered suitable by the custody officer;

(Note: The 'Department' means the Social Services Department.)

(b) in relation to a person who is mentally disordered or mentally vulnerable —

(i) a relative, guardian or other person responsible for the person's care or custody;

(ii) someone experienced in dealing with mentally disordered or mentally vulnerable people but who is not a police officer or person employed by the police; or

(iii) if a person described in (i) or (ii) is not available - any person over the age of 21 who is not a police officer or person employed by the police and who is considered suitable by the custody officer;

"legal practitioner" means a person who is entitled to practise as an advocate or as a solicitor, attorney or proctor in any court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland.

D2.6A. Establishing gender for purposes of a search of a person is to be done in accordance with Annex F to Code A.

D2.7. References to custody officers include those performing the functions of custody officer.

D2.8. When a record of any action requiring the authority of an officer of a specified rank is made under this Code, subject to paragraph D2.18, the officer's name and rank must be recorded.

D2.9. When this Code requires the prior authority or agreement of an officer of a specified rank or above, the authority may be given by an officer who has been authorised to perform the functions of that rank under section 781 of the Ordinance.

D2.10. Subject to paragraph D2.18, all records must be timed and signed by the maker.

D2.11. Records must be made in the custody record, unless otherwise specified. References to 'pocket book' include any official report book issued to police officers.

D2.12. If any procedure in this Code requires a person's consent, the consent of —

(a) a mentally disordered or otherwise mentally vulnerable person - is only valid if given in the presence of the appropriate adult;

(b) a youth - is only valid if the consent of the youth's parent or guardian is also obtained, unless the youth is under 14, in which case the parent's or guardian's consent is sufficient in its own right (see Note 2A)

D2.12A. If the only obstacle to an identification procedure in section D3 is that a youth's parent or guardian refuses consent or reasonable efforts to obtain it have failed, the identification officer may apply the provisions of paragraph D3.21.

D2.13. If a person is blind, seriously visually impaired or unable to read, the custody officer or identification officer must make sure the person's legal practitioner, relative, appropriate adult or some other person likely to take an interest in the person and not involved in the investigation is available to help check any documentation. When this Code requires written consent or signing,

the person assisting may be asked to sign instead, if the detainee prefers. This paragraph does not require an appropriate adult to be called solely to assist in checking and signing documentation for a person who is not mentally disordered or otherwise mentally vulnerable, or a youth. (See Note 2B and Code C paragraph C3.15.)

D2.14. If any procedure in this Code requires information to be given to or sought from a suspect, it must be given or sought in the appropriate adult's presence if the suspect is mentally disordered, otherwise mentally vulnerable or a youth. If the appropriate adult is not present when the information is first given or sought, the procedure must be repeated in the presence of the appropriate adult when that person arrives. If the suspect appears to be deaf or there is doubt about his or her hearing or speaking ability or ability to understand English, and effective communication cannot be established, the information must be given or sought through an interpreter.

D2.15. Any procedure in this Code involving the participation of a suspect who is mentally disordered, otherwise mentally vulnerable or a youth, must take place in the presence of the appropriate adult. (See Code C paragraph C1.4.)

D2.15A. Any procedure in this Code involving the participation of a witness who is or appears to be mentally disordered, otherwise mentally vulnerable or a youth should take place in the presence of a support person. However, the support person must not be allowed to prompt any identification of a suspect by a witness. (See Note 2AB)

D2.16. References to —

(a) 'taking a photograph', include the use of any process to produce a single, still or moving, visual image;

(b) 'photographing a person', should be construed accordingly;

(c) 'photographs', 'films', 'negatives' and 'copies' include relevant visual images recorded, stored, or reproduced through any medium;

(d) 'destruction' includes the deletion of computer data relating to such images or making access to that data impossible.

D2.17. Except as described, nothing in this Code affects the powers and procedures for requiring and taking samples of breath in relation to driving offences, etc. under the Road Traffic Ordinance.

D2.18. Nothing in this Code requires the identity of officers to be recorded or disclosed if the officers reasonably believe recording or disclosing their names might put them in danger. In these cases, they must use warrant or other identification numbers. (See Note 2D)

D2.19 to 21. [Omitted]

Notes for Guidance

2A. For the purposes of paragraph D2.12, the consent required from a parent or guardian may, for a youth in the care of the Crown, be given by the officer with responsibility for that youth. In the case of a youth, nothing in paragraph D2.12 requires the parent, guardian or practitioner of the Social Services Department to be present to give consent, unless the person is acting as the appropriate adult under paragraphs D2.14 or D2.15. However, it is important that a parent or guardian not present is fully informed before being asked to consent. He or she must be given the same information about the procedure and the youth's suspected involvement in the offence as the youth and appropriate adult. The parent or guardian must also be allowed to speak to the youth and the appropriate adult if the parent or guardian wishes. Provided the consent is fully informed and is not withdrawn, it may be obtained at any time before the procedure takes place.

2AB. A pre-trial support person is a person other than a police officer who is asked by the investigating officer to accompany a vulnerable witness during an identification procedure, unless the witness states that he or she does not want a support person to be present. The support person should not be, or be likely to be, a witness in the investigation.

2B. People who are seriously visually impaired or unable to read may be unwilling to sign police documents. The alternative, i.e. their practitioner signing on their behalf, seeks to protect the interests of both police and suspects.

2C. [Omitted]

2D. The purpose of paragraph D2.18 is to protect those involved in serious organised crime investigations or arrests of particularly violent suspects when there is reliable information that those arrested or their associates may threaten or cause harm to the officers. In cases of doubt, an officer of the rank of inspector or above should be consulted.

D3. Identification and recognition of suspects

Part I. Identification of a suspect by an eye-witness

D3.0. This part applies when an eye-witness has seen the offender committing the crime or in any other circumstances which tend to prove or disprove the involvement of the person the witness saw in the crime, for example, close to the scene of the crime, immediately before or immediately after it was committed. It sets out the procedures to be used to test the ability of the eye-witness to identify a person suspected of involvement in the offence as the person the witness saw on the previous occasion. Except where stated, this part does not apply to the procedures described in Part B and *Note 3AA.*

D3.1. A record must be made of the suspect's description as first given by a potential witness. This record must —

(a) be made and kept in a form which enables details of that description to be accurately produced from it, in a visible and legible form, which can be given to the suspect or his or her legal practitioner in accordance with this Code; and

(b) unless otherwise specified, be made before the witness takes part in any identification procedures under paragraphs D3.5 to D3.10, D3.21 or D3.23.

A copy of the record must, where practicable, be given to the suspect or his or her legal practitioner before any procedures under paragraphs D3.5 to D3.10, D3.21 or D3.23 are carried out. (See Note 3E)

A. Cases when the suspect's identity is not known

D3.2. In cases when the suspect's identity is not known, a witness may be taken to a particular neighbourhood or place to see whether he or she can identify the person he or she saw. Although the number, age, gender, race, general description and style of clothing of other people present at the location and the way in which any identification is made cannot be controlled, the principles applicable to the formal procedures under paragraphs D3.5 to D3.10 must be followed as far as practicable. For example —

(a) if it is practicable to do so, a record should be made of the witness' description of the suspect, as in paragraph D3.1(a), before asking the witness to make an identification;

(b) care must be taken not to direct the witness' attention to any individual unless, taking into account all the circumstances, this cannot be avoided. However, this does not prevent a witness being asked to look carefully at the people around at the time or to look towards a group or in a particular direction, if this appears necessary to make sure that the witness does not overlook a possible suspect simply because the witness is looking in the opposite direction, and also to enable the witness to make comparisons between any suspect and others who are in the area (see Note 3F);

(c) if there is more than one witness, every effort should be made to keep them separate and witnesses should be taken to see whether they can identify a person independently;

(d) once there is sufficient information to justify the arrest of a particular individual for suspected involvement in the offence, e.g., after a witness makes a positive identification, the provisions from paragraph D3.4 onwards apply for any other witnesses in relation to that individual. Subject to paragraphs D3.12 and D3.13, it is not necessary for the witness who makes such a positive identification to take part in a further procedure;

(e) the officer accompanying the witness must record, in his or her pocket book, the action taken as soon as, and in as much detail, as possible. The record should include —

(i) the date, time and place of the relevant occasion the witness claims to have previously seen the suspect;

(ii) where any identification was made; how it was made and the conditions at the time (e.g., the distance the witness was from the suspect, the weather and light);

(iii) whether the witness's attention was drawn to the suspect; the reason for this; and anything said by the witness or the suspect about the identification or the conduct of the procedure.

D3.3. A witness must not be shown photographs, computerised or artist's composite likenesses or similar likenesses or pictures (including 'E-fit' images) if the identity of the suspect is known to the police and the suspect is available to take part in a video identification, an identification parade or a group identification. If the suspect's identity is not known, the showing of such images to a witness to obtain identification evidence must be done in accordance with Annex E.

B. Cases when the suspect is known and available

D3.4. If the suspect's identity is known to the police and the suspect is available, the identification procedures set out in paragraphs D3.5 to D3.10 may be used. References in this section to a suspect being 'known' mean there is sufficient information known to the police to justify the arrest of a particular person for suspected involvement in the offence. A suspect being 'available' means he or she is immediately available, or will be within a reasonably short time, and willing to take an effective part in at least one of the following and that it is practicable to arrange —

(a) video identification;

(b) identification parade;

(c) group identification.

Video identification

D3.5. A 'video identification' is when the witness is shown moving images of a known suspect, together with similar images of others who resemble the suspect. Moving images must be used unless —

(a) the suspect is known but not available (see paragraph D3.21); or

(b) in accordance with paragraph 2A of Annex A of this Code, the identification officer does not consider that replication of a physical feature can be achieved or that it is not possible to conceal the location of the feature on the image of the suspect.

The identification officer may then decide to make use of video identification but using still images.

D3.6. Video identifications must be carried out in accordance with Annex A.

Identification parade

D3.7. An 'identification parade' is when the witness sees the suspect in a line of others who resemble the suspect.

D3.8. Identification parades must be carried out in accordance with Annex B.

Group identification
D3.9. A ‘group identification’ is when the witness sees the suspect in an informal group of people.

D3.10. Group identifications must be carried out in accordance with Annex C.

Arranging identification procedures
D3.11. Except for the provisions in paragraph D3.19, the arrangements for, and conduct of, the identification procedures in paragraphs D3.5 to D3.10 and circumstances in which an identification procedure must be held are the responsibility of an officer of the rank of sergeant or above who, so far as practicable, is not involved with the investigation (‘the identification officer’).

Unless otherwise specified, the identification officer may allow another officer to make arrangements for, and conduct, any of these identification procedures. In delegating these procedures, the identification officer must be able to supervise effectively and either intervene or be contacted for advice. No officer or any other person involved with the investigation of the case against the suspect, beyond the extent required by these procedures, may take any part in these procedures or act as the identification officer. This does not prevent the identification officer from consulting the officer in charge of the investigation to determine which procedure to use. When an identification procedure is required, in the interest of fairness to suspects and witnesses, it must be held as soon as practicable.

Circumstances in which an identification procedure must be held
D3.12. Whenever —

(a) a witness has identified a suspect or purported to have identified a suspect prior to any identification procedure set out in paragraphs D3.5 to D3.10 having been held; or

(b) there is a witness available, who expresses an ability to identify the suspect, or there is a reasonable chance of the witness being able to do so, and the witness has not been given an opportunity to identify the suspect in any of the procedures set out in paragraphs D3.5 to D3.10; and

(c) the suspect disputes being the person the witness claims to have seen,

an identification procedure must be held unless it is not practicable or it would serve no useful purpose in proving or disproving whether the suspect was involved in committing the offence. For example —

(i) if the suspect admits being at the scene of the crime and gives an account of what took place and the eye-witness does not see anything which contradicts that;

(ii) when it is not disputed that the suspect is already well known to the witness who claims to have seen the suspect commit the crime.

D3.13. An eye-witness identification procedure may also be held if the officer in charge of the investigation considers it would be useful.

Selecting an identification procedure
D3.14. If, because of paragraph D3.12, an identification procedure is to be held, the suspect must initially be offered a video identification unless —

(a) a video identification is not practicable; or

(b) an identification parade is both practicable and more suitable than a video identification; or

(c) paragraph D3.16 applies.

The identification officer and the officer in charge of the investigation must consult each other to determine which option is to be offered. An identification parade may not be practicable because of factors relating to the witnesses, such as their number, state of health, availability and travelling requirements. A video identification would normally be more suitable if it could be arranged and completed sooner than an identification parade. Before an option is offered the suspect must also be reminded of the entitlement to obtain legal advice.

D3.15. A suspect who refuses the identification procedure first offered must be asked to state his or her reason for refusing and may get advice from his or her legal practitioner and/or if present, the appropriate adult. The suspect, legal practitioner and/or appropriate adult must be allowed to make representations about why another procedure should be used. A record must be made of the reasons for refusal and any representations made. After considering any reasons given, and representations made, the identification officer must, if appropriate, arrange for the suspect to be offered an alternative which the officer considers suitable and practicable. If the officer decides it is not suitable and practicable to offer an alternative identification procedure, the reasons for that decision must be recorded.

D3.16. A group identification may initially be offered if the officer in charge of the investigation considers it is more suitable than a video identification or an identification parade and the identification officer considers it practicable to arrange.

Notice to suspect
D3.17. Unless paragraph D3.20 applies, before a video identification, an identification parade or group identification is arranged, the following must be explained to the suspect —

(a) the purposes of the video identification, identification parade or group identification;

(b) the suspect's entitlement to obtain legal advice (see paragraph C6.5 of Code C);

(c) the procedures for holding it, including the suspect's right to have a legal practitioner or friend present;

(d) that the suspect does not have to consent to or co-operate in a video identification, identification parade or group identification;

(e) that if the suspect does not consent to, and co-operate in, a video identification, identification parade or group identification, the refusal may be given in evidence in any subsequent trial and police may proceed covertly without the suspect's consent or make other arrangements to test whether a witness can identify the suspect (see paragraph D3.21);

(f) whether, for the purposes of the video identification procedure, images of the suspect have previously been obtained (see paragraph D3.20), and if so, that the suspect may co-operate in providing further, suitable images to be used instead;

(g) if appropriate, the special arrangements for youths;

(h) if appropriate, the special arrangements for mentally disordered or otherwise mentally vulnerable people;

(i) that if the suspect significantly alters his or her appearance between being offered an identification procedure and any attempt to hold an identification procedure, this may be given in evidence if the case comes to trial, and the identification officer may then consider other forms of identification (see paragraph D3.21 and Note 3C);

(j) that a moving image or photograph may be taken of the suspect when he or she attends any identification procedure;

(k) whether, before the suspect's identity became known, the witness was shown photographs, a computerised or artist's composite likeness or similar likeness or image by the police (see Note 3B);

(l) that if the suspect changes his or her appearance before an identification parade, it may not be practicable to arrange one on the day or subsequently and, because of the appearance change, the identification officer may consider alternative methods of identification (see Note 3C);

(m) that the suspect or his or her legal practitioner will be provided with details of the description of the suspect as first given by any witnesses who are to attend the video identification, identification parade, group identification or confrontation (see paragraph D3.1).

D3.18. This information must also be recorded in a written notice handed to the suspect. The suspect must be given a reasonable opportunity to read the notice, after which the suspect should be asked to sign a second copy to indicate if he or she is willing to co-operate with the making of a video or take part in the identification parade or group identification. The signed copy must be retained by the identification officer.

D3.19. The duties of the identification officer under paragraphs D3.17 and D3.18 may be performed by the custody officer or some other officer not involved in the investigation if —

(a) it is proposed to release the suspect so that an identification procedure can be arranged and carried out and an officer of the rank of sergeant or above is not available to act as the identification officer (see paragraph D3.11) before the suspect leaves the place of lawful custody; or

(b) it is proposed to keep the suspect in police detention while the procedure is arranged and carried out and waiting for an officer of the rank of sergeant or above to act as the identification officer (see paragraph D3.11) would cause unreasonable delay to the investigation.

The officer concerned must inform the identification officer of the action taken and give that officer the signed copy of the notice (see Note 3C).

D3.20. If the identification officer and officer in charge of the investigation suspect, on reasonable grounds, that if the suspect was given the information and notice as in paragraphs D3.17 and D3.18, he or she would then take steps to avoid being seen by a witness in any identification procedure, the identification officer may arrange for images of the suspect suitable for use in a video identification procedure to be obtained before giving the information and notice. If the suspect's images are obtained in these circumstances, the suspect may, for the purposes of a video identification procedure, co-operate in providing new images which if suitable, would be used instead (see paragraph D3.17(f)).

C. Cases when the suspect is known but not available

D3.21. When a known suspect is not available or has ceased to be available (see paragraph D3.4) the identification officer may make arrangements for a video identification (see Annex A). If necessary, the identification officer may follow the video identification procedures but using still images. Any suitable moving or still images may be used and these may be obtained covertly if necessary. Alternatively, the identification officer may make arrangements for a group identification (see Note 3D). These provisions may also be applied to a youth if the consent of the parent or guardian is either refused or reasonable efforts to obtain that consent have failed (see paragraph D2.12A).

D3.22. Any covert activity should be strictly limited to that necessary to test the ability of the witness to identify the suspect.

D3.23. The identification officer may arrange for the suspect to be confronted by the witness if none of the options referred to in paragraphs D3.5 to D3.10 or D3.21 are practicable. A "confrontation" is when the suspect is directly confronted by the witness. A confrontation does not require the suspect's consent. Confrontations must be carried out in accordance with Annex D.

D3.24. Requirements for information to be given to, or sought from, a suspect or for the suspect to be given an opportunity to view images before they are shown to a witness, do not apply if the suspect's lack of co-operation prevents the necessary action.

D. Documentation

D3.25. A record must be made of the video identification, identification parade, group identification or confrontation on forms provided for the purpose.

D3.26. If the identification officer considers it is not practicable to hold a video identification or identification parade requested by the suspect, the reasons must be recorded and explained to the suspect.

D3.27. A record must be made of a person's failure or refusal to co-operate in a video identification, identification parade or group identification and, if applicable, of the grounds for obtaining images in accordance with paragraph D3.20.

E. Showing films and photographs of incidents and information released to the media

D3.28. Nothing in this Code precludes showing films or photographs to the public through the media, or to police officers for the purposes of recognition and tracing suspects. However, when such material is shown to obtain evidence of recognition, the procedures in Part B will apply. (See Note 3AA)

D3.29. When a broadcast or publication is made (see paragraph D3.28), a copy of the relevant material released to the media for the purposes of recognising or tracing the suspect must be kept. The suspect or his or her legal practitioner must be allowed to view such material before any procedures under paragraphs D3.5 to D3.10, D3.21 or D3.23 are carried out, if it is practicable and would not unreasonably delay the investigation. Each eye-witness involved in the procedure must be asked, after he or she has taken part, whether he or she has seen any film, photograph or image relating to the offence or any description of the suspect that has been broadcast or published in any media or on any social networking site, and if the witness has, he or she should be asked to give details of the circumstances, such as the date and place as relevant. The replies must be recorded.

This paragraph does not affect any other requirement under the Ordinance to retain material in connection with criminal investigations (see the Code on the recording, retention and disclosure of material obtained in a criminal investigation).

F. Destruction and retention of photographs taken or used in identification procedures

D3.30. Section 115 of the Ordinance (see paragraph D5.12) provides powers to take photographs of suspects and allows the photographs to be used or disclosed only for purposes related to the prevention or detection of crime, the investigation of offences or the conduct of prosecutions by, or on behalf of, police or other law enforcement and prosecuting authorities inside and outside the Falkland Islands, or the enforcement of a sentence. After being so used or disclosed, they may be retained but can only be used or disclosed for the same purposes.

D3.31. Subject to paragraph D3.33, any photographs (and all negatives and copies), of suspects that are not taken in accordance with paragraph D5.12 and that are taken for the purposes of, or in connection with, the identification procedures in paragraphs D3.5 to D3.10, D.21 or D3.23, must be destroyed unless the suspect —

(a) is charged with, or informed he or she may be prosecuted for, an imprisonable offence (i.e. an offence for which a sentence of imprisonment can be imposed);

(b) is prosecuted for an imprisonable offence;

(c) is cautioned for an imprisonable offence; or

(d) gives informed consent, in writing, for the photograph or images to be retained or purposes described in paragraph D3.30.

D3.32. When paragraph D3.31 requires the destruction of any photograph of a person, the person must be given an opportunity to witness the destruction or to have a certificate confirming the destruction if the person asks for one within 5 days of being informed that the destruction is required.

D3.33. Nothing in paragraph D3.31 affects any other requirement under the Ordinance to retain material in connection with criminal investigations – see the Code of Practice on the recording, retention and disclosure of material obtained in a criminal investigation ('Disclosure Code').

Part II. Evidence of recognition by showing films, photographs and other images

D3.34. This part of this section applies when, for the purposes of obtaining evidence of recognition, any person, including a police officer —

(a) views the image of an individual in a film, photograph or any other visual medium; and

(b) is asked whether he or she recognises that individual as someone who is known to the person.

(See Notes 3AA and 3G)

D3.35. The films, photographs and other images must be shown on an individual basis to avoid any possibility of collusion and to provide safeguards against mistaken recognition (see Note 3G). The showing must as far as possible follow the principles for video identification if the suspect is known (see Annex A), or identification by photographs if the suspect is not known (see Annex E).

D3.36. A record of the circumstances and conditions under which the person is given an opportunity to recognise the individual must be made and the record must include —

(a) whether the person knew or was given information concerning the name or identity of

any suspect;

(b) what the person has been told before the viewing about the offence, or the person(s) depicted in the images of the offender, and by whom;

(c) how and by whom the witness was asked to view the image or look at the individual;

(d) whether the viewing was alone or with others and if with others the reason for it;

(e) the arrangements under which the person viewed the film or saw the individual and by whom these arrangements were made;

(f) whether the viewing of the images was arranged as part of a mass circulation to police and the public or for selected purposes;

(g) the date, time and place that images were viewed or further viewed or the individual was seen;

(h) the times between which the images were viewed or the individual seen;

(i) how the viewing of images or sighting of the individual was controlled and by whom;

(j) whether the person was familiar with the location shown in any images or the place where the person saw the individual, and if so, why;

(k) whether or not on this occasion, the person claims to recognise any image shown, or any individual seen, as being someone known to the person, and if so —

(i) the reason;

(ii) the words of recognition;

(iii) any expressions of doubt;

(iv) what features of the image or the individual triggered the recognition.

D3.37. The record under paragraph D3.36 may be made by —

(a) the person who views the image or sees the individual and makes the recognition; or

(b) the officer in charge of showing the images to the person or in charge of the conditions under which the person sees the individual.

Notes for Guidance

3AA. The eye-witness identification procedures in Part A should not be used to test whether a witness can recognise a person as someone the witness knows and would be able to give

evidence of recognition along the lines that "On (describe date, time location) I saw an image of an individual who I recognised as AB." In these cases, the procedures in Part B apply.

3A. A police officer who is a witness for the purposes of this part of the Code is subject to the same principles and procedures as a civilian witness.

3B. When a witness attending an identification procedure has previously been shown photographs, or been shown or provided with computerised or artist's composite likenesses, or similar likenesses or pictures, it is the responsibility of the officer in charge of the investigation to make the identification officer aware of this.

3C. The purpose of paragraph D3.19 is to avoid or reduce delay in arranging identification procedures by enabling the required information and warnings (see sub-paragraphs D3.17(i) and D3.17(l)) to be given at the earliest opportunity.

3D. Paragraph D3.21 would apply when a known suspect deliberately makes himself or herself 'unavailable' in order to delay or frustrate arrangements for obtaining identification evidence. It also applies when a suspect refuses or fails to take part in a video identification, an identification parade or a group identification, or refuses or fails to take part in the only practicable options from that list. It enables any suitable images of the suspect, moving or still, which are available or can be obtained, to be used in an identification procedure. Examples include images from custody and other CCTV systems and from visually recorded interview records (see Code F Note 2D).

3E. When it is proposed to show photographs to a witness in accordance with Annex E, it is the responsibility of the officer in charge of the investigation to confirm to the officer responsible for supervising and directing the showing, that the first description of the suspect given by that witness has been recorded. If this description has not been recorded, the procedure under Annex E must be postponed (see Annex E paragraph 2).

3F. The admissibility and value of identification evidence obtained when carrying out the procedure under paragraph D3.2 may be compromised if —

(a) before a person is identified, the witness' attention is specifically drawn to that person; or

(b) the suspect's identity becomes known before the procedure.

3G. The admissibility and value of evidence of recognition obtained when carrying out the procedures in Part B may be compromised if before the person is recognised, the witness who has claimed to know the person is given or is made, or becomes aware of, information about the person which was not previously known to the witness personally but which the witness has purported to rely on to support the claim that the person is in fact known to the witness.

D4. Identification by fingerprints and footwear impressions

Part I. Taking fingerprints in connection with a criminal investigation

A. General

D4.1. References to 'fingerprints' mean any record, produced by any method, of the skin pattern and other physical characteristics or features of a person's fingers or palms.

B. Taking the fingerprints

D4.2. A person's fingerprints may be taken in connection with the investigation of an offence only with the person's consent or if paragraph D4.3 applies. If the person is at a place of lawful custody, consent must be in writing.

D4.3. Section 91 of the Ordinance empowers police officers to take fingerprints without consent from the following —

(a) a person who has been bailed to appear at a court or place of lawful custody if —

(i) the person has answered to bail for a person whose fingerprints were taken previously and there are reasonable grounds for believing the two persons are not the same; or

(ii) the person who has answered to bail claims to be a different person from a person whose fingerprints were previously taken,

and in either case, the court or an officer the rank of sergeant or above authorises the fingerprints to be taken at the court or place of lawful custody; (section 91(3) and (4))

(b) a person whom a police officer reasonably suspects is committing or attempting to commit, or has committed or attempted to commit, any offence if either —

(i) the person's name is unknown and cannot be readily ascertained by the officer; or

(ii) the officer has reasonable grounds for doubting whether a name given by the person is the person's real name; (section91(5))

(c) a person detained at a place of lawful custody in consequence of being arrested for an imprisonable offence (see Note 4A); (section 91(7)(a))

(d) a person detained at a place of lawful custody who has been charged with an imprisonable offence (see Note 4A) or informed he or she will be reported for such an offence; (section 91(7)(b))

(e) a person not detained at a place of lawful custody who has been charged with an imprisonable offence (see Note 4A) or informed he or she will be reported for such an offence; (section 91(8))

(f) a person who has been —

(i) convicted of an imprisonable offence; or

(ii) given a caution in respect of such an offence which, at the time of the caution, the person admitted; (section 91(9))

(g) a person who has been arrested for an imprisonable offence and released on bail; (section 91(10))

(h) a person who has been convicted of an offence under the law of a country or territory outside the Falkland Islands which would constitute a qualifying offence if done in the Falkland Islands (see Note 4AB). (section 91(11))

Note 1: Fingerprints may only be taken under paragraphs (c) to (h) if the person has not had his or her fingerprints taken in the course of the investigation of the offence or in exercise of the relevant power, unless the fingerprints taken previously do not constitute a complete set, or some or all of them are not of sufficient quality to allow satisfactory analysis, comparison or matching (section 91(12))

Note 2: Fingerprints may only be taken under those paragraphs if a police officer of the rank of sergeant or above is satisfied that taking fingerprints is necessary to assist in the prevention or detection of crime and authorises them to be taken (section 91(17))

D4.4. Section 95 and Schedule 2 to the Ordinance empower police officers to require (in accordance with Annex G) a person who is not detained to attend a place of lawful custody to have his or her fingerprints taken under the powers in paragraph D4.3. The time-limits for making a requirement are —

(a) persons charged etc. with an imprisonable offence (see paragraph D4.3(e)): The requirement may not be made more than 6 months after —

(i) the day the person was charged or reported if fingerprints have not been taken since then; or

(i) the day the investigating officer was informed that the fingerprints previously taken were incomplete or below standard;

(b) persons convicted or cautioned for an imprisonable offence in the Falkland Islands (see paragraph D4.3(f)). If the offence for which the person was convicted or cautioned is also a qualifying offence (see Note 4AB) there is no time limit for the exercise of this power. If the conviction or caution is for an imprisonable offence which is not a qualifying offence, the requirement may not be made more than 2 years from —

(i) the day the person was convicted or cautioned, if fingerprints have not been taken since then; or

(ii) the day an officer investigating the offence was informed that the fingerprints previously taken were incomplete or below standard;

(c) persons arrested for an imprisonable offence and released (see paragraph D4.3(g)). The requirement may not be made more than 6 months after the day the investigating officer was informed that the fingerprints previously taken were incomplete or below standard;

(d) persons convicted of a qualifying offence (see Note 4AB) outside the Falkland Islands (see paragraph D4.3(h): There is no time limit for making the requirement.

Note: A person who has had his or her fingerprints taken under any of the powers in section 91 on 2 occasions in relation to any offence may not be required to attend a place of lawful custody for fingerprints to be taken again under section 91 in relation to that offence, unless authorised by an officer of the rank of inspector or above. The fact of the authorisation and the reasons for giving it must be recorded as soon as practicable.

D4.4A. A police officer may arrest without warrant a person who fails to comply with a requirement mentioned in paragraph D4.4.

D4.5. A person's fingerprints may be taken, as above, electronically.

D4.6. Reasonable force may be used, if necessary, to take a person's fingerprints without the person's consent under the powers as in paragraphs D4.3 and D4.4.

D4.7. Before any fingerprints are taken —

(a) without consent under any power in section 91, the person must be informed of —

(i) the reason the fingerprints are to be taken;

(ii) the power under which they are to be taken; and

(iii) the fact that the relevant authority has been given.

(b) with or without consent at a place of lawful custody or elsewhere, the person must be informed —

(i) that the fingerprints may be subject of a speculative search against other fingerprints (see Note 4B); and

(ii) that the fingerprints may be retained in accordance with paragraph A2 of Annex F unless they were taken under the power mentioned in paragraph 4.3(e) when they must be destroyed after they have been checked (see Note 4C).

C. Documentation

D4.8A. A record must be made as soon as practicable after the fingerprints are taken, of —

(a) the matters in paragraph D4.7(a)(i) to (iii) and the fact that the person has been informed of those matters; and

(b) the fact that the person has been informed of the matters in paragraph D4.7(b)(i) and (ii).

The record must be made in the person's custody record if the person is detained at a place of lawful custody when the fingerprints are taken.

D4.8. If force is used, a record must be made of the circumstances and those present.

Part II. Taking fingerprints in connection with immigration enquiries
[Omitted]

Part III. Taking footwear impressions in connection with a criminal investigation
A. Action
D4.16. Impressions of a person's footwear may be taken in connection with the investigation of an offence only with the person's consent or if paragraph D4.17 applies. If the person is at a place of lawful custody, consent must be in writing.

D4.17. Section 92 of the Ordinance empowers a police officer to take footwear impressions without consent from any person who is detained at a place of lawful custody —

(a) in consequence of being arrested for an imprisonable offence (see Note 4A) or if the detainee has been charged with such an offence, or informed he or she will be reported for such an offence; and

(b) the detainee has not had an impression of his or her footwear taken in the course of the investigation of the offence unless the previously taken impression is not complete or is not of sufficient quality to allow satisfactory analysis, comparison or matching (whether in the case in question or generally).

D4.18. Reasonable force may be used, if necessary, to take a footwear impression from a detainee without consent under the power in paragraph D4.17.

D4.19. Before any footwear impression is taken with, or without, consent as above, the person must be informed —

(a) of the reason the impression is to be taken;

(b) that the impression may be retained and may be subject of a speculative search against other impressions (see Note 4B), unless destruction of the impression is required in accordance with Annex F, Part A; and

(c) that if the person's footwear impressions are required to be destroyed, the person may witness their destruction as provided for in Annex F, Part A.

B. Documentation

D4.20. A record must be made as soon as possible, of the reason for taking a person's footwear impressions without consent. If force is used, a record must be made of the circumstances and of the persons present.

D4.21. A record must be made when a person has been informed, in accordance with paragraph D4.19(b), of the possibility that his or her footwear impressions may be the subject of a speculative search.

Notes for Guidance

4A. Under section 2 of the Ordinance an 'imprisonable offence' means an offence for which a sentence of imprisonment can be imposed, other than for non-payment of a fine.

4AB. A 'qualifying offence' is a sexual offence or an offence of violence. These terms are defined in section 2 of the Ordinance.

4B. Fingerprints, footwear impressions or a DNA sample (and the information derived from it) taken from a person arrested on suspicion of being involved in an imprisonable offence, or charged with such an offence, or informed he or she will be reported for such an offence, may be subject of a speculative search. This means the fingerprints, footwear impressions or DNA sample may be checked against other fingerprints, footwear impressions and DNA records held by, or on behalf of, the police and other law enforcement authorities in, or outside, the Falkland Islands, or held in connection with, or as a result of, an investigation of an offence inside or outside the Falkland Islands.

Fingerprints, footwear impressions and samples taken from a person suspected of committing an imprisonable offence but not arrested, charged or informed he or she will be reported for it, may be subject to a speculative search only if the person consents in writing. The following is an example of a basic form of words —

> "I consent to my fingerprints, footwear impressions and DNA sample and information derived from it being retained and used only for purposes related to the prevention and detection of a crime, the investigation of an offence or the conduct of a prosecution either nationally or internationally.
>
> I understand that my fingerprints, footwear impressions or DNA sample may be checked against other fingerprint, footwear impressions and DNA records held by or on behalf of relevant law enforcement authorities, either in the Falkland Islands or elsewhere.
>
> I understand that once I have given my consent for my fingerprints, footwear impressions or DNA sample to be retained and used I cannot withdraw this consent."

(See Annex F regarding the retention and use of fingerprints and footwear impressions taken with consent for elimination purposes.)

4C. The power described in paragraph D 4.3(e) allows fingerprints of a suspect who has not been arrested to be taken in connection with any offence (whether imprisonable or not) using a mobile device and then checked on the street against the database containing the national fingerprint collection. Fingerprints taken under this power cannot be retained after they have been checked. The results may make an arrest for the suspected offence based on the name condition unnecessary (see paragraph G2.9(a) of Code G) and enable the offence to be disposed of without arrest, for example, by summons/charging by post, penalty notice or words of advice.

If arrest for a non-imprisonable offence is necessary for any other reason, this power may also be exercised at a place of lawful custody. Before the power is exercised, the officer should —

(a) inform the person of the nature of the suspected offence and why the person is suspected of committing it;

(b) give the person a reasonable opportunity to establish his or her real name before deciding that the name is unknown and cannot be readily ascertained or that there are reasonable grounds to doubt that a name the person has given is the real name;

(c) as applicable, inform the person of the reason why the name is not known and cannot be readily ascertained or of the grounds for doubting that a name the person has given is his or her real name, including, for example, the reason why a particular document the person has produced to verify the real name is not sufficient.

4D. [Omitted]

D5. Examinations to establish identity and the taking of photographs

I. Detainees at a place of lawful custody

A. Searching or examination of detainees at a place of lawful custody

D5.1. Section 85 of the Ordinance allows a detainee at a place of lawful custody to be searched or examined or both, to establish —

(a) whether the detainee has any marks, features or injuries that would tend to identify him or her as a person involved in the commission of an offence and to photograph any identifying marks (see paragraph D5.5); or

(b) the detainee's identity.

A person detained at a place of lawful custody to be searched under a stop and search power (see Code A) is not a detainee for the purposes of these powers.

D5.2. A search and/or examination to find marks under section 85(1)(a) may be carried out without the detainee's consent (see paragraph D2.12) only if authorised by an officer the rank of inspector or above when consent has been withheld or it is not practicable to obtain consent (see Note 5D).

D5.3. A search or examination to establish a suspect's identity under section 85(1)(b) may be carried out without the detainee's consent (see paragraph D2.12) only if authorised by an officer of the rank of inspector or above and only if the detainee has refused to identify himself or herself or the authorising officer has reasonable grounds for suspecting the person is not who he or she claims to be.

D5.4. Any marks that assist in establishing the detainee's identity, or his or her identification as a person involved in the commission of an offence, are identifying marks. Such marks may be photographed with the detainee's consent (see paragraph D2.12), or without consent if it is withheld or it is not practicable to obtain it (see Note 5D).

D5.5. A detainee may only be searched, examined and photographed under section 85 by a police officer of the same gender, except in the case of a strip search not involving exposure of intimate body parts, as to which see paragraph 11(aa) of Annex A to Code C.

D5.6. Any photographs of identifying marks, taken under section 85, may be used or disclosed only for purposes related to the prevention or detection of crime, the investigation of offences or the conduct of prosecutions by, or on behalf of, police or other law enforcement and prosecuting authorities in the Falkland Islands or elsewhere. After being so used or disclosed, the photograph may be retained, but must not be used or disclosed except for these purposes (see Note 5B).

D5.7. The powers mentioned in paragraph D5.1 do not affect any other requirement under the Ordinance to retain material in connection with criminal investigations – see the Code of Practice on the recording, retention and disclosure of material obtained in a criminal investigation ('Disclosure Code').

D5.8. Authority for the search and/or examination for the purposes of paragraphs D5.2 and 5.3 may be given orally or in writing. If given orally, the authorising officer must confirm it in writing as soon as practicable. A separate authority is required for each purpose which applies.

D5.9. If it is established that a person is unwilling to co-operate sufficiently to enable a search and/or examination to take place or a suitable photograph to be taken, an officer may use reasonable force to —

(a) search and/or examine a detainee without the person's consent; and

(b) photograph any identifying marks without the person's consent.

D5.10. The thoroughness and extent of any search or examination carried out in accordance with the powers in section 85 must be no more than the officer considers necessary to achieve the required purpose. Any search or examination which involves the removal of more than the person's outer clothing must be conducted in accordance with Code C, Annex A, paragraph A11.

D5.11. An intimate search may not be carried out under the powers in section 85.

B. Photographing detainees at a place of lawful custody and other persons elsewhere than at a place of lawful custody

D5.12. Under section 85 of the Ordinance, an officer may photograph —

(a) any person while the person is detained at a place of lawful custody; and

(b) any person who is elsewhere than at a place of lawful custody and who has been —

(i) arrested by a police officer for an offence;

(ii) taken into custody by a police officer after being arrested for an offence by a person other than a police officer; or

(iii) given a fixed penalty notice by a police officer in uniform under the Road Traffic Ordinance.

D5.12A. Photographs taken under section 115 —

(a) may be taken with the person's consent, or without the person's consent if consent is withheld or it is not practicable to obtain the person's consent (see Note 5E); and

(b) may be used or disclosed only for purposes related to the prevention or detection of crime, the investigation of offences or the conduct of prosecutions by, or on behalf of, police or other law enforcement and prosecuting authorities in the Falkland Islands or elsewhere or the enforcement of any sentence or order made by a court when dealing with an offence. After being so used or disclosed, they may be retained but can only be used or disclosed for the same purposes (see Note 5B).

D5.13. The officer proposing to take a detainee's photograph may, for this purpose, require the person to remove any item or substance worn on, or over, all, or any part of, the person's head or face. If the person does not comply with such a requirement, the officer may remove the item or substance.

D5.14. If it is established that the detainee is unwilling to co-operate sufficiently to enable a suitable photograph to be taken, and it is not reasonably practicable to take the photograph covertly, an officer may use reasonable force (see Note 5F) —

(a) to take the person's photograph without his or her consent; and

(b) for the purpose of taking the photograph, remove any item or substance worn on, or over, all, or any part of, the person's head or face which the person has failed to remove when asked.

D5.15. For the purposes of this Code, a photograph may be obtained without the person's consent by making a copy of an image of the person taken at any time on a camera system installed anywhere in a place of lawful custody.

C. Information to be given

D5.16. When a person is searched, examined or photographed as in paragraph D5.1 and D5.12, or a person's photograph is obtained as in paragraph D5.15, the person must be informed of —

(a) the purpose of the search, examination or photograph;

(b) the grounds on which the relevant authority, if applicable, has been given; and

(c) the purposes for which the photograph may be used, disclosed or retained.

This information must be given before the search or examination commences or the photograph is taken, except if the photograph is —

(i) to be taken covertly;

(ii) obtained as in paragraph D5.15, in which case the person must be informed as soon as practicable after the photograph is taken or obtained.

D. Documentation

D5.17. A record must be made when a detainee is searched or examined, or a photograph of the person, or of any identifying marks found on the person, is taken. The record must include —

(a) the identity, subject to paragraph D2.18, of the officer carrying out the search or examination or taking the photograph;

(b) the purpose of the search, examination or photograph and the outcome;

(c) the detainee's consent to the search, examination or photograph, or the reason the detainee was searched, examined or photographed without consent;

(d) the giving of any authority as in paragraphs D5.2 and D5.3, the grounds for giving it and the authorising officer.

D5.18. If force is used when searching, examining or taking a photograph in accordance with this section, a record must be made of the circumstances and of the persons present.

Part II. Persons at a place of lawful custody not detained

D5.19. When there are reasonable grounds for suspecting the involvement of a person in a criminal offence, but that person is at a place of lawful custody voluntarily and not detained, the provisions of paragraphs D5.1 to D5.18 should apply, subject to the modifications in the following paragraphs.

D5.20. References to the 'person being detained' and to the powers mentioned in paragraph D5.1 which apply only to detainees at a place of lawful custody are to be omitted.

D5.21. Force may not be used to —

(a) search and/or examine the person to —

(i) discover whether the person has any marks that would tend to identify him or her as a person involved in the commission of an offence; or

(ii) establish the person's identity;

(b) take photographs of any identifying marks (see paragraph D5.4); or

(c) take a photograph of the person.

D5.22. Subject to paragraph D5.24, any photograph of a person or of his or her identifying marks which are not taken in accordance with the provisions mentioned in paragraphs D5.1 or D5.12 must be destroyed (together with any negatives and copies) unless the person —

(a) is charged with, or informed that he or she may be prosecuted for, an imprisonable offence;

(b) is prosecuted for an imprisonable offence;

(c) is cautioned for an imprisonable offence; or

(d) gives informed consent, in writing, for the photograph or image to be retained as in paragraph D5.6.

D5.23. When paragraph D5.22 requires the destruction of any photograph of a person, the person must be given an opportunity to witness the destruction or to have a certificate confirming the destruction if the person requests such a certificate within 5 days of being informed the destruction is required.

D5.24. Nothing in paragraph D5.22 affects any other requirement under the Ordinance to retain material in connection with criminal investigations – see the Code on the recording, retention and disclosure of material obtained in a criminal investigation ('Disclosure Code).

Notes for Guidance

5A. The conditions under which fingerprints may be taken to assist in establishing a person's identity are described in section D4.

5B. Examples of purposes related to the prevention or detection of crime, the investigation of offences or the conduct of prosecutions include —

(a) checking the photograph against other photographs held in records or in connection with, or as a result of, an investigation of an offence to establish whether the person is liable to arrest for other offences;

(b) when the person is arrested at the same time as other people, or at a time when it is likely that other people will be arrested, using the photograph to help establish who was arrested, at what time and where;

(c) when the real identity of the person is not known and cannot be readily ascertained or there are reasonable grounds for doubting a name and other personal details given by the person are the real name and personal details of that person.

(Note: In these circumstances, the photograph may be used or disclosed to help to establish or verify the person's real identity or determine whether the person is liable to arrest for some other offence, e.g. by checking it against other photographs held in records or in connection with, or as a result of, an investigation of an offence.)

(d) when it appears that any identification procedure in section D3 may need to be arranged for which the person's photograph would assist;

(e) when the person's release without charge may be required, and if the release is —

(i) on bail to appear at a place of lawful custody - using the photograph to help verify the person's identity when the person answers to bail and if the person does not answer to bail, to assist in arresting the person; or

(ii) without bail - using the photograph to help verify the person's identity or assist in locating the person for the purposes of serving him or her with a summons to appear at court in criminal proceedings;

(iii) when the person has answered to bail at a place of lawful custody and there are reasonable grounds for doubting he or she is the person who was previously granted bail, using the photograph to help establish or verify his or her identity;

(g) when the person arrested on a warrant claims to be a different person from the person named on the warrant and a photograph would help to confirm or disprove the claim;

(h) when the person has been charged with, reported for, or convicted of, an imprisonable offence and the person's photograph is not already on record as a result of (a) to (f) or the photograph is on record but the person's appearance has changed since it was taken and the person has not yet been released or brought before a court.

5C. There is no power to arrest a person convicted of an imprisonable offence solely to take his or her photograph. The power to take photographs in this section applies only when the person is in custody as a result of the exercise of another power, e.g. arrest for fingerprinting under Schedule 2 to the Ordinance.

5D. Examples of when it would not be practicable to obtain a detainee's consent (see paragraph D2.12) to a search or examination or the taking of a photograph of an identifying mark include—

(a) when the person is drunk or otherwise unfit to give consent;

(b) when there are reasonable grounds to suspect that if the person became aware that a search or examination was to take place or an identifying mark was to be photographed, the person would take steps to prevent this happening, e.g. by violently resisting, covering or concealing the mark, etc. and it would not otherwise be possible to carry out the search or examination or to photograph any identifying mark;

(c) in the case of a youth, if the parent or guardian cannot be contacted in sufficient time to allow the search or examination to be carried out or the photograph to be taken.

5E. Examples of when it would not be practicable to obtain the person's consent (see paragraph D2.12) to a photograph being taken include —

(a) when the person is drunk or otherwise unfit to give consent;

(b) when there are reasonable grounds to suspect that if the person became aware that a photograph, suitable to be used or disclosed for the use and disclosure described in paragraph D5.6, was to be taken, the person would take steps to prevent it being taken, e.g. by violently resisting, covering or distorting his or her face, etc., and it would not otherwise be possible to take a suitable photograph;

(c) when, in order to obtain a suitable photograph, it is necessary to take it covertly; and

(d) in the case of a youth, if the parent or guardian cannot be contacted in sufficient time to allow the photograph to be taken.

5F. The use of reasonable force to take the photograph of a suspect elsewhere than at a place of lawful custody must be carefully considered. The removal of headwear and the taking of a photograph should whenever practicable be by an officer of the same gender as the suspect. It would be appropriate for these actions to be conducted out of public view.

D6. Identification by body samples and impressions

Part I. General
D6.1. References to —

(a) an 'intimate sample' mean a dental impression or sample of blood, semen or any other tissue fluid, urine, or pubic hair, or a swab taken from any part of a person's genitals or from a person's body orifice other than the mouth;

(b) a 'non-intimate sample' means —

(i) a sample of hair, other than pubic hair, which includes hair plucked with the root (see Note 6A);

(ii) a sample taken from a nail or from under a nail;

(iii) a swab taken from any part of a person's body other than a part from which a swab taken would be an intimate sample;

(iv) saliva;

(v) a skin impression which means any record, other than a fingerprint, which is a record, in any form and produced by any method, of the skin pattern and other physical characteristics or features of the whole, or any part of, a person's foot or of any other part of the person's body.

Part II. Action

A. Intimate samples

D6.2. Section 93 of the Ordinance provides that intimate samples may be taken from the following —

(a) a person in police detention, but only —

(i) if a police officer of the rank of inspector or above has reasonable grounds to believe such a sample will tend to confirm or disprove the suspect's involvement in an imprisonable offence (see Note 4A) and gives authorisation for a sample to be taken; and

(ii) with the suspect's written consent; (section 93(1) and (3))

(b) a person not in police detention but from whom 2 or more non-intimate samples have been taken in the course of an investigation of an offence and the samples, though suitable, have proved insufficient, if —

(i) a police officer of the rank of inspector or above authorises it to be taken; and,

(ii) the person concerned gives written consent (see Notes 6B and 6C); (section 93(2) and (3))

(c) a person convicted outside the Falkland Islands of an offence which if committed in the Falkland Islands would be a qualifying offence (see Note 4AB) and from whom 2 or more non-intimate samples taken under section 94(9) have proved insufficient, if —

(i) a police officer of the rank of inspector or above is satisfied that taking the sample is necessary to assist in the prevention or detection of crime and authorises it to be taken; and

(ii) the person concerned gives written consent (section 93(4) and (5)).

D6.2A. Section 95 and Schedule 2 to the Ordinance empower police officers to require (in accordance with Annex G) a person who is not detained to attend an approved place (i.e. a police station etc. as listed in section 86(9) of the Ordinance) to have an intimate sample taken under the powers in paragraph D6.2. The time-limits for making a requirement are —

(a) persons from whom 2 or more non-intimate samples have been taken and proved to be insufficient (see paragraph D6.2(b): There is no time limit for making the requirement;

(b) persons convicted outside the Falkland Islands from whom 2 or more non-intimate samples have proved insufficient (see paragraph D6.2(c): There is no time limit for making the requirement.

D6.2AB. A police officer may arrest, without warrant, a person who fails to comply with a requirement mentioned in paragraph D6.2A.

D6.3. Before a suspect is asked to provide an intimate sample, he or she must be —

(a) informed —

(i) of the reason, including the nature of the suspected offence (except if taken under paragraph D6.2(c) from a person convicted outside the Falkland Islands);

(ii) that authorisation has been given and the provision under which given;

(iii) that a sample taken at an approved place may be the subject of a speculative search;

(b) warned that if he or she refuses without good cause, the refusal may harm his or her case if it comes to trial (see Note 6D). If the suspect is in police detention and not legally represented, he or she must also be reminded of the entitlement to obtain legal advice (see Code C, paragraph C6.5) and the reminder must be noted in the custody record. If paragraph D6.2(b) applies and the person is attending an approved place voluntarily, the entitlement to obtain legal advice as in paragraph C3.21 of Code C must be explained to the person.

D6.4. Dental impressions may only be taken by a registered dentist. Other intimate samples, except for samples of urine, may only be taken by a health care professional as defined in section 2 of the Ordinance (see Note 9A in Code C).

<u>B. Non-intimate samples</u>

D6.5. A non-intimate sample may be taken from a detainee only with the detainee's written consent, or if paragraph D6.6 applies.

D6.6. A non-intimate sample may be taken from the following persons without the appropriate consent —

(a) a person who is in police detention as a consequence of his or her arrest for an imprisonable offence and has not had a non-intimate sample of the same type and from the same part of the body taken in the course of the investigation of the offence by the police or has had such a sample taken but it proved insufficient; (section 94(3) and (5));

(b) a person who is being held in custody by the police on the authority of a court if an officer of the rank of inspector or above authorises it to be taken. An authorisation may be given —

(i) if the authorising officer has reasonable grounds for suspecting the person of involvement in an imprisonable offence and for believing that the sample will tend to confirm or disprove that involvement; and

(ii) in writing or orally and confirmed in writing, as soon as practicable;

but an authorisation may not be given to take from the same part of the body a further non-intimate sample consisting of a skin impression unless the previously taken impression proved insufficient; (section 94(4) and (5));

(c) a person who has been arrested for an imprisonable offence and release if the person —

(i) is on bail and has not had a sample of the same type and from the same part of the body taken in the course of the investigation of the offence;

(ii) has had such a sample taken in the course of the investigation of the offence, but it proved unsuitable or insufficient; (section 94(6));

(d) a person (whether or not in police detention or held in custody by the police on the authority of a court) who has been charged with an imprisonable offence or informed that he or she will be reported for such an offence, if the person —

(i) has not had a non-intimate sample taken from him or her in the course of the investigation;

(ii) has had a sample taken, but it proved unsuitable or insufficient for the same form of analysis (see Note 6B); or

(iii) has had a sample taken in the course of the investigation of the offence and the sample has been destroyed and in proceedings relating to the offence there is a dispute as to whether a DNA profile relevant to the proceedings was derived from the destroyed sample; (section 94(7));

(e) a person who has been —

(i) convicted of an imprisonable offence; or

(ii) given a caution in respect of such an offence which, at the time of the caution, the person admitted,

if, since the conviction or caution a non-intimate sample has not been taken from the person or a sample which has been taken since then has proved to be unsuitable or insufficient and in either case, an officer of the rank of inspector or above, is satisfied that taking the sample is necessary to assist in the prevention or detection of crime and authorises the taking; (section 94(8));

(f) a person detained following acquittal on grounds of insanity or finding of unfitness to plead; (section 94(9));

(g) a person who has been convicted outside the Falkland Islands of an offence which if committed in the Falkland Islands would be a qualifying offence (see Note 4AB) if –

(i) a non-intimate sample has not been taken previously under this power or a sample was so taken but was unsuitable or insufficient; and

(ii) a police officer of the rank of inspector or above is satisfied that taking a sample is necessary to assist in the prevention or detection of crime and authorises it to be taken (section 94(10)).

D6.6A. Section 95 and Schedule 2 to the Ordinance empower police officers to require (in accordance with Annex G) a person who is not detained to attend a place of lawful custody to have a non-intimate sample taken under the powers in paragraph D6.6. The time-limits for making a requirement are —

(a) persons arrested for an imprisonable offence and released (see paragraph D6.6(c): The requirement may not be made more than 6 months after the day the investigating officer was informed that the sample previously taken was unsuitable or insufficient;

(b) persons charged etc. with an imprisonable offence (see paragraph D6.6(d)). The requirement may not be made more than 6 months after —

(i) the day the person was charged or reported if a sample has not been taken since then; or

(iii) the day the investigating officer was informed that the sample previously taken was unsuitable or insufficient;

(c) a person convicted or cautioned for an imprisonable offence in the Falkland Islands (see paragraph D6.6(e)): If the offence is also a qualifying offence (see Note 4AB) there is no time limit for the exercise of this power. If the conviction or caution was for an imprisonable offence that is <u>not</u> a qualifying offence, the requirement may not be made more than 2 years from —

(i) the day the person was convicted or cautioned, if a sample has not been taken since then; or

(ii) the day an officer investigating the offence was informed that the sample previously taken was unsuitable or insufficient;

(d) a person who has been convicted of a qualifying offence outside the Falkland Islands: (see paragraph D6.6(g) and Note 4AB)). There is no time limit for making the requirement.

Note: A person who has had a non-intimate sample taken under any of the powers in section 94 mentioned in paragraph D6.6 on 2 occasions in relation to any offence may not be required under Schedule 2 to attend a place of lawful custody for a sample to be taken again under that section in relation to that offence, unless authorised by an officer of the rank of inspector or above. The fact of the authorisation and the reasons for giving it must be recorded as soon as practicable;

D6.6AB. A police officer may arrest, without warrant, a person who fails to comply with a requirement mentioned in paragraph D6.6A.

D6.7. Reasonable force may be used, if necessary, to take a non-intimate sample from a person without the person's consent under the powers mentioned in paragraph D6.6.

D6.8. Before any non-intimate sample is taken from a person —

(a) without consent under any power mentioned in paragraph D6.6 or D6.6A, the person must be informed of —

(i) the reason for taking the sample;

(ii) the fact that the relevant authorisation has been given if authorisation is required;

(b) with or without consent at a place of lawful custody or elsewhere, the person must be informed —

(i) that the sample or information derived from the sample may be the subject of a speculative search against other samples and information derived from them (see Note 6E); and

(ii) that the sample and the information derived from it may be retained in accordance with Annex F, Part A.

C. Removal of clothing

D6.9. When clothing needs to be removed in circumstances likely to cause embarrassment to the person, no person of the opposite gender who is not a health care professional may be present (unless, in the case of a mentally disordered or mentally vulnerable person or a youth, that person specifically requests the presence of an appropriate adult of the opposite gender who is readily available), nor may anyone whose presence is unnecessary be present. However, in the case of a

youth, this is subject to the overriding proviso that such a removal of clothing may take place in the absence of the appropriate adult only if the youth signifies, in the presence of the adult, that he or she prefers the adult's absence, and the adult agrees.

D. Documentation

D6.10. A record must be made as soon as practicable after the sample is taken of —

(a) the matters in paragraph D6.8(a) and the fact that the person has been informed of those matters;

(b) the fact that the person has been informed of the matters in paragraph D6.8(b).

D6.10A. If force is used, a record must be made of the circumstances and the persons present.

D6.11. A record must be made of a warning given as required by paragraph D6.3.

Notes for Guidance

6A. When hair samples are taken for the purpose of DNA analysis (rather than for other purposes such as making a visual match), the suspect should be permitted a reasonable choice as to what part of the body the hairs are taken from. When hairs are plucked, they should be plucked individually, unless the suspect prefers otherwise, and no more should be plucked than the person taking them reasonably considers necessary for a sufficient sample.

6B. (a) An insufficient sample is one which is not sufficient either in quantity or quality to provide information for a particular form of analysis, such as DNA analysis. A sample may also be insufficient if enough information cannot be obtained from it by analysis because of loss, destruction, damage or contamination of the sample or as a result of an earlier, unsuccessful attempt at analysis.

(b) An unsuitable sample is one which, by its nature, is not suitable for a particular form of analysis.

6C. Nothing in paragraph D6.2 prevents intimate samples being taken for elimination purposes with the consent of the person concerned, but the provisions of paragraph D2.12 relating to the role of the appropriate adult should be applied.

6D. In warning a person who is asked to provide an intimate sample as in paragraph D6.3, the following form of words may be used —

"You do not have to provide this sample/allow this swab or impression to be taken, but I must warn you that if you refuse without good cause, your refusal may harm your case if it comes to trial."

6E. Fingerprints or a DNA sample and the information derived from it taken from a person arrested on suspicion of being involved in an imprisonable offence, or charged with such an offence, or informed that he or she will be reported for such an offence, may be subject of a

speculative search. This means they may be checked against other fingerprints and DNA records held by, or on behalf of, the police and other law enforcement authorities in the Falkland Islands or elsewhere, or held in connection with, or as a result of, an investigation of an offence in the Falkland Islands or elsewhere. Fingerprints and samples taken from any other person, e.g. a person who is suspected of committing an imprisonable offence but who has not been arrested, charged or informed that he or she will be reported for it, may be subject to a speculative search only if the person consents in writing to his or her fingerprints being subject of such a search. The following is an example of a basic form of words —

> "I consent to my fingerprints/DNA sample and information derived from it being retained and used only for purposes related to the prevention and detection of a crime, the investigation of an offence or the conduct of a prosecution either in the Falkland Islands or elsewhere.
>
> I understand that this sample may be checked against other fingerprint/DNA records held by or on behalf of relevant law enforcement authorities, either in the Falkland Islands or elsewhere.
>
> I understand that once I have given my consent for the sample to be retained and used I cannot withdraw this consent."

(*See Annex F regarding the retention and use of fingerprints and samples taken with consent for elimination purposes.*)

6F. Samples of urine and non-intimate samples taken in accordance with sections 96 and 97 of the Ordinance may not be used for identification purposes in accordance with this Code (see Note 17D in Code C).

ANNEX A - VIDEO IDENTIFICATION

A. General

1. The arrangements for obtaining and ensuring the availability of a suitable set of images to be used in a video identification must be the responsibility of an identification officer, who has no direct involvement with the case.

2. The set of images must include the suspect and at least eight other people who, so far as possible, resemble the suspect in age, height, general appearance and position in life. Only one suspect may appear in any set unless there are 2 suspects of roughly similar appearance, in which case they may be shown together with at least 12 other people.

2A. If the suspect has an unusual physical feature, e.g., a facial scar, tattoo or distinctive hairstyle or hair colour which does not appear on the images of the other people that are available to be used, steps may be taken to —

(a) conceal the location of the feature on the images of the suspect and the other people; or

(b) replicate that feature on the images of the other people.

For these purposes, the feature may be concealed or replicated electronically or by any other method which it is practicable to use to ensure that the images of the suspect and other people resemble each other. The identification officer has discretion to choose whether to conceal or replicate the feature and the method to be used. If an unusual physical feature has been described by the witness, the identification officer should, if practicable, have that feature replicated. If it has not been described, concealment may be more appropriate.

2B. If the identification officer decides that a feature should be concealed or replicated, the reason for the decision and whether the feature was concealed or replicated in the images shown to any witness must be recorded.

2C. If the witness requests to view an image in which an unusual physical feature has been concealed or replicated without the feature being concealed or replicated, the witness may be allowed to do so.

3. The images used to conduct a video identification must, as far as possible, show the suspect and other people in the same positions or carrying out the same sequence of movements. They must also show the suspect and other people under identical conditions unless the identification officer reasonably believes —

(a) because of the suspect's failure or refusal to co-operate or other reasons, it is not practicable for the conditions to be identical; and

(b) any difference in the conditions would not direct a witness' attention to any individual image.

4. The reasons that identical conditions are not practicable must be recorded on forms provided for the purpose.

5. Provision must be made for each person shown in a photograph to be identified by number.

6. If police officers are shown, any numerals or other identifying badges must be concealed. If a prison inmate is shown, either as a suspect or not, then either all, or none of, the people shown should be in prison clothing.

7. The suspect or his or her legal practitioner, friend, or appropriate adult must be given a reasonable opportunity to see the complete set of images before it is shown to any witness. If the suspect has a reasonable objection to the set of images or any of the participants, the suspect must be asked to state the reasons for the objection. Steps must, if practicable, be taken to remove the grounds for objection. If this is not practicable, the suspect and/or his or her practitioner must be told why the objections cannot be met, and the objection, the reason given for it and why it cannot be met must be recorded on forms provided for the purpose.

8. Before the images are shown in accordance with paragraph 7, the suspect or his or her legal practitioner must be provided with details of the first description of the suspect by any witnesses who are to attend the video identification. When a broadcast or publication is made, as in paragraph D3.28, the suspect or his or her legal practitioner must also be allowed to view any material released to the media by the police for the purpose of recognising or tracing the suspect, provided it is practicable and would not unreasonably delay the investigation.

9. The suspect's legal practitioner must, if practicable, be given reasonable notification of the time and place that the video identification is to be conducted so that a practitioner may attend on behalf of the suspect. If a legal practitioner has not been instructed, this information must be given to the suspect. The suspect may not be present when the images are shown to a witness. In the absence of the suspect's practitioner, the viewing itself must be recorded on video. No unauthorised people may be present.

B. Conducting the video identification

10. The identification officer is responsible for making the appropriate arrangements to make sure that, before they see the set of images, witnesses are not able to communicate with each other about the case, see any of the images which are to be shown, see, or be reminded of, any photograph or description of the suspect or be given any other indication as to the suspect's identity, or overhear a witness who has already seen the material. There must be no discussion with the witness about the composition of the set of images and a witness must not be told whether a previous witness has made any identification.

11. Only one witness may see the set of images at a time. Immediately before the images are shown, the witness must be told that the person he or she saw on a specified earlier occasion may, or may not, appear in the images the witness is shown and that if the witness cannot make a positive identification, he or she should say so. The witness must be advised that at any point, he or she may ask to see a particular part of the set of images or to have a particular image frozen for study. Furthermore, it should be pointed out to the witness that there is no limit on how many times he or she can view the whole set of images or any part of them. However, the witness should be asked not to make any decision as to whether the person he or she saw is on the set of images until he or she has seen the whole set at least twice.

12. Once the witness has seen the whole set of images at least twice and has indicated that he or she does not wish to view the images, or any part of them, again, the witness must be asked to say whether the individual he or she saw in person on a specified earlier occasion has been shown and, if so, to identify the individual by number of the image. The witness will then be shown that image to confirm the identification.

13. Care must be taken not to direct the witness' attention to any one individual image or to give any indication of the suspect's identity. If a witness has previously made an identification by photographs, or a computerised or artist's composite or similar likeness, the witness must not be reminded of such a photograph or composite likeness once a suspect is available for identification by other means in accordance with this Code. Nor must the witness be reminded of any description of the suspect.

14. After the procedure, each witness must be asked whether he or she has seen any broadcast or published films or photographs, or any descriptions of suspects relating to the offence and the reply must be recorded.

C. Image security and destruction

15. Arrangements must be made for all relevant material containing sets of images used for specific identification procedures to be kept securely and their movements accounted for. In particular, no-one involved in the investigation may be permitted to view the material prior to it being shown to any witness.

16. As appropriate, paragraph D3.30 or D 3.31 applies to the destruction or retention of relevant sets of images.

D. Documentation

17. A record must be made of all those participating in, or seeing, the set of images whose names are known to the police.

18. A record of the conduct of the video identification must be made on forms provided for the purpose. This includes anything said by the witness about any identifications or the conduct of the procedure and any reasons it was not practicable to comply with any of the provisions of this Code governing the conduct of video identifications.

ANNEX B –
IDENTIFICATION PARADES

A. General

1. A suspect must be given a reasonable opportunity to have a legal practitioner or friend present, and must be asked to indicate on a second copy of the notice referred to in paragraph D3.18 whether or not he or she wishes to have one present.

2. An identification parade may take place either in a normal room or one equipped with a screen permitting witnesses to see members of the identification parade without being seen. The procedures for the composition and conduct of the identification parade are the same in both cases, subject to paragraph 8 (except that an identification parade involving a screen may take place only when the suspect's legal practitioner, friend or appropriate adult is present or the identification parade is recorded on video).

3. Before the identification parade takes place, the suspect or his or her legal practitioner must be provided with details of the first description of the suspect by any witnesses who are attending the identification parade. When a broadcast or publication is made as in paragraph D3.28, the suspect or his or her legal practitioner should also be allowed to view any material released to the media by the police for the purpose of recognising or tracing the suspect, provided it is practicable to do so and would not unreasonably delay the investigation.

B. Identification parades involving prison inmates

4. If a prison inmate is required for identification, and there are no security problems about the person leaving the establishment, he or she may be asked to participate in an identification parade or video identification.

5. An identification parade may be held in the prison but must be conducted, as far as practicable, under normal identification parade rules. Members of the public should comprise the identification parade unless there are serious security or control objections to their admission to the prison. In such cases, or if a group or video identification is arranged within the prison, other inmates may participate. If an inmate is the suspect, he or she is not required to wear prison clothing for the identification parade unless the other people taking part are other inmates in similar clothing, or are members of the public who are prepared to wear prison clothing for the occasion.

C. Conduct of the identification parade

6. Immediately before the identification parade, the suspect must be reminded of the procedures governing its conduct and cautioned in the terms of Code C, paragraphs C10.5 or C10.6, as appropriate.

7. All unauthorised people must be excluded from the place where the identification parade is held.

8. Once the identification parade has been formed, everything that takes place subsequently is respect of it must be in the presence and hearing of the suspect and any interpreter, legal practitioner, friend or appropriate adult who is present (unless the identification parade involves a screen, in which case everything said to, or by, any witness at the place where the identification parade is held, must be said in the hearing and presence of the suspect's legal practitioner, friend or appropriate adult or be recorded on video).

9. The identification parade must consist of at least 8 people (in addition to the suspect) who, as far as possible, resemble the suspect in age, height, general appearance and position in life. Only one suspect is to be included in an identification parade, unless there are 2 suspects of roughly similar appearance, in which case they may be paraded together with at least 12 other people. In no circumstances should more than 2 suspects be included in one identification parade and where there are separate identification parades, they must be made up of different people.

10. If the suspect has an unusual physical feature, e.g., a facial scar, tattoo or distinctive hairstyle or hair colour which cannot be replicated on other members of the identification parade, steps may be taken to conceal the location of that feature on the suspect and the other members of the identification parade if the suspect and his or her legal practitioner, or appropriate adult, agree. For example, by use of a plaster or a hat, so that all members of the identification parade resemble each other in general appearance.

11. When all members of a similar group are possible suspects, separate identification parades must be held for each unless there are 2 suspects of similar appearance, in which case they may appear on the same identification parade with at least 12 other members of the group who are not

suspects. When police officers in uniform form an identification parade, any numerals or other identifying badges must be concealed.

12. When the suspect is brought to the place where the identification parade is to be held, he or she must be asked if he or she has any objection to the arrangements for the identification parade or to any of the other participants in it and to state the reasons for the objection. The suspect may obtain advice from his or her legal practitioner or friend, if present, before the identification parade proceeds. If the suspect has a reasonable objection to the arrangements or any of the participants, steps must, if practicable, be taken to remove the grounds for objection. When it is not practicable to do so, the suspect must be told why the objections cannot be met. The objection, the reason given for it and why it cannot be met must be recorded on forms provided for the purpose.

13. The suspect may select his or her own position in the line, but may not otherwise interfere with the order of the people forming the line. When there is more than one witness, the suspect must be told, after each witness has left the room, that he or she can, if he or she wishes, change position in the line. Each position in the line must be clearly numbered, either by means of a number laid on the floor in front of each identification parade member or by other means.

14. Appropriate arrangements must be made to make sure, before witnesses attend the identification parade, that they are not able to —

(a) communicate with each other about the case or overhear a witness who has already seen the identification parade;

(b) see any member of the identification parade;

(c) see, or be reminded of, any photograph or description of the suspect or be given any other indication as to the suspect's identity; or

(d) see the suspect before or after the identification parade.

15. The person conducting a witness to an identification parade must not discuss with the witness the composition of the identification parade and, in particular, must not disclose whether a previous witness has made any identification.

16. Witnesses must be brought in one at a time. Immediately before the witness inspects the identification parade, he or she must be told that the person he or she saw on a specified earlier occasion may, or may not, be present and if the witness cannot make a positive identification, he or she should say so. The witness must also be told that he or she not make any decision about whether the person he or she saw is on the identification parade until he or she has looked at each member at least twice.

17. When the officer (see paragraph D3.11) conducting the identification procedure is satisfied that the witness has properly looked at each member of the identification parade, the officer must

ask the witness whether the person the witness saw on a specified earlier occasion is on the identification parade and, if so, to indicate the number of the person concerned.

18. If the witness wishes to hear any identification parade member speak, adopt any specified posture or move, the witness must first be asked whether he or she can identify any person on the identification parade on the basis of appearance only. When the request is to hear members of the identification parade speak, the witness must be reminded that the participants in the identification parade have been chosen on the basis of physical appearance only. Members of the identification parade may then be asked to comply with the witness' request to hear them speak, see them move or adopt any specified posture.

19. If the witness requests that the person he or she has indicated remove anything used for the purposes of paragraph 10 to conceal the location of an unusual physical feature, that person may be asked to remove it.

20. If the witness makes an identification after the identification parade has ended the suspect and, if present, his or her legal practitioner, interpreter or friend must be informed. When this occurs, consideration should be given to allowing the witness a second opportunity to identify the suspect.

21 After the procedure, each witness must be asked whether he or she has seen any broadcast or published films or photographs or any descriptions of suspects relating to the offence, including any films, photos or descriptions published on the internet, and the reply must be recorded.

22. When the last witness has left, the suspect must be asked whether he or she wishes to make any comments on the conduct of the identification parade.

D. Documentation

23. A video recording must normally be taken of the identification parade. If that is impracticable, a colour photograph must be taken. A copy of the video recording or photograph must be supplied, on request, to the suspect or his or her legal practitioner within a reasonable time.

24. Paragraph D3.30 or D3.31 apply, as far as appropriate, to any photograph or video taken as in paragraph 23.

25. If any person is asked to leave an identification parade because he or she is interfering with its conduct, the circumstances must be recorded.

26. A record must be made of all those present at an identification parade whose names are known to the police.

27. If prison inmates make up an identification parade, the circumstances must be recorded.

28. A record of the conduct of any identification parade must be made on forms provided for the purpose. This includes anything said by the witness or the suspect about any identifications or the conduct of the procedure, and any reason why it was not practicable to comply with any of this Code's provisions.

ANNEX C –
GROUP IDENTIFICATION

A. General

1. The purpose of this Annex is to make sure, as far as possible, that group identifications follow the principles and procedures for identification parades so that the conditions are fair to the suspect in the way they test the witness' ability to make an identification.

2. Group identifications may take place either with the suspect's consent and cooperation or covertly without the suspect's consent.

3. The location of the group identification is a matter for the identification officer, although the officer may take into account any representations made by the suspect, appropriate adult, legal practitioner or friend.

4. The place where the group identification is held should be one where other people are either passing by or waiting around informally in groups, such that the suspect is able to join them and be capable of being seen by the witness at the same time as others in the group. For example, people leaving an escalator, pedestrians walking through a shopping centre, passengers on railway and bus stations, waiting in queues or groups or where people are standing or sitting in groups in other public places.

5. If the group identification is to be held covertly, the choice of locations will be limited by the places where the suspect can be found and the number of other people present at that time. In these cases, suitable locations might be along regular routes travelled by the suspect, including buses or trains or public places frequented by the suspect.

6. Although the number, age, gender, race and general description and style of clothing of other people present at the location cannot be controlled by the identification officer, in selecting the location the officer must consider the general appearance and numbers of people likely to be present. In particular, the officer must reasonably expect that over the period the witness observes the group, the witness will be able to see, from time to time, a number of others whose appearance is broadly similar to that of the suspect.

7. A group identification need not be held if the identification officer believes, because of the unusual appearance of the suspect, that none of the locations that it would be practicable to use satisfy the requirements of paragraph 6 that are necessary to make the identification fair.

8. Immediately after a group identification procedure has taken place (with or without the suspect's consent), a colour photograph or video should be taken of the general scene, if practicable, to give a general impression of the scene and the number of people present. Alternatively, if it is practicable, the group identification may be video recorded.

9. If it is not practicable to take the photograph or video in accordance with paragraph 8, a photograph or film of the scene should be taken later at a time determined by the identification officer, if the officer considers it practicable to do so.

10. An identification carried out in accordance with this Code remains a group identification even though, at the time of being seen by the witness, the suspect was alone rather than in a group.

11. Before the group identification takes place, the suspect or his or her legal practitioner must be provided with details of the first description of the suspect by any witnesses who are to attend the identification. When a broadcast or publication is made, as in paragraph D3.28, the suspect or his or her legal practitioner should also be allowed to view any material released by the police to the media for the purposes of recognising or tracing the suspect, provided that it is practicable and would not unreasonably delay the investigation.

12. After the procedure, each witness must be asked whether he or she has seen any broadcast or published films or photographs or any descriptions of suspects relating to the offence and the reply recorded.

B. Identification with the consent of the suspect

13. A suspect must be given a reasonable opportunity to have a legal practitioner or friend present. The suspect must be asked to indicate on a second copy of the notice referred to in paragraph D3.18 whether or not they wish to do so.

14. The witness, the person carrying out the procedure and the suspect's legal practitioner, appropriate adult, friend or any interpreter for the witness, may be concealed from the sight of the individuals in the group they are observing, if the person carrying out the procedure considers this assists the conduct of the identification.

15. The police officer conducting a witness to a group identification must not discuss with the witness the forthcoming group identification and, in particular, must not disclose whether a previous witness has made any identification.

16. Anything said to, or by, the witness during the procedure about the identification should be said in the presence and hearing of the persons present at the procedure.

17. Appropriate arrangements must be made to make sure, before witnesses attend the group identification; they are not able to —

(a) communicate with each other about the case or overhear a witness who has already been given an opportunity to see the suspect in the group;

(b) see the suspect; or

(c) see, or be reminded of, any photographs or description of the suspect or be given any other indication of the suspect's identity.

18. Witnesses must be brought one at a time to the place where they are to observe the group. Immediately before the witness is asked to look at the group, the person conducting the procedure must tell the witness that the person the witness saw may, or may not, be in the group and that if the witness cannot make a positive identification, he or she should say so.

The witness must be asked to observe the group in which the suspect is to appear. The way in which the witness should do this will depend on whether the group is moving or stationary.

Moving group

19. When the group in which the suspect is to appear is moving, e.g. leaving an escalator, the provisions of paragraphs 20 to 24 should be followed.

20. If two or more suspects consent to a group identification, each should be the subject of separate identification procedures. These may be conducted consecutively on the same occasion.

21. The person conducting the procedure must tell the witness to observe the group and ask the witness to point out any person the witness thinks he or she saw on the specified earlier occasion.

22. Once the witness has been informed as in paragraph 21, the suspect should be allowed to take whatever position in the group the suspect wishes.

23. When the witness points out a person as in paragraph 21 the witness must, if practicable, be asked to take a closer look at the person to confirm the identification. If this is not practicable, or the witness cannot confirm the identification, the witness must be asked how sure he or she is that the person he or she has indicated is the relevant person.

24. The witness should continue to observe the group for the period which the person conducting the procedure reasonably believes is necessary in the circumstances for the witness to be able to make comparisons between the suspect and other individuals of broadly similar appearance to the suspect.

Stationary groups

25. When the group in which the suspect is to appear is stationary, e.g. people waiting in a queue, the provisions of paragraphs 26 to 29 should be followed.

26. If two or more suspects consent to a group identification, each should be subject to separate identification procedures unless they are of broadly similar appearance, in which case they may appear in the same group. When separate group identifications are held, the groups must be made up of different people.

27. The suspect may take whatever position in the group he or she wishes. If there is more than one witness, the suspect must be told, out of the sight and hearing of any witness, that the suspect can, if the suspect wishes, change his or her position in the group.

28. The witness must be asked to pass along, or amongst, the group and to look at each person in the group at least twice, taking as much care and time as possible according to the circumstances,

before making an identification. Once the witness has done this, the witness must be asked whether the person he or she saw on the specified earlier occasion is in the group and to indicate any such person by whatever means the person conducting the procedure considers appropriate in the circumstances. If this is not practicable, the witness must be asked to point out any person the witness thinks he or she saw on the earlier occasion.

29. When the witness makes an indication as in paragraph 28, arrangements must be made, if practicable, for the witness to take a closer look at the person to confirm the identification. If this is not practicable, or the witness is unable to confirm the identification, the witness must be asked how sure the witness is that the person he or she has indicated is the relevant person.

All cases

30. If the suspect unreasonably delays joining the group, or having joined the group, deliberately conceals himself or herself from the sight of the witness, this may be treated as a refusal to co-operate in a group identification.

31. If the witness identifies a person other than the suspect, that person should be informed what has happened and asked if he or she is prepared to give his or her name and address. There is no obligation upon any member of the public to give these details. There is no duty to record any details of any other member of the public present in the group or at the place where the procedure is conducted.

32. When the group identification has been completed, the suspect must be asked whether he or she wishes to make any comments on the conduct of the procedure.

33. If the suspect has not been previously informed, he or she must be told of any identifications made by the witnesses.

C. Identification without the suspect's consent

34. Group identifications held covertly without the suspect's consent should, as far as practicable, follow the rules for conduct of group identification by consent.

35. A suspect has no right to have a legal practitioner, appropriate adult or friend present, as the identification will take place without the knowledge of the suspect.

36. Any number of suspects may be identified at the same time.

D. Identification at a police station

37. A group identification should not take place at a police station unless for reasons of safety or security or because it is not practicable to hold it anywhere else.

38. A group identification may take place either in a room equipped with a screen permitting witnesses to see members of the group without being seen, or anywhere else at a police station that the identification officer considers appropriate.

39. As many of the additional safeguards applicable to identification parades should be followed as the identification officer considers practicable in the circumstances.

E. Identifications involving prison inmates

40. A group identification involving a prison inmate may only be arranged in the prison or at a police station.

41. When a group identification takes place involving a prison inmate, whether in a prison or at a police station, the arrangements should follow those in paragraphs 37 to 39. If a group identification takes place within a prison, other inmates may participate. If an inmate is the suspect, he or she does not have to wear prison clothing for the group identification unless the other participants are wearing the same clothing.

F. Documentation

42. When a photograph or video is taken as in paragraph 8 or 9, a copy of the photograph or video must be supplied on request to the suspect or his or her legal practitioner within a reasonable time.

43. Paragraph D3.30 or D3.31, as appropriate, applies when a photograph or film taken in accordance with paragraph 8 or 9 includes the suspect.

44. A record of the conduct of any group identification must be made on forms provided for the purpose. This includes anything said by the witness or suspect about any identifications or the conduct of the procedure and any reasons why it was not practicable to comply with any of the provisions of this Code governing the conduct of group identifications.

ANNEX D –
CONFRONTATION BY A WITNESS

1. Before the confrontation takes place, the witness must be told that the person he or she saw at the scene may, or may not, be the person he or she is to confront and that if the person he or she confronts is not the person at the scene the witness should say so.

2. Before the confrontation takes place the suspect or his or her legal practitioner must be provided with details of the first description of the suspect given by any witness who is to attend. When a broadcast or publication is made, as in paragraph D3.28, the suspect or his or her legal practitioner should also be allowed to view any material released to the media for the purposes of recognising or tracing the suspect, provided it is practicable to do so and would not unreasonably delay the investigation.

3. Force must not be used to make the suspect’s face visible to the witness.

4. Confrontation must take place in the presence of the suspect’s legal practitioner, interpreter or friend, unless this would cause unreasonable delay.

5. The suspect must be confronted independently by each witness, who must be asked “Is this the person?” If the witness identifies the person but is unable to confirm the identification, the witness must be asked how sure he or she is that the person is the one the witness saw on the earlier occasion.

6. The confrontation should normally take place at a police station, either in a normal room or one equipped with a screen permitting a witness to see the suspect without being seen. In both cases, the procedures are the same except that a room equipped with a screen may be used only when the suspect’s legal practitioner, friend or appropriate adult is present or the confrontation is recorded on video.

7. After the procedure, each witness must be asked whether he or she has seen any broadcast or published films or photographs or any descriptions of suspects relating to the offence and the witness’ reply must be recorded.

ANNEX E –
SHOWING PHOTOGRAPHS

A. Action

1. An officer of the rank of sergeant or above must be made responsible for supervising and directing the showing of photographs. The actual showing may be done by another officer (see paragraph D3.11).

2. The supervising officer must confirm that the first description of the suspect given by the witness has been recorded before the witness is shown the photographs. If the supervising officer is unable to confirm that the description has been recorded the officer must postpone showing the photographs.

3. Only one witness may be shown photographs at any one time. Each witness must be given as much privacy as practicable and must not be allowed to communicate with any other witness in the case.

4. The witness must be shown not less than 12 photographs at a time, which must, as far as possible, all be of a similar type.

5. When the witness is shown the photographs, he or she must be told that the photograph of the person he or she saw may, or may not, be amongst them and if the witness cannot make a positive identification, he or she should say so. The witness must also be told that he or she should not make a decision until he or she has viewed at least 12 photographs. The witness must not be prompted or guided in any way but must be left to make any selection without help.

6. If a witness makes a positive identification from photographs, unless the person identified is otherwise eliminated from enquiries or is not available, other witnesses must not be shown photographs. But both they, and the witness who has made the identification, must be asked to attend a video identification, an identification parade or group identification unless there is no dispute about the suspect’s identification.

7. If the witness makes a selection but is unable to confirm the identification, the person showing the photographs must ask the witness how sure he or she is that the photograph the witness has indicated is the person he or she saw on the specified earlier occasion.

8. When the use of a computerised or artist's composite or similar likeness has led to there being a known suspect who can be asked to participate in a video identification, appear on an identification parade or participate in a group identification, that likeness must not be shown to other potential witnesses.

9. When a witness attending a video identification, an identification parade or group identification has previously been shown photographs or computerised or artist's composite or similar likeness (and it is the responsibility of the officer in charge of the investigation to make the identification officer aware that this is the case), the suspect and his or her legal practitioner must be informed of this fact before the identification procedure takes place.

10. None of the photographs shown is to be destroyed, whether or not an identification is made, as they may be required for production in court. The photographs must be numbered and a separate photograph taken of the frame or part of the album from which the witness made an identification as an aid to reconstituting it.

B. Documentation

11. Whether or not an identification is made, a record must be kept of the showing of photographs on forms provided for the purpose. This includes anything said by the witness about any identification or the conduct of the procedure, any reasons it was not practicable to comply with any of the provisions of this Code governing the showing of photographs, and the name and rank of the supervising officer.

12. The supervising officer must inspect and sign the record as soon as practicable.

ANNEX F –
FINGERPRINTS, FOOTWEAR IMPRESSIONS AND SAMPLES; DESTRUCTION AND SPECULATIVE SEARCHES

Note: Annex F of Home Office Code D was based on s.64 of the UK PACE Act 1984 as extensively amended. That section has been replaced by ss. 64D to 64U by the Protection of Freedoms Act 2012 (which is not yet in force in the UK.)

Annex F will presumably be replaced in due course. Meanwhile, the rules on retention and destruction of samples and DNA profiles in the Falkland Islands should be taken to be as in sections 98 to 114 of the Ordinance.

Existing Annex F is set out here for reference only.

A. Fingerprints, footwear impressions and samples taken in connection with a criminal investigation

1. When fingerprints, footwear impressions or DNA samples are taken from a person in connection with an investigation and the person is not suspected of having committed the offence (see Note F1), they must be destroyed as soon as they have fulfilled the purpose for which they were taken unless —

(a) they were taken for the purposes of an investigation of an offence for which a person has been convicted; and

(b) fingerprints, footwear impressions or samples were also taken from the convicted person for the purposes of that investigation.

However, subject to paragraph 2, the fingerprints, footwear impressions and samples, and the information derived from samples, may not be used in the investigation of any offence or in evidence against the person who is, or would be, entitled to the destruction of the fingerprints, footwear impressions and samples (see Note F2).

2. The requirement to destroy fingerprints, footwear impressions and DNA samples, and information derived from samples, and restrictions on their retention and use in paragraph 1, do not apply if the person from whom they were taken gives written consent for the fingerprints, footwear impressions or samples to be retained and used after they have fulfilled the purpose for which they were taken (see Note F1).

3. When a person's fingerprints, footwear impressions or samples are to be destroyed —

(a) any copies of the fingerprints and footwear impressions must also be destroyed;

(b) the person may witness the destruction of the fingerprints, footwear impressions or copies if the person asks to do so within 5 days of being informed that destruction is required;

(c) access to relevant computer fingerprint data must be made impossible as soon as practicable and the person must be given a certificate to this effect within 3 months of asking; and

(d) neither the fingerprints, footwear impressions, the sample, nor any information derived from the sample may be used in the investigation of any offence or in evidence against the person who is, or would be, entitled to its destruction.

4. Fingerprints, footwear impressions or samples, and the information derived from samples taken in connection with the investigation of an offence, which are not required to be destroyed, may be retained after they have fulfilled the purposes for which they were taken. They may be used only for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution in, as well as outside, the Falkland Islands, and may also be subject to a speculative search. This includes checking them against other fingerprints,

footwear impressions and DNA records held by, or on behalf of, the police and other law enforcement authorities in, as well as outside, the Falkland Islands.

B. Fingerprints taken in connection with immigration enquiries
[Omitted]

Notes for Guidance
F1. Fingerprints, footwear impressions and samples given voluntarily for the purposes of elimination play an important part in many police investigations. It is therefore important to make sure that innocent volunteers are not deterred from participating and that their consent to their fingerprints, footwear impressions and DNA being used for the purposes of a specific investigation is fully informed and voluntary. If the police or volunteer seek to have the fingerprints, footwear impressions or samples retained for use after the specific investigation ends, it is important the volunteer's consent to this is also fully informed and voluntary.

Examples of consent for:
• DNA/fingerprints/footwear impressions - to be used only for the purposes of a specific investigation;

• DNA/fingerprints/footwear impressions - to be used in the specific investigation and retained by the police for future use.

To minimise the risk of confusion, each consent should be physically separate and the volunteer should be asked to sign each consent.

(a) DNA:

(i) DNA sample taken for the purposes of elimination or as part of an intelligence-led screening and to be used only for the purposes of that investigation and destroyed afterwards:

"I consent to my DNA/mouth swab being taken for forensic analysis. I understand that the sample will be destroyed at the end of the case and that my profile will only be compared to the crime stain profile from this enquiry. I have been advised that the person taking the sample may be required to give evidence and/or provide a written statement to the police in relation to the taking of it."

(ii) DNA sample to be retained on the National DNA database and used in the future:

"I consent to my DNA sample and information derived from it being retained and used only for purposes related to the prevention and detection of a crime, the investigation of an offence or the conduct of a prosecution either nationally or internationally. I understand that this sample may be checked against other DNA records held by, or on behalf of, relevant law enforcement authorities, either nationally or internationally. I understand that once I have given my consent for the sample to be retained and used I cannot withdraw this consent."

(b) Fingerprints:

(i) Fingerprints taken for the purposes of elimination or as part of an intelligence-led screening and to be used only for the purposes of that investigation and destroyed afterwards:

"I consent to my fingerprints being taken for elimination purposes. I understand that the fingerprints will be destroyed at the end of the case and that my fingerprints will only be compared to the fingerprints from this enquiry. I have been advised that the person taking the fingerprints may be required to give evidence and/or provide a written statement to the police in relation to the taking of it."

(ii) Fingerprints to be retained for future use:

"I consent to my fingerprints being retained and used only for purposes related to the prevention and detection of a crime, the investigation of an offence or the conduct of a prosecution either nationally or internationally. I understand that my fingerprints may be checked against other records held by, or on behalf of, relevant law enforcement authorities, either nationally or internationally. I understand that once I have given my consent for my fingerprints to be retained and used I cannot withdraw this consent."

(c) Footwear impressions:

(i) Footwear impressions taken for the purposes of elimination or as part of an intelligence-led screening and to be used only for the purposes of that investigation and destroyed afterwards:

"I consent to my footwear impressions being taken for elimination purposes. I understand that the footwear impressions will be destroyed at the end of the case and that my footwear impressions will only be compared to the footwear impressions from this enquiry. I have been advised that the person taking the footwear impressions may be required to give evidence and/or provide a written statement to the police in relation to the taking of it."

(ii) Footwear impressions to be retained for future use:

"I consent to my footwear impressions being retained and used only for purposes related to the prevention and detection of a crime, the investigation of an offence or the conduct of a prosecution, either nationally or internationally. I understand that my footwear impressions may be checked against other records held by, or on behalf of, relevant law enforcement authorities, either nationally or internationally. I understand that once I have given my consent for my footwear impressions to be retained and used I cannot withdraw this consent."

F2. The provisions for the retention of fingerprints, footwear impressions and samples in paragraph 1 allow for all fingerprints, footwear impressions and samples in a case to be available for any subsequent miscarriage of justice investigation.

ANNEX G –
REQUIREMENT FOR A PERSON TO ATTEND A PLACE OF LAWFUL CUSTODY FOR FINGERPRINTS AND SAMPLES

1. A requirement under Schedule 2 of the Ordinance for a person to attend a place of lawful custody to have fingerprints or samples taken —

(a) must give the person a period of at least 7 days within which to attend the place of lawful custody; and

(b) may direct the person to attend at a specified time of day or between specified times of day.

2. When specifying the period and times of attendance, the officer making the requirements must consider whether the fingerprints or samples could reasonably be taken at a time when the person is required to attend the place of lawful custody for any other reason. See Note G1.

3. An officer of the rank of sergeant or above may authorise a period shorter than 7 days if there is an urgent need for a person's fingerprints or sample for the purposes of the investigation of an offence. The fact of the authorisation and the reasons for giving it must be recorded as soon as practicable.

4. The police officer making a requirement and the person to whom it applies may agree to vary it so as to specify any period within which, or date or time at which, the person is to attend. However, variation must not have effect for the purposes of enforcement, unless it is confirmed by the officer in writing.

Notes for Guidance

G1. The specified period within which the person is to attend need not fall within the period allowed (if applicable) for making the requirement.

G2. To justify the arrest without warrant of a person who fails to comply with a requirement, (see paragraph D4.4A above), the officer making the requirement, or confirming a variation, should be prepared to explain how, when and where the requirement was made or the variation was confirmed and what steps were taken to ensure that the person understood what to do and the consequences of not complying with the requirement.

CODE 'E'

CODE OF PRACTICE ON AUDIO RECORDING OF INTERVIEWS WITH SUSPECTS

Contents

E1. General

E1.01. This Code of Practice is a copy of the Code contained in Schedule 3 to the Criminal Procedure and Evidence Ordinance [2014] (in this Code referred to as "the Ordinance") and is to be read as one with the Ordinance.

E1.02. The powers and procedures in this Code must be used fairly, responsibly, with respect for the suspects to whom they apply, and without unlawful discrimination on the grounds of sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Police officers when carrying out their functions must have regard to the need to eliminate unlawful discrimination, harassment and victimisation and to take steps to foster good relations.

E1.1. This Code of Practice must be readily available at every police station and every other place of lawful custody for consultation by police officers, detained persons and members of the public.

The Code must also be published on the Falkland Islands Government and/or Royal Falkland Islands Police website, and is to be made available for consultation by members of the public in such civic locations as the Governor directs or, in the absence of such a direction, as the Chief Police Officer considers appropriate (e.g. community library).

E1.2. The Notes for Guidance are not provisions of this Code, but are guidance to police officers and others about its application and interpretation.

E1.3. Nothing in this Code detracts from the requirements of Code C (the Code of Practice for the detention, treatment and questioning of persons by police officers).

E1.4. The provisions of this Code do not apply to people detained in custody for searches under stop and search powers, except as required by Code A.

E1.5. In this Code, “legal practitioner” means a person who is entitled to practise as an advocate or as a solicitor, attorney or proctor in any court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland.

E1.6. In this Code, “recording media” means any removable, physical audio recording medium (such as magnetic type, optical disc or solid state memory) which can be played and copied.

E1.7. Sections E2 to E6 of this Code set out provisions which apply to all interviews with suspects, including provisions which apply only to interviews recorded using removable media. Section E7 applies to interviews recorded using a secure digital network.

E1.8. [Omitted]

E1.9. [Omitted]

E1.10. References to a pocket book in this Code include any official report book issued to police officers.

E1.11. If an officer has any suspicion, or is told in good faith, that a suspect of any age may be mentally disordered or otherwise mentally vulnerable, in the absence of clear evidence to dispel that suspicion, the person must be treated as such for the purposes of this Code (see Note 1G to Code C).

E1.12. Any suspect who appears to be under 18 must be treated as a youth for the purposes of this Code in the absence of clear evidence that he or she is older.

E1.13. A suspect who appears to be blind, seriously visually impaired, deaf, unable to read or speak or who has difficulty communicating orally because of a speech impediment, must be treated as such for the purposes of this Code in the absence of clear evidence to the contrary.

E2. Recording and sealing master recordings

E2.1. Recording of interviews must be carried out openly to instil confidence in its reliability as an impartial and accurate record of the interview.

E2.2. One recording, the master recording, will be sealed in the suspect's presence. A second recording will be used as a working copy. The master recording is either of all the recordings made in a multiple deck/drive machine or the only recording in a single deck/drive machine. The working copy is either the repeat recording made in a multiple deck/drive machine or a copy of the master recording made by a single deck/drive machine (see Note 2A).

E2.3. Nothing in this Code requires the identity of an officer conducting an interview to be recorded or disclosed if the interviewer reasonably believes recording or disclosing his or her identity might put the interviewer in danger. In these cases interviewers should use warrant or other identification numbers (see Note 2C).

Notes for Guidance

2A. The purpose of sealing the master recording in the suspect's presence is to show the recording's integrity is preserved. If a single deck/drive machine is used the working copy of the master recording must be made in the suspect's presence and without the master recording leaving the suspect's sight. The working copy must be used for making further copies if needed.

2B. [Omitted]

2C. The purpose of paragraph E2.3 is to protect those involved in serious organised crime investigations or arrests of particularly violent suspects when there is reliable information that those arrested or their associates may threaten or cause harm to those involved. In cases of doubt, an officer of inspector rank or above should be consulted.

E3. Interviews to be audio recorded

E3.1. Subject to paragraphs E3.3 and E3.4, audio recording must be used at a place of lawful custody for any interview —

(a) with a person cautioned under section C10 of Code C in respect of any imprisonable offence (see Note 3A);

(b) which takes place as a result of an interviewer exceptionally putting further questions to a suspect about an imprisonable offence after the suspect has been charged with, or told he or she may be prosecuted for, that offence (see paragraph C16.5 of Code C);

(c) when an interviewer wishes to tell a person, after the person has been charged with, or informed that he or she may be prosecuted for, an offence described in paragraph E3.1(a),

about any written statement or interview with another person (see paragraph C16.4 of Code C).

E3.2. [Omitted]

E3.3. A police officer of the rank of sergeant or above may authorise the interviewer not to audio record the interview if it is —

(a) not reasonably practicable because of equipment failure or the unavailability of a suitable interview room or recorder and the authorising officer considers, on reasonable grounds, that the interview should not be delayed; or

(b) clear from the outset there will not be a prosecution.

(Note: In these cases the interview should be recorded in writing in accordance with section C11 of Code C. In all cases the authorising officer must record the specific reasons for not audio recording (see Note 3B)).

E3.4. If a suspect refuses to go into or remain in a suitable interview room (see paragraph C12.5 of Code C) and a police officer of the rank of sergeant or above considers, on reasonable grounds, that the interview should not be delayed, the interview may, at the that officer's discretion, be conducted in a cell using portable recording equipment or, if none is available, recorded in writing as in section C11 of Code C. The reasons for this must be recorded.

E3.5. The whole of each interview must be audio recorded, including the taking and reading back of any statement.

E3.6. A sign or indicator which is visible to the suspect must show when the recording equipment is recording.

Notes for Guidance

3A. Nothing in this Code is intended to preclude audio recording at police discretion of interviews at a place of lawful custody with people cautioned in respect of offences not covered by paragraph E3.1, or responses made by persons after they have been charged with, or told they may be prosecuted for, an offence, provided that this Code is complied with.

3AA. Attention is drawn to the provisions of Code C about the matters to be considered when deciding whether a detained person is fit to be interviewed.

3AB. Code C sets out the circumstances in which a suspect may be questioned about an offence after being charged with it.

3AC. Code C sets out the procedures to be followed when, after charge, a person's attention is drawn to a statement made by another person. One method of bringing the content of an interview with another person to the notice of a suspect may be to play him or her a recording of that interview.

3B. A decision not to audio record an interview for any reason may be the subject of comment in court. The authorising officer should be prepared to justify that decision.

3C. [Omitted]

E4. The interview

A. General
E4.1. The provisions of Code C —

(a) sections C10 and C11, and the applicable Notes for Guidance, apply to the conduct of interviews to which this Code applies;

(b) paragraphs C11.7 to C11.14 apply only when a written record is needed.

E4.2. Paragraphs C10.10 and C10.11 and Annex C of Code C describe the restriction on drawing adverse inferences from a suspect's failure or refusal to say anything about his or her involvement in the offence when interviewed or after being charged or informed he or she may be prosecuted, and how it affects the terms of the caution and determines if and by whom a special warning under section 367 or 368 of the Ordinance can be given.

B. Commencement of interviews
E4.3. When the suspect is brought into the interview room the interviewer must, without delay but in the suspect's sight, load the recorder with new recording media and set it to record. The recording media must be unwrapped or opened in the suspect's presence. (This paragraph does not apply to interviews recorded using a secure digital network, as to which see section E7.)

E4.4. The interviewer should tell the suspect about the recording process and point out the sign or indicator which shows that the recording equipment is activated and recording (see paragraph E3.6). The interviewer must —

(a) say the interview is being audibly recorded;

(b) subject to paragraph E2.3, give his or her name and rank and that of any other police officer present;

(c) ask the suspect and any other party present, such as a legal practitioner, to identify himself or herself (see Note 4A);

(d) state the date, time of commencement and place of the interview;

(e) state that the suspect will be given a notice about what will happen to the copies of the recording. (This sub-paragraph does not apply to interviews recorded using a secure digital network, as to which see section E7).

E4.5. The interviewer must —

(a) caution the suspect (see section C10 of Code C);

(b) remind the suspect of his or her entitlement to obtain independent legal advice (see paragraph C11.2 of Code C).

E4.6. The interviewer must put to the suspect any significant statement or silence (see paragraph C11.4A of Code C).

C. Interviews with deaf persons

E4.7. If the suspect is deaf or is suspected of having impaired hearing, the interviewer must make a written note of the interview in accordance with Code C at the same time as audio recording it in accordance with this Code (see Notes 4B and 4C).

D. Objections and complaints by the suspect

E4.8. If the suspect objects to the interview being audibly recorded at the outset, during the interview or during a break, the interviewer must explain that the interview is being audibly recorded and that this Code requires the suspect's objections to be recorded on the audio recording. When any objections have been audibly recorded or the suspect has refused to have his or her objections recorded, the interviewer must say that he or she is turning off the recorder, give the reasons and turn it off. The interviewer must then make a written record of the interview as in section C11 of Code C. If, however, the interviewer reasonably considers that he or she may proceed to question the suspect with the audio recording still on, the interviewer may do so. This procedure also applies in cases where the suspect has previously objected to the interview being visually recorded (see F4.8 of Code F), and the investigating officer has decided to audibly record the interview (see Note 4D).

E4.9. If in the course of an interview a complaint is made by or on behalf of the person being questioned concerning the provisions of this Code or Code C, the interviewer must act as in paragraph C12.9 of Code C (see Notes 4E and 4F).

E4.10. If the suspect indicates he or she wishes to tell the interviewer about matters not directly connected with the offence, and is unwilling for these matters to be audio recorded, the suspect should be given the opportunity to tell the interviewer at the end of the formal interview.

E. Changing recording media

F4.11. If the recording media is not of sufficient length to record all of the interview with the suspect, further recording media must be used. When the recording equipment indicates that the recording media has only a short time left to run, the interviewer must advise the suspect and round off that part of the interview. If the interviewer wishes to continue the interview but does not already have further recording media with him, he or she must obtain more media. The suspect should not be left unattended in the interview room. The interviewer will remove the recording media from the recording equipment and insert a new one which has been unwrapped or otherwise opened in the suspect's presence. The recording equipment must then be set to record.

Care must be taken, particularly when a number of sets of recording media have been used, to ensure that there is no confusion between them. This could be achieved by marking the sets of recording media with consecutive identification numbers.

F. Taking a break during interview

E4.12. When a break is taken, the fact that a break is to be taken, the reason for it and the time must be recorded on the audio recording.

E4.12A. When the break is taken and the interview room vacated by the suspect, the recording medium must be removed from the recorder and the procedures for the conclusion of an interview followed (see paragraph E4.18).

E4.13. When a break is a short one and both the suspect and an interviewer remain in the interview room, the recording may be stopped. There is no need to remove the recording medium and when the interview recommences the recording should continue on the same recording medium. The time at which the interview recommences must be recorded on the audio recording.

E4.14. After any break in the interview the interviewer must, before resuming the interview, remind the person being questioned that he or she remains under caution or, if there is any doubt, give the caution in full again (see Note 4G).

G. Failure of recording equipment

E4.15. If there is an equipment failure which can be rectified quickly, e.g. by inserting a new recording medium; the interviewer must follow the appropriate procedures as in paragraph E4.11. When the recording is resumed the interviewer must explain what happened and record the time at which the interview recommences. If, however, it will not be possible to continue recording on that recorder and no replacement recorder is readily available, the interview may continue without being audibly recorded. If this happens, the interviewer must seek the authority of a police officer of the rank of sergeant or above as in paragraph E3.3 (see Note 4H).

H. Removing recording media from the recorder

E4.16. When a recording medium is removed from the recorder during the interview, it must be retained and the procedures in paragraph E4.18 followed.

I. Conclusion of interview

E4.17. At the conclusion of the interview, the suspect must be offered the opportunity to clarify anything that he or she has said and asked if there is anything he or she wishes to add.

E4.18. At the conclusion of the interview, including the taking and reading back of any written statement, the time must be recorded and the recording must be stopped. The interviewer must seal the master recording with a master recording label and treat it as an exhibit in accordance with standing orders, policies and procedures of the Police Force.

The interviewer must sign the label and ask the suspect and any third party present during the interview to sign it. If the suspect or third party refuse to sign the label an officer of the rank of

sergeant or above, or, if such an officer is not available, the custody officer, must be called into the interview room and, subject to paragraph E2.3, asked to sign it.

E4.19. The suspect must be given a notice which explains —

(a) how the audio recording will be used;

(b) the arrangements for access to it;

(c) that if the person is charged or informed that he or she will be prosecuted, a copy of the audio recording will be supplied as soon as practicable or as otherwise agreed between the suspect and the police, or on the order of a court.

Notes for Guidance

4A. For the purpose of voice identification, the interviewer should ask the suspect and any other people present to identify themselves.

4B. This provision is to give a person who is deaf or has impaired hearing equivalent rights of access to the full interview record as far as is possible using audio recording.

4C. The provisions of section C13 of Code C on interpreters for deaf persons or for interviews with suspects who have difficulty understanding English continue to apply.

4D. The interviewer should remember that a decision to continue recording against the wishes of the suspect may be the subject of comment in court.

4E. If the custody officer is called to deal with the complaint, the recorder should, if possible, be left on until the custody officer has entered the room and spoken to the person being interviewed. Continuation or termination of the interview should be at the interviewer's discretion, pending action by an officer of the rank of inspector or above under paragraph C9.2 of Code C.

4F. If the complaint is about a matter not connected with this Code or Code C, the decision to continue is at the interviewer's discretion. When the interviewer decides to continue the interview, he or she must tell the suspect that the complaint will be brought to the custody officer's attention at the conclusion of the interview. When the interview is concluded the interviewer must, as soon as practicable, inform the custody officer about the existence and nature of the complaint made.

4FA. In considering whether to caution again after a break, the officer should bear in mind that he or she may have to satisfy a court that the suspect understood that he or she was still under caution when the interview resumed.

4G. The interviewer should remember that it may be necessary to show to the court that nothing occurred during a break or between interviews which influenced the suspect's recorded evidence. After a break or at the beginning of a subsequent interview, the interviewer should consider summarising on the record the reason for the break and confirming this with the suspect.

4H. If the interview is being recorded and the medium or the recording equipment fails, the officer conducting the interview should stop the interview immediately. If part of the interview is unaffected by the error and is still accessible on the medium, that medium must be copied and sealed in the suspect's presence and the interview recommenced using new equipment or media as required. If the content of the interview has been lost in its entirety the medium should be sealed in the suspect's presence and the interview begun again. If the recording equipment cannot be fixed or no replacement is immediately available, the interview should be recorded in accordance with section C11 of Code C.

E5. After the interview

E5.1. The interviewer must make a note in his or her pocket book that the interview has taken place and was audibly recorded, of its time, duration and date and of the master recording's identification number.

E5.2. If no proceedings follow in respect of the person whose interview was recorded, the recording medium must be kept securely as in paragraph E6.1 and Note 6A.

Note for Guidance

5A. [Omitted]

E6. Media security

E6.1. The officer in charge of each place of lawful custody at which interviews with suspects are recorded must make arrangements for master recordings to be kept securely and their movements accounted for on the same basis as material which may be used for evidential purposes, in accordance with standing orders, policies and procedures of the Police Force (see Note 6A).

E6.2. A police officer has no authority to break the seal on a master recording required for criminal trial or appeal proceedings. If it is necessary to gain access to the master recording, the police officer must arrange for its seal to be broken in the presence of a representative of the Attorney General. The defendant or his or her legal practitioner should be informed and given a reasonable opportunity to be present. If the defendant or his or her legal practitioner is present one of them must be invited to reseal and sign the master recording. If both refuse or neither is present the resealing and signing must be done by the representative of the Attorney General (see Note 6B).

E6.2A. When the master recording seal is broken, a record must be made of the procedure followed, including the date, time, place and persons present.

E6.3. The Chief Police Officer must establish arrangements for breaking the seal of the master copy where no criminal proceedings result, or the criminal proceedings to which the interview relates have been concluded and it becomes necessary to break the seal. These arrangements should be those which the Chief Police Officer considers are reasonably necessary to demonstrate to the person interviewed and any other party who may wish to use or refer to the interview record that the master copy has not been tampered with and that the interview record remains accurate (see Note 6D).

E6.4. Subject to paragraph E6.6, a representative of the prosecution and each defendant must be given a reasonable opportunity to be present when the seal is broken, the master copy copied and resealed.

E6.5. If one or more of the parties is not present when the master copy seal is broken because they cannot be contacted or refuse to attend or paragraph E6.6 applies, arrangements should be made for an independent person to be present. Alternatively, or as an additional safeguard, arrangements should be made for a film or photographs to be taken of the procedure.

E6.6. Paragraph E6.5 does not require a person to be given an opportunity to be present if —

(a) it is necessary to break the master copy seal for the proper and effective further investigation of the original offence or the investigation of some other offence; and

(b) the officer in charge of the investigation has reasonable grounds to suspect that allowing an opportunity might prejudice any such investigation or criminal proceedings which may be brought as a result or endanger any person (see Note 6E).

Notes for Guidance

6A. This section is concerned with the security of the master recording sealed at the conclusion of the interview. Care must be taken of working copies of recordings because their loss or destruction may lead to the need to access master recordings.

6B. If the recording has been delivered to the Supreme Court for safe keeping in a trial on indictment, the Attorney General will apply to the Registrar of the court for the release of the recording for unsealing by the Attorney General.

6C. Reference to the Attorney General in this part of the Code include any other body or person with a statutory responsibility for prosecution for whom the police conduct any recorded interviews.

6D. The most common reasons for needing access to master copies that are not required for criminal proceedings arise from civil actions and complaints against police and civil actions between individuals arising out of allegations of crime investigated by police.

6E. Paragraph E6.6 could apply, for example, when one or more of the outcomes or likely outcomes of the investigation might be —

(a) the prosecution of one or more of the original suspects;

(b) the prosecution of someone previously not suspected, including someone who was originally a witness; and

(c) any original suspect being treated as a prosecution witness and when premature disclosure of any police action, particularly through contact with any parties involved, could lead to a real risk of compromising the investigation and endangering witnesses.

6F. Police officers must arrange that, as far as possible, tape recording arrangements are unobtrusive.

E7. Recording of Interviews by Secure Digital Network

E7.1. A secure digital network does not use removable media and this section specifies the provisions which will apply when a secure digital network is used.

E7.2. A 'secure digital network' is a computer network system which enables an original interview recording to be stored as a digital multi-media file or a series of such files, on a secure file server approved for the purpose by the Governor.

E7.2A. The provisions of sections E1 to E6 of this Code which refer or apply only to removable media do not apply to a secure digital network recording.

E7.3. The following requirements are solely applicable to the use of a secure digital network for the recording of interviews.

A. Application of sections E1 to E6 of this Code

E7.4. Sections E1 to E6 of this Code apply except —

(a) paragraph E2.2 under "Recording and sealing of master recordings";

(b) paragraph E4.3 under "(b) Commencement of interviews";

(c) paragraph E4.4 (e) under "(b) Commencement of interviews";

(d) paragraphs E4.11 to E4.19 under "(e) Changing recording media", "(f) Taking a break during interview", "(g) Failure of recording equipment", "(h) Removing recording media from the recorder" and "(i) Conclusion of interview";

(e) paragraphs E6.1 to E6.4 and Notes 6A to 6C under "Media security".

B. Commencement of Interview

E7.5. When the suspect is brought into the interview room, the interviewer must without delay and in the sight of the suspect switch on the recording equipment and enter the information necessary to log on to the secure network and start recording.

E7.6. The interviewer must then inform the suspect that the interview is being recorded using a secure digital network and that recording has commenced.

E7.7. In addition to the requirements of paragraph E4.4 (a) to (d) above, the interviewer must inform the suspect that —

(a) if the suspect is charged or informed that he or she will be prosecuted, he or she will be given access to the recording of the interview, but otherwise will only be given access as agreed with the police or on the order of a court; and

(b) the suspect will be given a written notice at the end of the interview setting out his or her rights to access the recording and what will happen to the recording.

C. Taking a break during interview

E7.8. When a break is taken, the fact that a break is to be taken, the reason for it and the time must be recorded on the audio recording. The recording must be stopped and the procedures in paragraphs E7.12 and E7.13 for the conclusion of an interview followed.

E7.9. When the interview recommences the procedures in paragraphs E7.5 to E7.7 for commencing an interview must be followed to create a new file to record the continuation of the interview. The time the interview recommences must be recorded on the audio recording.

E7.10. After any break in the interview the interviewer must, before resuming the interview, remind the suspect that he or she remains under caution or, if there is any doubt, give the caution in full again (see Note 4G.)

D. Failure of recording equipment

E7.11. If there is an equipment failure which can be rectified quickly, e.g. by commencing a new secure digital network recording; the interviewer must follow the appropriate procedures as in paragraphs E7.8 to E7.10. When the recording is resumed the interviewer must explain what happened and record the time the interview recommences. If it is not possible to continue recording on the secure digital network, the interview should be recorded on removable media as in paragraph E4.3 unless the necessary equipment is not available. If this happens the interview may continue without being audibly recorded and the interviewer must seek the authority of a police officer of the rank of sergeant or above, as in paragraph E3.3 (see Note 4H).

E. Conclusion of interview

E7.12. At the conclusion of the interview, the suspect must be offered the opportunity to clarify anything he or she has said and asked if there is anything he or she wants want to add.

E7.13. At the conclusion of the interview, including the taking and reading back of any written statement —

(a) the time must be orally recorded;

(b) the suspect must be given a notice which explains —

(i) how the audio recording will be used;

(ii) the arrangements for access to it;

(iii) that if the suspect is charged or informed that he or she will be prosecuted, he or she will be given access to the recording of the interview either electronically or by being given a copy on removable recording media, but otherwise the suspect will only be given access as agreed with the police or on the order of a court (see Note 7A);

(c) the suspect must be asked to confirm that he or she has received a copy of the notice at paragraph E7.13(b). If the suspect fails to accept or to acknowledge receipt of the notice, the interviewer must state for the recording that a copy of the notice has been provided to the suspect and that he or she has refused to take a copy of the notice or has refused to acknowledge receipt;

(d) the time must be recorded and the interviewer must notify the suspect that the recording is being saved to the secure network. The interviewer must save the recording in the presence of the suspect. The suspect must then be informed that the interview is terminated.

F. After the interview

E7.14. The interviewer must make a note in his or her pocket book that the interview has taken place and was audibly recorded, of its time, duration and date and of the original recording's identification number.

E7.15. If no proceedings follow in respect of the person whose interview was recorded, the recordings must be kept securely as in paragraphs E7.16 and 7.17 (see Note 5A.)

G. Security of secure digital network interview records

E7.16. Interview record files must be stored in read only format on non-removable storage devices, for example, hard disk drives, to ensure their integrity. The recordings must first be saved locally to a secure non-removable device before being transferred to the remote network device. If for any reason the network connection fails, the recording remains on the local device and must be transferred when the network connections are restored.

E7.17. Access to interview recordings, including copying to removable media, must be strictly controlled and monitored to ensure that access is restricted to those who have been given specific permission to access for specified purposes when this is necessary. For example, police officers and staff of the Attorney General's Chambers involved in the preparation of any prosecution case, persons interviewed if they have been charged or informed they may be prosecuted, and their legal practitioners.

Note for Guidance

7A. The notice at paragraph E7.13 above should provide a brief explanation of the secure digital network and how access to the recording is strictly limited. The notice should also explain the rights of the suspect, his or her legal practitioner, the police and the prosecutor to access to the recording of the interview. Space should be provided on the form to insert the date and the file reference number for the interview.

CODE 'F'

CODE OF PRACTICE ON VISUAL RECORDING WITH SOUND OF INTERVIEWS WITH SUSPECTS

Contents

F1. General

(*Note: There is no statutory requirement to visually record interviews, but if it is done, it must be done in accordance with this Code*).

F1.01. This Code of Practice is a copy of the Code contained in Schedule 3 to the Criminal Procedure and Evidence Ordinance [2014] (in this Code referred to as "the Ordinance") and is to be read as one with the Ordinance.

F1.02. The powers and procedures in this Code must be used fairly, responsibly, with respect for the suspects to whom they apply, and without unlawful discrimination on the grounds of sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Police officers when carrying out their functions must have regard to the need to eliminate unlawful discrimination, harassment and victimisation and to take steps to foster good relations.

F1.1. This Code of Practice must be readily available at every police station and every other place of lawful custody for consultation by police officers, detained persons and members of the public.

The Code must also be published on the Falkland Islands Government and/or Royal Falkland Islands Police website, and is to be made available for consultation by members of the public in such civic locations as the Governor directs or, in the absence of such a direction, as the Chief Police Officer considers appropriate (e.g. community library).

F1.2. The Notes for Guidance are not provisions of this Code, but are guidance to police officers and others about its application and interpretation.

E1.3. Nothing in this Code detracts from the requirements of Code C (the Code of Practice for the detention, treatment and questioning of persons by police officers).

F1.4. The interviews to which this Code applies are set out in paragraphs F3.1 to F3.3.

F1.4A. In this Code, "recording media" means any removable, physical audio recording medium (such as magnetic type, optical disc or solid state memory) which can be played and copied.

F1.4B. In this Code, 'appropriate adult' and 'legal practitioner' have the meanings given those terms by section 2 of the Ordinance, that is to say —

"appropriate adult" means —

(c) in relation to a youth —

(i) the youth's parent or guardian;

(ii) if the youth is in the care of the Department - a person representing the Department; or

(iii) if a person described in (i) or (ii) is not available - any person over the age of 21 who is not a police officer or a person employed by the police and who is considered suitable by the custody officer;

(Note: The 'Department' means the Social Services Department.)

(d) in relation to a person who is mentally disordered or mentally vulnerable —

(i) a relative, guardian or other person responsible for the person's care or custody;

(ii) someone experienced in dealing with mentally disordered or mentally vulnerable people but who is not a police officer or person employed by the police; or

(iii) if a person described in (i) or (ii) is not available - any person over the age of 21 who is not a police officer or person employed by the police and who is considered suitable by the custody officer;

"legal practitioner" means a person who is entitled to practise as an advocate or as a solicitor, attorney or proctor in any court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland.

F1.5. In this Code, the term "interview" has the same meaning as in Code C, i.e. the questioning of a person regarding his or her involvement or suspected involvement in a criminal offence or offences which must be carried out under caution.

F1.5A. The provisions and Notes for Guidance in Code C applicable to the terms 'interview', 'appropriate adult' and 'legal practitioner' apply to this Code where appropriate.

F1.6. Any reference in this Code to visual recording is to be taken to mean visual recording with sound.

F1.7. References to a 'pocket book' in this Code include any official report book issued to police officers.

F1.8. If an officer has any suspicion, or is told in good faith, that a suspect of any age may be mentally disordered or otherwise mentally vulnerable, in the absence of clear evidence to dispel that suspicion, the person must be treated as such for the purposes of this Code (see Note 1G to Code C).

F1.9. Any suspect who appears to be under 18 must be treated as a youth for the purposes of this Code in the absence of clear evidence that he or she is older.

F1.10. A suspect who appears to be blind, seriously visually impaired, deaf, unable to read or speak or who has difficulty communicating orally because of a speech impediment, must be treated as such for the purposes of this Code in the absence of clear evidence to the contrary.

Note for Guidance
1A. [Omitted]

F2. Recording and sealing of master tapes
F2.1. Recording of interviews must be carried out openly to instil confidence in its reliability as an impartial and accurate record of the interview.
F2.2. Any camera used must be placed in the interview room so as to ensure coverage of as much of the room as is practicably possible while the interviews are taking place (see Note 2A).

F2.3. The recording media must be of a high quality, new and previously unused. When the recording media is placed in the recorder and switched on to record, the correct date and time, in hours, minutes and seconds, must be superimposed automatically, second by second, during the whole recording (see Note 2B).

F2.4. One copy of the recording media, referred to in this Code as the master copy, must be sealed before it leaves the presence of the suspect. A second copy must be used as a working copy (see Notes 2C and 2D).

F2.5. Nothing in this Code requires the identity of an officer to be recorded or disclosed if the officer reasonably believes that recording or disclosing the officer's name might put him or her in danger. In this case, the officer must have his or her back to the camera and must use his or her warrant or other identification number. Such instances and the reasons for them must be recorded in the custody record (see Note 2E).

Notes for Guidance

2A. Interviewing officers should arrange that, as far as possible, visual recording arrangements are unobtrusive. It must be clear to the suspect, however, that there is no opportunity to interfere with the recording equipment or the recording medium.

2B. In this context, the recording media will be of either a VHS or digital CD format and should be capable of having an image of the date and time superimposed upon it as it records the interview.

2C. The purpose of sealing the master copy before it leaves the presence of the suspect is to establish his or her confidence that the integrity of the copy is preserved.

2D. The recording of the interview may be used for identification procedures in accordance with paragraph 3.21 or Annex A of Code D.

2E. The purpose of the paragraph F2.5 is to protect police officers and others involved in the investigation of serious organised crime or the arrest of particularly violent suspects when there is reliable information that the person arrested or his or her associates may threaten or cause harm to the officer or the officer's family or personal property.

F3. Interviews to be visually recorded

F3.1. Subject to paragraph F3.2, if an interviewing officer is considering making a visual recording, it might be appropriate for an interview —

(a) with a suspect in respect of an imprisonable offence (see Notes 3A and 3B);

(b) which takes place as a result of an interviewer exceptionally putting further questions to a suspect about an imprisonable offence after the suspect has been charged with, or informed that he or she may be prosecuted for, that offence (see Note 3C);

(c) in which an interviewer wishes to bring to the notice of a person, after that person has been charged with, or informed that he or she may be prosecuted for an offence described in sub-paragraph (a), any written statement made by another person, or the content of an interview with another person (see Note 3D);

(d) with, or in the presence of, a deaf or deaf/blind or speech impaired person who uses sign language to communicate;

(e) with, or in the presence of, anyone who requires an “appropriate adult”; or

(f) in any case where the suspect or his or her representative requests that the interview be recorded visually.

F3.2. [Omitted]

F3.3. A police officer of the rank of sergeant or above may authorise the interviewing officer not to record the interview visually —

(a) if it is not reasonably practicable to do so because of failure of the equipment, or the non-availability of a suitable interview room, or recorder, and the interviewing officer considers on reasonable grounds that the interview should not be delayed until the failure has been rectified or a suitable room or recorder becomes available. In such cases the authorising officer may authorise the interviewing officer to audio record the interview in accordance with the guidance set out in Code E;

(b) if it is clear from the outset that no prosecution will ensue; or

(c) if it is not practicable to do so because at the time the person resists being taken to a suitable interview room or other location which would enable the interview to be recorded, or otherwise fails or refuses to go into such a room or location, and the interviewing officer considers on reasonable grounds that the interview should not be delayed until these conditions cease to apply.

F3.3A. In a case as mentioned in sub-paragraph (c) of paragraph F3.3, the authorising officer may authorise the interviewing officer to audio record the interview in accordance with the guidance set out in Code E, or if this is not feasible to record the interview in writing as in section C11 of Code C.

In all cases mentioned in paragraph F3.3, the interviewing officer must make a note in the custody record of the reasons for not taking a visual record (see Note 3F).

F3.4. When a person who is voluntarily attending a place of lawful custody is required to be cautioned in accordance with Code C prior to being interviewed, the subsequent interview must be recorded, unless the custody officer gives authority in accordance with paragraph F3.3 for the interview not to be so recorded.

F3.5. The whole of each interview must be recorded visually, including the taking and reading back of any statement.

F3.6. A visible illuminated sign or indicator must light and remain on at all times when the recording equipment is activated or capable of recording or transmitting any signal or information.

Notes for Guidance

3A. Nothing in the Code is intended to preclude visual recording at police discretion of interviews at a place of lawful custody with people cautioned in respect of offences not covered by paragraph F3.1, or responses made by interviewees after they have been charged with, or informed they may be prosecuted for, an offence, provided that this Code is complied with.

3B. Attention is drawn to the provisions of Code C about the matters to be considered when deciding whether a detained person is fit to be interviewed.

3C. Code C sets out the circumstances in which a suspect may be questioned about an offence after being charged with it.

3D. Code C sets out the procedures to be followed when, after charge, a person's attention is drawn to a statement made by another person. One method of bringing the content of an interview with another person to the notice of a suspect may be to play him or her a recording of that interview.

3E. [Omitted]

3F. A decision not to record an interview visually for any reason may be the subject of comment in court. The authorising officer should therefore be prepared to justify his or her decision in each case.

F4. The Interview

A. General

F4.1. The provisions of Code C in relation to cautions and interviews and the Notes for Guidance applicable to those provisions applies to the conduct of interviews to which this Code applies.

F4.2. Particular attention is drawn to those parts of Code C that describe the restrictions on drawing adverse inferences from a suspect's failure or refusal to say anything about his or her involvement in the offence when interviewed, or after being charged or informed that he or she may be prosecuted, and how those restrictions affect the terms of the caution and determine whether a special warning under section 367 or 368 of the Ordinance should be given.

B. Commencement of interviews

F4.3. When the suspect is brought into the interview room the interviewer must without delay, but in sight of the suspect, load the recording equipment and set it to record. The recording medium must be unwrapped or otherwise opened in the presence of the suspect (see Note 4A).

F4.4. The interviewer must then tell the suspect formally about the visual recording and point out the sign or indicator which shows that the recording equipment is activated and recording (see paragraph F3.6). The interviewer must —

(a) explain that the interview is being visually recorded;

(b) subject to paragraph F2.5, give his or her name and rank, and that of any other police officer present;

(c) ask the suspect and any other party present (e.g. a legal practitioner) to identify themselves;

(d) state the date, time of commencement and place of the interview; and

(e) state that the suspect will be given a notice about what will happen to the recording.

F4.5. The interviewer must then caution the suspect, in the form set out in Code C, and remind the suspect of his or her entitlement to obtain independent legal advice and that the suspect can speak to a legal practitioner on the telephone.

F4.6. The interviewer must then put to the suspect any significant statement or silence (i.e. failure or refusal to answer a question or to answer it satisfactorily) which occurred before the start of the interview, and must ask the suspect whether he or she wishes to confirm or deny that earlier statement or silence or whether he or she wishes to add anything. The definition of a "significant" statement or silence is the same as that set out in Code C.

C. Interviews with the deaf

F4.7. If the suspect is deaf or there is doubt about his or her hearing ability, the provisions of Code C on interpreters for the deaf or for interviews with suspects who have difficulty in understanding English continue to apply (see paragraph C11.4A of Code C and Note 4AB).

D. Objections and complaints by the suspect

F4.8. If the suspect raises objections to the interview being visually recorded, either at the outset or during the interview or during a break in the interview, the interviewer must explain the fact that the interview is being visually recorded and that the provisions of this Code require that the suspect's objections must be recorded on the visual recording. When any objections have been visually recorded or the suspect has refused to have his or her objections recorded, the interviewer must say that he or she is turning off the recording equipment, give his or her reasons and turn it off. If a separate audio recording is being maintained, the officer must ask the suspect to record the reasons for refusing to agree to visual recording of the interview. Paragraph E4.8 of Code E will apply if the suspect objects to audio recording of the interview. The officer must then make a written record of the interview. If the interviewer reasonably considers that he or she may proceed to question the suspect with the visual recording still on, the interviewer may do so (see Note 4G).

F4.9. If in the course of an interview a complaint is made by the person being questioned, or on his or her behalf, concerning the provisions of this Code or of Code C, the interviewer must act in accordance with Code C, record the complaint in the interview record and inform the custody officer (see Notes 4B and 4C).

F4.10. If the suspect indicates that he or she wishes to tell the interviewer about matters not directly connected with the offence of which the suspected is suspected and that he or she is unwilling for these matters to be recorded, the suspect must be given the opportunity to tell the interviewer about these matters after the conclusion of the formal interview.

E. Changing the recording media

F4.11. If the recording media is not of sufficient length to record all of the interview with the suspect, further recording media must be used. When the recording equipment indicates that the recording media has only a short time left to run, the interviewer must advise the suspect and round off that part of the interview. If the interviewer wishes to continue the interview but does not already have further recording media with him, he or she must obtain more media. The suspect should not be left unattended in the interview room. The interviewer will remove the recording media from the recording equipment and insert a new one which has been unwrapped or otherwise opened in the suspect's presence. The recording equipment must then be set to record.

Care must be taken, particularly when a number of sets of recording media have been used, to ensure that there is no confusion between them. This could be achieved by marking the sets of recording media with consecutive identification numbers.

F. Taking a break during the interview

F4.12. When a break is to be taken during the course of an interview and the interview room is to be vacated by the suspect, the fact that a break is to be taken, the reason for it and the time must be recorded. The recording equipment must be turned off and the recording medium removed. The procedures for the conclusion of an interview set out in paragraph F4.19 should be followed.

F4.13. When a break is to be a short one, and both the suspect and a police officer are to remain in the interview room, the fact that a break is to be taken, the reasons for it and the time must be recorded on the recording medium. The recording equipment may be turned off, but there is no need to remove the recording medium. When the interview is recommenced the recording must continue on the same recording medium and the time at which the interview recommences must be recorded.

F4.14. When there is a break in questioning under caution, the interviewing officer must ensure that the person being questioned is aware that he or she remains under caution. If there is any doubt, the caution must be given again in full when the interview resumes (see Notes 4D and 4E).

G. Failure of recording equipment

F4.15. If there is a failure of equipment which can be rectified quickly, the appropriate procedures set out in paragraph F4.12 must be followed. When the recording is resumed the interviewer must explain what has happened and record the time the interview recommences. If, however, it is not possible to continue recording on that particular recorder and no alternative equipment is readily available, the interview may continue without being recorded visually. In such circumstances, the procedures in paragraph F3.3 of this Code for seeking the authority of an officer of the rank of sergeant or above must be followed (see Note 4F).

H. Removing used recording media from recording equipment

F4.16. Where used recording media are removed from the recording equipment during the course of an interview, they must be retained and the procedures set out in paragraph F4.18 followed.

I. Conclusion of interview

F4.17. Before the conclusion of the interview, the suspect must be offered the opportunity to clarify anything he or she has said and asked if there is anything that he or she wishes wish to add.

F4.18. At the conclusion of the interview, including the taking and reading back of any written statement, the time must be recorded and the recording equipment switched off. The recording medium must be removed from the recording equipment, sealed with a master copy label and treated as an exhibit in accordance with the standing orders, policies and procedures of the Police Force. The interviewer must sign the label and also ask the suspect and any appropriate adults or other third party present during the interview to sign it. If the suspect or third party refuses to sign the label, an officer of the rank of sergeant or above, or if such an officer is not available, the custody officer, must be called into the interview room and asked, subject to paragraph F2.5, to sign it.

F4.19. The suspect must be given a notice which explains —

(a) how the audio recording will be used;

(b) the arrangements for access to it;

(c) that if the person is charged or informed that he or she will be prosecuted, a copy of the audio recording will be supplied as soon as practicable or as otherwise agreed between the suspect and the police, or on the order of a court.

Notes for Guidance

4A. The interviewer should attempt to estimate the likely length of the interview and ensure that an appropriate quantity of recording media and labels with which to seal the master copies are available in the interview room.

4AB. This provision is to give a person who is deaf or has impaired hearing equivalent rights of access to the full interview record as far as is possible using audio recording.

4B. If the custody officer is called immediately to deal with the complaint, wherever possible the recording equipment should be left to run until the custody officer has entered the interview room and spoken to the person being interviewed. Continuation or termination of the interview should be at the discretion of the interviewing officer, pending action pending action by an officer of the rank of inspector or above as set out in Code C.

4C. If the complaint is about a matter not connected with this Code or Code C, the decision to continue with the interview is at the discretion of the interviewing officer. If the interviewing officer decides to continue with the interview, the person being interviewed must be told that the

complaint will be brought to the attention of the custody officer at the conclusion of the interview. When the interview is concluded, the interviewing officer must, as soon as practicable, inform the custody officer of the existence and nature of the complaint made.

4D. In considering whether to caution again after a break, the officer should bear in mind that he or she may have to satisfy a court that the suspect understood that he or she was still under caution when the interview resumed.

4E. The officer should bear in mind that it may be necessary to satisfy the court that nothing occurred during a break in an interview or between interviews which influenced the suspect's recorded evidence. On the re-commencement of an interview, the officer should consider summarising on the recording medium the reason for the break and confirming this with the suspect.

4F. If any part of the recording media breaks or is otherwise damaged during the interview, it should be sealed as a master copy in the presence of the suspect and the interview resumed where it left off. The undamaged part should be copied and the original sealed as a master recording in the suspect's presence, if necessary after the interview. If equipment for copying is not readily available, both parts should be sealed in the suspect's presence and the interview begun again.

4G. The interviewer should be aware that a decision to continue recording against the wishes of the suspect may be the subject of comment in court.

F5. After the Interview

F5.1. The interviewer must make a note in his or her pocket book of the fact that the interview has taken place and has been recorded, its time, duration and date and the identification number of the master copy of the recording media.

F5.2. If no proceedings follow in respect of the person whose interview was recorded, the recording media must nevertheless be kept securely in accordance with paragraph F6.1 and Note 6A.

Note for Guidance
5A. [Omitted]

F6. Master copy security

A. General
F6.1. The officer in charge of a place of lawful custody at which interviews with suspects are recorded must make arrangements for the master copies to be kept securely and their movements accounted for on the same basis as other material which may be used for evidential purposes, in accordance with standing orders, policies and procedures of the Police Force (see Note 6A).

B. Breaking master copy seal for criminal proceedings

F6.2. A police officer has no authority to break the seal on a master copy which is required for criminal trial or appeal proceedings. If it is necessary to gain access to the master copy, the police officer must arrange for its seal to be broken in the presence of a representative of the Attorney General. The defendant or his or her legal adviser must be informed and given a reasonable opportunity to be present. If the defendant or his or her legal practitioner is present one of them must be invited to reseal and sign the master copy. If either refuses or neither is present, this must be done by the representative of the Attorney General (see Notes 6B and 6C).

C. Breaking master copy seal: other cases

F.6.3. The Chief Police Officer must establish arrangements for breaking the seal of the master copy where no criminal proceedings result, or the criminal proceedings to which the interview relates have been concluded and it becomes necessary to break the seal. These arrangements should be those which the Chief Police Officer considers are reasonably necessary to demonstrate to the person interviewed and any other party who may wish to use or refer to the interview record that the master copy has not been tampered with and that the interview record remains accurate (see Note 6D).

F6.4. Subject to paragraph F6.6, a representative of the prosecution and each defendant must be given a reasonable opportunity to be present when the seal is broken, the master copy copied and resealed.

F6.5. If one or more of the parties is not present when the master copy seal is broken because they cannot be contacted or refuse to attend or paragraph F6.6 applies, arrangements should be made for an independent person to be present. Alternatively, or as an additional safeguard, arrangements should be made for a film or photographs to be taken of the procedure.

F6.6. Paragraph F6.5 does not require a person to be given an opportunity to be present if —

(a) it is necessary to break the master copy seal for the proper and effective further investigation of the original offence or the investigation of some other offence; and

(b) the officer in charge of the investigation has reasonable grounds to suspect that allowing an opportunity might prejudice any such investigation or criminal proceedings which may be brought as a result or endanger any person (see Note 6E).

D. Documentation

F6.7 When the master copy seal is broken, copied and re-sealed, a record must be made of the procedure followed, including the date, time and place and persons present.

Notes for Guidance

6A. This section is concerned with the security of the master copy which will have been sealed at the conclusion of the interview. Care should, however, be taken of working copies since their loss or destruction might lead to the need to have access to master copies.

6B. If the recording has been delivered to the Supreme Court for safe keeping in a trial on indictment, the Attorney General will apply to the Registrar of the court for the release of the recording for unsealing by the Attorney General.

6C. Reference to the Attorney General in this part of the Code include any other body or person with a statutory responsibility for prosecution for whom the police conduct any recorded interviews.

6D. The most common reasons for needing access to master copies that are not required for criminal proceedings arise from civil actions and complaints against police and civil actions between individuals arising out of allegations of crime investigated by police.

6E. Paragraph F6.6 could apply, for example, when one or more of the outcomes or likely outcomes of the investigation might be —

(a) the prosecution of one or more of the original suspects;

(b) the prosecution of someone previously not suspected, including someone who was originally a witness; and

(c) any original suspect being treated as a prosecution witness and when premature disclosure of any police action, particularly through contact with any parties involved, could lead to a real risk of compromising the investigation and endangering witnesses.

6F. Police officers must arrange that, as far as possible, tape recording arrangements are unobtrusive.

F7. Visual recording of interviews by secure digital network

F7.1. This section applies if an officer wishes to make a visual recording with sound of an interview mentioned in section F3 of this Code using a secure digital network which does not use removable media (see paragraph F1.6(c) above.)

F7.2. A ‘secure digital network’ is a computer network system which enables an original interview recording to be stored as a digital multi-media file or a series of such files, on a secure file server approved for the purpose by the Governor.

F7.3. The provisions of sections F1 to F6 of this Code which refer or apply only to removable media do not apply to a secure digital network recording.

F7.4. The statutory requirement and provisions for the audio recording of interviews using a secure digital network as set out in section E7 of Code E apply to the visual recording with sound of interviews mentioned in section F5 of this Code as if references to audio recordings of interviews include visual recordings with sound.

CODE 'G'

CODE OF PRACTICE FOR THE STATUTORY POWER OF ARREST BY POLICE OFFICERS

Contents

G1. Introduction

G1.01. This Code of Practice is a copy of the Code contained in Schedule 3 to the Criminal Procedure and Evidence Ordinance [2014] (in this Code referred to as "the Ordinance") and is to be read as one with the Ordinance.

G1.1. This Code of Practice deals with statutory power of police to arrest persons involved, or suspected of being involved, in a criminal offence. The power of arrest must be used fairly, responsibly, with respect for people suspected of committing offences and without unlawful discrimination on the grounds of sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Police officers when carrying out their functions must have regard to the need to eliminate unlawful discrimination, harassment and victimisation and to take steps to foster good relations.
G1.2. The right to liberty is a key principle of the human rights provisions of the Constitution. The exercise of the power of arrest represents an obvious and significant interference with that right.

G1.3. The use of the power must be fully justified and officers exercising the power should consider if the necessary objectives can be met by other, less intrusive means. Arrest must never be used simply because it can be used. Absence of justification for exercising the powers of arrest may lead to challenges if the case goes to court. When the power of arrest is exercised it is essential that it is exercised in a non-discriminatory and proportionate manner, which is incompatible with the right to liberty under section 5 of the Constitution.

G1.4. Part 4 of the Ordinance provides the statutory power of arrest without warrant by police officers and others. If the provisions of the Ordinance and this Code are not observed, both the arrest and the conduct of any subsequent investigation may be open to question.

G1.5. This Code of Practice must be readily available at every police station and every other place of lawful custody for consultation by police officers, detained persons and members of the public.

The Code must also be published on the Falkland Islands Government and/or Royal Falkland Islands Police website, and is to be made available for consultation by members of the public in such civic locations as the Governor directs or, in the absence of such a direction, as the Chief Police Officer considers appropriate (e.g. community library).

G1.6. The Notes for Guidance are not provisions of this Code, but are guidance to police officers and others about its application and interpretation.

G1.7. In this Code, 'street bail' means bail at a place other than a place of lawful custody.

G2. Elements of arrest under section 44

G2.1. A lawful arrest requires 2 elements —

(a) a person's involvement or suspected involvement or attempted involvement in the commission of a criminal offence; and

(b) reasonable grounds for believing that the person's arrest is necessary.

Both elements must be satisfied, and it can never be necessary to arrest a person unless there are reasonable grounds to suspect them of committing an offence.

G2.2. The arrested person must be informed that he or she has been arrested, even if this fact is obvious, and of the relevant circumstances of the arrest in relation to both the above elements. The custody officer must be informed of these matters on arrival at a place of lawful custody (see paragraphs G2.9, G3.3 and paragraph C3.4 of Code C).

A. Involvement in an offence
G2.3. A police officer may arrest without warrant in relation to any offence —

(a) a person who is about to commit an offence or is in the act of committing an offence;

(b) a person whom the officer has reasonable grounds for suspecting is about to commit an offence or to be committing an offence;

(c) a person whom the officer has reasonable grounds to suspect of being guilty of an offence which the officer has reasonable grounds for suspecting has been committed;

(d) anyone who is guilty of an offence which has been committed or whom the officer has reasonable grounds for suspecting to be guilty of that offence.

G2.3A. There must be some reasonable, objective grounds for the suspicion, based on known facts and information which are relevant to the likelihood that the offence has been committed and that the person liable to arrest committed it (see Notes 2 and 2A.)

B. Necessity criteria

G2.4. The power of arrest is only exercisable if the officer has reasonable grounds for believing that it is necessary to arrest the person. The criteria for what may constitute necessity are set out in paragraph G2.9. It remains an operational decision at the discretion of the arresting officer to decide —

(a) which one or more of the necessity criteria (if any) applies to the individual; and

(b) if any of the criteria apply, whether to arrest, grant street bail after arrest, report for summons, issue a fixed penalty notice or take any other action that is open to the officer.

G2.5. In applying the criteria, the arresting officer must be satisfied that at least one of the reasons supporting the need for arrest is satisfied.

G2.6. Extending the power of arrest to all offences provides a police officer with the ability to use that power to deal with any situation. However, applying the necessity criteria requires the officer to examine and justify the reason or reasons why a person needs to be arrested or (as the case may be) further arrested and taken to a place of lawful custody for the custody officer to decide whether to authorise the person's detention for the offence (see Note 2C).

G2.7. The criteria in paragraph G2.9 below are based on section 44 of the Ordinance and are exhaustive. However, the circumstances that may satisfy those criteria remain a matter for the operational discretion of individual officers. Some examples are given below of what those circumstances may be, and what officers might consider when deciding whether arrest is necessary.

G2.8. In considering the individual circumstances, the officer must take into account the situation of the victim, the nature of the offence, the circumstances of the suspect and the needs of the investigative process.

G2.9. When it is practicable to tell a person why arresting the person is necessary (as required by paragraphs G2.2, G3.3 and Note 3), the police officer should outline the facts, information and other circumstances which form the basis for believing that the arrest is necessary and which the officer considers necessary for one or more of the following purposes —

(a) to enable the name of the person to be ascertained (if the officer does not know, and cannot readily ascertain, the person's name, or has reasonable grounds for doubting whether a name given by the person as his or her name is the person's real name);

(b) correspondingly as regards the person's address;

(Note: An address is satisfactory for the service of a summons if the person will be at it long enough to serve him or her with a summons; or if some other person at that address specified by the person will accept service of the summons on his or her behalf.)

(c) to prevent the person —

(i) causing physical injury to himself or herself or any other person;

(ii) suffering physical injury;

(iii) causing loss or damage to property;

(iv) committing an offence against public decency (only applies where members of the public going about their normal business cannot reasonably be expected to avoid the person in question); or

(v) causing an unlawful obstruction of the highway;

(d) to protect a child or other vulnerable person from the person being arrested;

(e) to allow the prompt and effective investigation of the offence or of the conduct of the person;

(f) to prevent a prosecution for the offence from being hindered by the disappearance of the person.

G2.9A. Paragraph G2.9(e) may apply if (but is not limited to) —

(a) there are reasonable grounds to believe that the person —

(i) has made false statements;
(ii) has made statements which cannot be readily verified;

(iii) has presented false evidence;

(iv) may steal or destroy evidence;

(v) may make contact with co-suspects or conspirators;

(vi) may intimidate or threaten or make contact with witnesses;

(b) it is necessary to obtain evidence by questioning;

(c) an arrest of a person in connection with an imprisonable offence is considered and there is a need to —

(i) enter and search without a search warrant any premises occupied or controlled by the person or where the person is at or immediately before arrest;

(ii) search the person;

(iii) prevent the person having contact with others;

(iv) take fingerprints, footwear impressions, samples or photographs of the person;

(d) compliance with statutory drug testing requirements must be ensured;

(e) there are reasonable grounds for believing that —

(i) if the person is not arrested he or she will fail to attend court;

(ii) street bail after arrest would be insufficient to deter the suspect from trying to evade prosecution.

(f) an arrest would enable the special warning to be given in accordance with paragraphs C10.10 and C10.11 of Code C when the suspect is found —

(i) in possession of incriminating objects, or at a place where such objects are found; or

(ii) at or near the scene of the crime at or about the time it was committed.

G3. Information to be given on arrest

A. Need for a caution

G3.1. Paragraphs C10.1 and C10.2 of Code C set out the requirement for a person whom there are grounds to suspect of an offence (see Note 2) to be cautioned before being questioned or further questioned about an offence.

G3.2. [Omitted]

G3.3. A person who is arrested, or further arrested, must be informed as soon as practicable that he or she is under arrest and of the grounds and reasons for the arrest (see paragraph G2.2 and Note 3).

G3.4. A person who is arrested, or further arrested, must also be cautioned unless —

(a) it is impracticable to caution by reason of the person's condition or behaviour at the time;

(b) the person has already been cautioned immediately prior to arrest as in paragraph G3.1.

B. Terms of the caution (see section C10 of Code C)
G3.5. The caution, which must be given on arrest, should be in the following terms —

"You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence." (See Note 4).

G3.6. Minor deviations from the words of any caution given in accordance with this Code do not constitute a breach of this Code, provided the sense of the relevant caution is preserved (see Note 5).

G3.7. [Omitted]

G4. Records of Arrest

A. General
G4.1. The arresting officer must record in his or her pocket book, or by other methods used for recording information —

(a) the nature and circumstances of the offence leading to the arrest;

(b) the reason or reasons why arrest was necessary;

(c) the giving of the caution;

(d) anything said by the person at the time of arrest.

G4.2. The record should be made at the time of the arrest unless that is impracticable. If not made at the time of arrest, the record should be completed as soon as possible after it.

G4.3. On arrival at a place of lawful custody, the custody officer must open the custody record (see paragraph C1.1A and section C2 of Code C). The information given by the arresting officer on the circumstances and reason or reasons for arrest must be recorded as part of the custody record. Alternatively, a copy of the record made by the officer in accordance with paragraph G4.1 must be attached as part of the custody record (see paragraph G2.2 below and paragraphs C3.4 and C10.3 of Code C).

G4.4. The custody record will serve as a record of the arrest. Copies of the custody record will be provided in accordance with paragraph 2.4A of Code C, and access for inspection of the original record will be provided in accordance with paragraphs C2.4 and C2.5 of Code C.

B. Interviews and arrests

G4.5. Records of interview, significant statements or silences will be treated in the same way as set out in sections C10 and C11 of Code C and in Codes E and F (audio and visual recording of interviews).

Notes for Guidance

1. For the purposes of this Code, 'offence' has the meaning given it by section 2 of the Ordinance, i.e. any statutory or common law offence for which a person may be tried by the Supreme Court, the Magistrate's Court or the Summary Court and punished if convicted.

1A. This Code does not apply to powers of arrest conferred on police officers under an arrest warrant, or to the powers of police officers to arrest without warrant other than under section 44 for an offence. These other powers to arrest without warrant do not depend on the arrested person committing any specific offence and include —

(a) arrest of a person who fails to answer police bail to attend a place of lawful custody or who is suspected of breaching a condition of that bail;

(b) arrest of a person bailed to attend court who is suspected of breaching, or is believed likely to breach, any condition of bail to take the person to court for bail to be re-considered;

(c) taking mentally disturbed persons into custody under the Mental Health Ordinance so that they can be taken to the hospital;

(d) arrest of a driver under the Road Traffic Ordinance following the outcome of a preliminary breath test to enable the driver to be required to provide an evidential sample;

(e) common law power to stop or prevent a breach of the peace - after arrest a person aged 18 or over may be brought before the Summary Court or the Magistrate's Court to show cause why he or she should not be bound over to keep the peace; these are not criminal proceedings.

1B. Youths should not be arrested at their place of education unless this is unavoidable. When a youth is arrested at the place of education, the principal or his or her nominee must be informed.

2. Facts and information relevant to a person's suspected involvement in an offence should not be confined to those which tend to indicate the person has committed or attempted to commit the offence. Before making a decision to arrest, a police officer should take account of any facts and information that are available, including claims of innocence made by the person, and that might dispel the suspicion.

2A. Particular examples of facts and information which might point to a person's innocence and may tend to dispel suspicion include those which relate to the statutory defence provided by

section 782 which allows the use of reasonable force in the prevention of crime or making an arrest, and the common law of self-defence. This may be relevant when a person appears, or claims, to have been acting reasonably in defence of himself or herself or others or to prevent his or her property or the property of others from being stolen, destroyed or damaged, particularly if the offence alleged is based on the use of unlawful force, e.g. a criminal assault.

2B. [Omitted]

2C. For a police officer to have reasonable grounds for believing it necessary to arrest, the officer is not required to be satisfied that there is no viable alternative to arrest. However, it does mean that in all cases, the officer should consider that arrest is the practical, sensible and proportionate option in all the circumstances at the time the decision is made. This applies equally to a person in police detention after being arrested for an offence who is suspected of involvement in a further offence and the necessity to arrest the person for that further offence is being considered.

2D. Although a warning is not expressly required, officers should if practicable, consider giving a warning which points out the person's offending behaviour, and explains why, if the person does not stop, the resulting consequences may make arrest necessary. Such a warning might —

(a) if heeded, avoid the need to arrest; or

(b) if ignored, support the need to arrest and also help prove the mental element of certain offences, for example, the person's intent or awareness, or help to rebut a defence that the person was acting reasonably.

A person who is warned that he or she may be liable to arrest if his or her real name and address cannot be ascertained, should be given a reasonable opportunity to establish the real name and address before deciding that either or both are unknown and cannot be readily ascertained or that there are reasonable grounds to doubt that a name and address the person has given is the real name and address. The person should be told why his or her name is not known and cannot be readily ascertained and (as the case may be) of the grounds for doubting that a name and address the person has given is the real name and address, including, for example, the reason why a particular document the person has produced to verify his or her real name and/or address, is not sufficient.

2E. The meaning of "prompt" should be considered on a case by case basis taking account of all the circumstances. It indicates that the progress of the investigation should not be delayed to the extent that it would adversely affect the effectiveness of the investigation. The arresting officer also has discretion to release the arrested person on 'street bail' as an alternative to taking the person directly to a place of lawful custody (see Note 2J).

2F. An officer who believes that it is necessary to interview the person suspected of committing the offence must then consider whether an arrest is necessary in order to carry out the interview. The officer is not required to interrogate the suspect to determine whether the person will attend a place of lawful custody voluntarily to be interviewed, but must consider whether the suspect's voluntary attendance is a practicable alternative for carrying out the interview. If it is, then arrest would not be necessary. Conversely, an officer who considers this option but is not satisfied that it is a practicable alternative, may have reasonable grounds for deciding that the arrest is necessary at the outset 'on the street'. Without such considerations, the officer would not be able to establish that arrest was necessary in order to interview.

Circumstances which suggest that a person's arrest 'on the street' would not be necessary in order to interview the person might be where the officer —

(a) is satisfied as to the person's identity and address and that the person will attend a specified place of lawful custody voluntarily to be interviewed, either immediately or by arrangement at a future date and time; and

(b) is not aware of any other circumstances which indicate that voluntary attendance would not be a practicable alternative (see paragraph G2.9(e)).

When making arrangements for the person's voluntary attendance, the officer should tell the person that —

(c) to properly investigate the person's suspected involvement in the offence the person must be interviewed under caution at a specified place of lawful custody, but in the circumstances an arrest for this purpose will not be necessary if the person attends that place voluntarily to be interviewed;

(d) if the person attends voluntarily, he or she will be entitled to obtain independent legal advice before, and to have a legal practitioner present at, the interview;

(e) the date and time of the interview will take account of the person's circumstances and the needs of the investigation; and

(f) if the person does not agree to attend a specified place of lawful custody voluntarily at a time which meets the needs of the investigation, or having so agreed, fails to attend, or having attended, fails to remain for the interview to be completed, it will be necessary to arrest the person to enable him or her to be interviewed.

2G. When the person attends the specified place of lawful custody voluntarily for interview by arrangement as in Note 2F above, arrest on arrival at that place prior to interview would only be justified if —

(a) new information coming to light after the arrangements were made indicates that from that time, voluntary attendance ceased to be a practicable alternative and the

person's arrest became necessary; and

(b) it was not reasonably practicable for the person to be arrested before the person attended the place of lawful custody.

If a person who attends a place of lawful custody voluntarily to be interviewed decides to leave before the interview is complete, the police would at that point be entitled to consider whether an arrest was necessary to carry out the interview. The possibility that the person might decide to leave during the interview is therefore not a valid reason for arresting the person before the interview has commenced (see paragraph 3.21 of Code C).

2H. The necessity criteria do not permit arrest solely to enable the routine taking, checking (speculative searching) and retention of fingerprints, samples, footwear impressions and photographs when there are no prior grounds to believe that checking and comparing the fingerprints, etc. or taking a photograph would provide relevant evidence of the person's involvement in the offence concerned or would help to ascertain or verify the person's real identity.

2I. The necessity criteria do not permit arrest for an offence solely because it happens to be an imprisonable offence or an offence under the Misuse of Drugs Ordinance unless there are reasonable grounds for suspecting that misuse of Class A drugs or Class B drugs might have caused or contributed to the offence.

2J. Having determined that the necessity criteria have been met and having made the arrest, the officer can then consider the use of street bail on the basis of the effective and efficient progress of the investigation of the offence in question. It gives the officer discretion to compel the person to attend a specified place of lawful custody at a date/time that best suits the overall needs of the particular investigation. Its use is not confined to dealing with child care issues or allowing officers to attend to more urgent operational duties and granting street bail does not retrospectively negate the need to arrest.

3. An arrested person must be given sufficient information to enable the person to understand that he or she has been deprived of his or her liberty and the reason for the arrest. For example, if a person is arrested on suspicion of committing an offence the person must be told the nature of the suspected offence, and when and where it was committed. The suspect must also be informed of the reason or reasons why arrest is considered necessary. Vague or technical language should be avoided.

When explaining why one or more of the arrest criteria apply, it is not necessary to disclose any specific details that might undermine or otherwise adversely affect any investigative processes. An example might be the conduct of a formal interview when prior disclosure of such details might give the suspect an opportunity to fabricate an innocent explanation or to otherwise conceal lies from the interviewer.

4. Nothing in this Code requires a caution to be given or repeated when informing a person not under arrest that he or she may be prosecuted for an offence. However, a court will not be able to draw any inferences under section 367 or 368 of the Ordinance if the person was not cautioned.

5. If it appears that a person does not understand the caution, the person giving it should explain it in his or her own words.

6. The powers available to an officer as the result of an arrest, such as entry and search of premises, detention without charge for more than 24 hours, holding a person incommunicado and delaying access to legal advice, are only available in respect of imprisonable offences and are subject to the specific requirements on authorisation set out in the Ordinance and the relevant Codes of Practice.

CODE OF PRACTICE FOR ARRANGING AND CONDUCTING INTERVIEWS WITH WITNESSES NOTIFIED BY THE DEFENDANT
('DEFENCE WITNESSES CODE')

Contents

Preamble

1.01. This Code of Practice is a copy of the Code contained in Schedule 3 to the Criminal Procedure and Evidence Ordinance [2014] (in this Code referred to as "the Ordinance") and is to be read as one with the Ordinance.

1.02. This Code of Practice must be readily available at every police station and every other place of lawful custody for consultation by police officers, detained persons and members of the public.

The Code must also be published on the Falkland Islands Government and/or Royal Falkland Islands Police website, and is to be made available for consultation by members of the public in

such civic locations as the Governor directs or, in the absence of such a direction, as the Chief Police Officer considers appropriate (e.g. community library).

1.03. This Code of Practice sets out guidance that police officers must follow if they arrange or conduct interviews of proposed witnesses whose details are disclosed to the prosecution by a defendant pursuant to the disclosure provisions in Part 14 of the Ordinance.

Persons other than police officers who are charged with the duty of conducting an investigation as defined in the Ordinance are to have regard to the relevant provisions of this Code, and should take these into account in applying their own operating procedures. This Code does not apply to persons who are not charged with the duty of conducting an investigation as defined in the Ordinance.

1.04. The powers and procedures in this Code must be used fairly, responsibly, with respect for the suspects to whom they apply, and without unlawful discrimination on the grounds of sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Police officers when carrying out their functions must have regard to the need to eliminate unlawful discrimination, harassment and victimisation and to take steps to foster good relations.

1.05. If an officer has any suspicion, or is told in good faith, that a witness of any age may be mentally disordered or otherwise mentally vulnerable, in the absence of clear evidence to dispel that suspicion, the person must be treated as such for the purposes of this Code (see Note 1G to Code C).

1.06. Any witness who appears to be under 18 must be treated as a youth for the purposes of this Code in the absence of clear evidence that he or she is older.

1.07. A witness who appears to be blind, seriously visually impaired, deaf, unable to read or speak or who has difficulty communicating orally because of a speech impediment, must be treated as such for the purposes of this Code in the absence of clear evidence to the contrary.

Introduction

1.1. Part 14 of the Ordinance sets out rules governing disclosure of information in the course of criminal proceedings by both the prosecution and the defence.

1.2. Section 218 provides for the defendant to give defence statements to the prosecution and to the court and section 219 sets out what those defence statements must contain. Section 219(2) requires that any defence statement that discloses an alibi must give particulars of it, including details of any witness who the defendant believes is able to give evidence in support of the alibi and any information the defendant has which may assist in identifying or finding such a witness.

1.3. Section 221 requires the defendant to give to the prosecutor and the court a notice indicating whether the defendant intends to call any witnesses at trial and giving details of those witnesses.

1.4. This Code of Practice sets out guidance that police officers must have regard to when they are arranging and conducting interviews of proposed witnesses identified in a defence statement given under section 219(2) or a notice given under section 221.

Definitions
2. In this code —

"officer" means a police officer or other investigating officer conducting, or proposing to conduct, an interview with a defence witness;

"legal practitioner" means a person who is entitled to practise as an advocate or as a solicitor, attorney or proctor in any court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland;

"witness" means a person identified by a defendant either in a defence statement under section 219(2) as being a witness that the defendant believes is able to give evidence in support of an alibi disclosed in the statement, or in a notice given to the court and the prosecutor under section 221 as being a person that the defendant intends to call as a witness at his trial.

Arrangement of the interview
3.1. If a police officer wishes to interview a witness, the witness must be asked whether he or she consents to being interviewed and informed that —

(a) an interview is being requested following the identification of the witness by the accused as a proposed witness under section 219(2) or section 221 of the Ordinance;

(b) the witness is not obliged to attend the proposed interview;

(c) the witness is entitled, at the witness' expense, to be accompanied by a legal practitioner at the interview; and

(d) a record will be made of the interview and the witness will subsequently be sent a copy of the record.

3.2. If the witness consents to being interviewed, the witness must be asked whether he or she —

(a) wishes to have a legal practitioner present at the interview;

(b) consents to a legal practitioner attending the interview on behalf of the defendant as an observer; and

(c) consents to a copy of the record being sent to the defendant. If the witness does not consent, he or she must be informed that the effect of disclosure requirements in criminal proceedings may nevertheless require the prosecution to disclose the record to the defendant (and any co-defendant) in the course of the proceedings.

Information to be provided to defendant

4.1. The officer must notify the defendant or, if the defendant is legally represented in the proceedings, the defendant's legal practitioner —

(a) that the officer requested an interview with the witness;

(b) whether the witness consented to the interview; and

(c) if the witness consented to the interview, whether the witness also consented to a legal practitioner attending the interview on behalf of the defendant, as an observer.

4.2. If the defendant is not legally represented in the proceedings, and if the witness consents to a legal practitioner attending the interview on behalf of the defendant, the defendant must be offered the opportunity, a reasonable time before the interview is held, to appoint a legal practitioner to attend it.

Date, time and venue for the interview

5. The officer must nominate a reasonable date, time and venue for the interview and notify the witness of them and any subsequent changes to them.

Notification to the defendant's legal practitioner

6. If the witness has consented to the presence of the defendant's legal practitioner, the practitioner must be notified that the interview is taking place, invited to observe, and given reasonable notice of the date, time and venue of the interview and any subsequent changes.

Conduct of the interview

7. The identity of the officer conducting the interview must be recorded. That person must have sufficient skills and authority, commensurate with the complexity of the investigation, to discharge his or her functions effectively. An officer must not conduct an interview if it is likely to result in a conflict of interest, for instance, if the officer is the victim of the alleged crime which is the subject of the proceedings. The advice of a more senior officer must always be sought if there is doubt as to whether a conflict of interest precludes an individual conducting the interview. If the doubt remains, the advice of the Attorney General must be sought.

Attendance of the defendant's legal practitioner

8.1. The defendant's legal practitioner may only attend the interview if the witness has consented to his or her presence as an observer. If the practitioner was given reasonable notice of the date, time and place of the interview, the fact that the practitioner is not present will not prevent the interview from being conducted. If the witness at any time withdraws consent to the defendant's legal practitioner being present at the interview, the interview may continue without the presence of the practitioner.

8.2. The defendant's legal practitioner may attend only as an observer.

Attendance of the witness's legal practitioner
9. If a witness has indicated that he or she wishes to appoint a legal practitioner to be present, that practitioner must be permitted to attend the interview.

Attendance of any other person
10. A witness under the age of 18, or a witness who is mentally disordered or otherwise mentally vulnerable, must be interviewed in the presence of an appropriate adult (as defined in section 2 of the Ordinance).

Recording of the interview
11.1. An accurate record must be made of the interview, whether it takes place at a place of lawful custody or elsewhere. The record must be made, where practicable, by audio recording or by visual recording with sound, or otherwise in writing. Any written record must be made and completed during the interview, unless this would not be practicable or would interfere with the conduct of the interview, and must constitute either a verbatim record of what has been said or, failing this, an account of the interview which adequately and accurately summarises it. If a written record is not made during the interview it must be made as soon as practicable after its completion. Written interview records must be timed and signed by the maker.

11.2. A copy of the record must be given, within a reasonable time of the interview, to —

(a) the witness; and

(b) if the witness consents, to the defendant or the defendant's legal practitioner.

CODE OF PRACTICE ON THE RECORDING, RETENTION AND DISCLOSURE OF MATERIAL OBTAINED IN A CRIMINAL INVESTIGATION
('DISCLOSURE CODE')

Contents

1. Introduction

1.01. This Code of Practice is a copy of the Code contained in Schedule 3 to the Criminal Procedure and Evidence Ordinance [2014] (in this Code referred to as "the Ordinance") and is to be read as one with the Ordinance.

1.1. This Code of Practice sets out the manner in which police officers are to record, retain and reveal to the prosecutor material obtained in a criminal investigation and which may be relevant to the investigation, and related matters.

1.2. Persons other than police officers who are charged with the duty of conducting an investigation as defined in the Ordinance are to have regard to the relevant provisions of this Code, and should take these into account in applying their own operating procedures.

1.3. This Code does not apply to persons who are not charged with the duty of conducting an investigation as defined in the Ordinance.

1.4. [Omitted]

2. Definitions

2.1 In this Code —

(a) a 'criminal investigation' is an investigation conducted by police officers with a view to it being ascertained whether a person should be charged with an offence, or whether a person charged with an offence is guilty of it. This will include —

(i) investigations into crimes that have been committed;

(ii) investigations whose purpose is to ascertain whether a crime has been committed, with a view to the possible institution of criminal proceedings; and

(iii) investigations which begin in the belief that a crime may have been committed, for example, when the police keep premises or people under observation for a period of time, with a view to the possible institution of criminal proceedings;

(b) 'charging a person with an offence' includes prosecution by way of a summons;

(c) an 'investigator' is any police officer involved in the conduct of a criminal investigation. All investigators have a responsibility for carrying out the duties imposed on them under this Code, including in particular recording information, and retaining records of information and other material;

(d) the 'officer in charge of an investigation' is the police officer responsible for directing a criminal investigation. That officer is also responsible for ensuring that proper procedures are

in place for recording information, and retaining records of information and other material, in the investigation;

(e) the 'disclosure officer' is the person responsible for examining material retained by the police during the investigation; revealing material to the prosecutor during the investigation and any criminal proceedings resulting from it, and certifying that the officer has done this; and disclosing material to the accused at the request of the prosecutor;

(f) the 'prosecutor' is the person responsible for the conduct, on behalf of the Crown, of criminal proceedings resulting from a specific criminal investigation;

(g) 'material' is material of any kind, including information and objects, which is obtained in the course of a criminal investigation and which may be relevant to the investigation. This includes not only material coming into the possession of the investigator (such as documents seized in the course of searching premises) but also material generated by the investigator (such as interview records);

(h) material may be 'relevant to an investigation' if it appears to an investigator, or to the officer in charge of an investigation, or to the disclosure officer, that it has some bearing on any offence under investigation or any person being investigated, or on the surrounding circumstances of the case, unless it is incapable of having any impact on the case;

(i) 'sensitive material' is material, the disclosure of which the disclosure officer believes would give rise to a real risk of serious prejudice to an important public interest;

(j) references to 'prosecution disclosure' are to the duty of the prosecutor under sections 216 and 224 of the Ordinance to disclose material which is in his or her possession or which he or she has inspected in pursuance of this Code, and which might reasonably be considered capable of undermining the case against the accused, or of assisting the case for the accused;

(k) references to the disclosure of material to a person accused of an offence include references to the disclosure of material to his or her legal practitioner;

(l) 'national security' means the security of the United Kingdom, the Falkland Islands, other British Overseas Territories and the Crown dependencies.

3. General responsibilities

3.1. The functions of the investigator, the officer in charge of an investigation and the disclosure officer are separate. Whether they are undertaken by one, two or more persons will depend on the complexity of the case. If they are undertaken by more than one person, close consultation between them is essential to the effective performance of the duties imposed by this Code.

3.2. [Omitted]

3.3. The Chief Police Officer must put in place arrangements to ensure that in every investigation the identity of the officer in charge of an investigation and the disclosure officer is recorded.

Disclosure officers should have sufficient skills and authority, commensurate with the complexity of the investigation, to discharge their functions effectively. An individual must not be appointed as a disclosure officer, or continue in that role, if it is likely to result in a conflict of interest, for instance, if the disclosure officer is the victim of the alleged crime which is the subject of the investigation. The advice of a more senior officer must always be sought if there is doubt as to whether a conflict of interest precludes an individual acting as the disclosure officer. If the doubt still remains, the advice of the Attorney General should be sought.

3.4. The officer in charge of an investigation may delegate tasks to another police officer, but remains responsible for ensuring that these have been carried out and for accounting for any general policies followed in the investigation. In particular, it is an essential part of the duties of the officer in charge to ensure that all material which may be relevant to an investigation is retained, and either made available to the disclosure officer or (in exceptional circumstances) revealed directly to the prosecutor.

3.5. In conducting an investigation, the investigator should pursue all reasonable lines of inquiry, whether these point towards or away from the suspect. What is reasonable in each case will depend on the particular circumstances. For example, where material is held on computer, it is a matter for the investigator to decide how many files on the computer it is reasonable to inquire into, and in what manner.

3.6. If the officer in charge of an investigation believes that other persons may be in possession of material that may be relevant to the investigation, and if this has not been obtained under paragraph 3.5, the officer should ask the disclosure officer to inform them of the existence of the investigation and invite them to retain the material in case they receive a request for its disclosure. The disclosure officer should inform the prosecutor that they may have such material. However, the officer in charge of an investigation is not required to make speculative enquiries of other persons: there must be some reason to believe that they may have relevant material. That reason may come from information provided to the police by the accused or from inquiries made or from some other source.

3.7. If, during a criminal investigation, the officer in charge of an investigation or disclosure officer for any reason no longer has responsibility for the functions falling to him, either the officer's supervisor or the police officer in charge of criminal investigations must assign someone else to assume that responsibility. That person's identity must be recorded, as with those initially responsible for these functions in each investigation.

4. Recording of information

4.1. If material which may be relevant to the investigation consists of information which is not recorded in any form, the officer in charge of an investigation must ensure that it is recorded in a durable, retrievable or readable form (whether in writing, on video or audio tape, or on computer disk).

4.2. If it is not practicable to retain the initial record of information because it forms part of a larger record which is to be destroyed, its contents should be transferred as a true record to a durable and more easily-stored form before that happens.

4.3. Negative information is often relevant to an investigation. If it may be relevant, it must be recorded. An example might be a number of people present in a particular place at a particular time who state that they saw nothing unusual.

4.4. If information which may be relevant is obtained, it must be recorded at the time it is obtained or as soon as practicable after that time. This includes, for example, information obtained in house-to-house enquiries, although the requirement to record information promptly does not require an investigator to take a statement from a potential witness where it could not otherwise be taken.

5. Retention of material

A. Duty to retain material

5.1. The investigator must retain material obtained in a criminal investigation which may be relevant to the investigation. Material may be photographed, video-recorded, captured digitally or otherwise retained in the form of a copy rather than the original at any time, if the original is perishable; the original was supplied to the investigator rather than generated by the investigator and is to be returned to its owner; or the retention of a copy rather than the original is reasonable in all the circumstances.

5.2. If material has been seized in the exercise of the powers of seizure conferred by the Ordinance, the duty to retain it under this code is subject to the provisions on the retention of seized material in section 30 of the Ordinance.

5.3. If the officer in charge of an investigation becomes aware as a result of developments in the case that material previously examined but not retained (because it was not thought to be relevant) may now be relevant to the investigation, the officer should, wherever practicable, take steps to obtain it or ensure that it is retained for further inspection or for production in court if required.

5.4. The duty to retain material includes the duty to retain material falling into the following categories, if it may be relevant to the investigation —

(a) crime reports (including crime report forms, relevant parts of incident report books or police officers' notebooks);

(b) custody records;

(c) records which are derived from tapes of telephone messages (for example 999 calls) containing descriptions of an alleged offence or offender;

(d) final versions of witness statements (and draft versions where their contents differ from the final version), including any exhibits mentioned (unless these have been returned to their owner on the understanding that they will be produced in court if required);

(e) interview records (written records, or audio or video tapes, of interviews with actual or potential witnesses or suspects);

(f) communications between the police and experts such as forensic scientists, and reports of work carried out by experts for the purposes of criminal proceedings;

(g) records of the first description of a suspect by each potential witness who purports to identify or describe the suspect, whether or not the description differs from that of subsequent descriptions by that or other witnesses;

(h) any material casting doubt on the reliability of a witness.

5.5. The duty to retain material if it may be relevant to the investigation also includes the duty to retain material which may satisfy the test for prosecution disclosure in the Ordinance, such as —

(a) information provided by an accused person which indicates an explanation for the offence with which the person has been charged;

(b) any material casting doubt on the reliability of a confession;

(c) any material casting doubt on the reliability of a prosecution witness.

5.6. The duty to retain material falling into these categories does not extend to items which are purely ancillary to such material and possess no independent significance (for example, duplicate copies of records and reports).

B. Length of time for which material is to be retained

5.7. All material which may be relevant to the investigation must be retained until a decision is taken whether to institute proceedings against a person for an offence.

5.8. If a criminal investigation results in proceedings being instituted, all material which may be relevant must be retained at least until the accused is acquitted or convicted or the prosecutor decides not to proceed with the case.

5.9. If the accused is convicted, all material which may be relevant must be retained until —

(a) the convicted person is released from custody, or discharged from hospital, in cases where the court imposes a custodial sentence or a hospital order;

(b) 6 months from the date of conviction, in all other cases.

If the court imposes a custodial sentence or hospital order and the convicted person is released from custody or discharged from hospital earlier than 6 months from the date of conviction, all material which may be relevant must be retained at least until 6 months from the date of conviction.

5.10. If an appeal against conviction is in progress when the release or discharge occurs, or at the end of the period of 6 months specified in paragraph 5.9, all material which may be relevant must be retained until the appeal is determined.

6. Preparation of Material for Prosecutor

A. Introduction

6.1 The officer in charge of the investigation, the disclosure officer or an investigator may seek advice from the prosecutor about whether any particular item of material may be relevant to the investigation.

6.2. Material which may be relevant to an investigation, which has been retained in accordance with this Code and which the disclosure officer believes will not form part of the prosecution case, must be listed in one of the two schedules mentioned below.

6.3. Material which the disclosure officer does not believe is sensitive must be listed in a schedule of non-sensitive material. The schedule must include a statement that the disclosure officer does not believe the material is sensitive.

6.4. Any material which is believed to be sensitive must be listed in a schedule of sensitive material. If there is no sensitive material, the disclosure officer must record this fact in a schedule of sensitive material.

6.4A. If in doubt as to whether material should be classified as sensitive, the disclosure officer should consult the prosecutor.

6.4B. A schedule of unused non-sensitive material should be disclosed to the defendant, but a schedule of unused sensitive material should not be.

6.5. Paragraphs 6.9 to 6.11 apply to both sensitive and non-sensitive material. Paragraphs 6.12 to 6.14 apply to sensitive material only.

6.6 to 6.8. [Omitted]

B. Way in which material is to be listed on schedule

6.9. The disclosure officer should ensure that each item of material is listed separately on the schedule, and is numbered consecutively. The description of each item should make clear the nature of the item and should contain sufficient detail to enable the prosecutor to decide whether he or she needs to inspect the material before deciding whether or not it should be disclosed.

6.10. In some enquiries it may not be practicable to list each item of material separately. For example, there may be many items of a similar or repetitive nature. These may be listed in a block and described by quantity and generic title.

6.11. Even if some material is listed in a block, the disclosure officer must ensure that any items among that material which might satisfy the test for prosecution disclosure are listed and described individually.

C. Treatment of sensitive material

6.12. Subject to paragraph 6.13, the disclosure officer must list on a sensitive schedule any material the disclosure of which the officer believes would give rise to a real risk of serious prejudice to an important public interest, and the reason for that belief. The schedule must

include a statement that the disclosure officer believes the material is sensitive. Depending on the circumstances, examples of such material may include the following —

(a) material relating to national security;

(b) material received from the intelligence and security agencies;

(c) material relating to intelligence from foreign sources which reveals sensitive intelligence gathering methods;

(d) material given in confidence;

(e) material relating to the identity or activities of informants, under-cover police officers, witnesses or other persons supplying information to the police who may be in danger if their identities are revealed;

(f) material revealing the location of any premises or other place used for police surveillance, or the identity of any person allowing a police officer to use them for surveillance;

(g) material revealing, either directly or indirectly, techniques and methods relied upon by a police officer in the course of a criminal investigation, for example covert surveillance techniques, or other methods of detecting crime;

(h) material the disclosure of which might facilitate the commission of other offences or hinder the prevention and detection of crime;

(i) material upon the strength of which search warrants were obtained;

(j) material containing details of persons taking part in identification parades;

(k) material supplied to an investigator during a criminal investigation which has been generated by an official of a body concerned with the regulation or supervision of bodies corporate or of persons engaged in financial activities, or which has been generated by a person retained by such a body;

(l) material supplied to an investigator during a criminal investigation which relates to a child or young person and which has been generated by a probation officer, the Social Services Department or some other party contacted by an investigator during the investigation.

(m) material related to the private life of a witness.

6.13. In exceptional circumstances, if an investigator considers that material is so sensitive that its revelation to the prosecutor by means of an entry on the sensitive schedule is inappropriate, the existence of the material must be revealed to the prosecutor separately. This will apply only

if compromising the material would be likely to lead directly to the loss of life, or directly threaten national security.

6.14. In such circumstances, the responsibility for informing the prosecutor lies with the investigator who knows the detail of the sensitive material. The investigator should act as soon as is reasonably practicable after the file containing the prosecution case is sent to the prosecutor. The investigator must also ensure that the prosecutor is able to inspect the material so that the prosecutor can assess whether it is disclosable and if so, whether it needs to be brought before a court for a ruling on disclosure under Part 14 of the Ordinance.

7. Revelation of material to prosecutor

7.01. In relation to imprisonable summary offences, the police must produce schedules and provide them to the prosecution as soon as practicable after a not guilty plea has been entered; and in relation to indictment-only offences, the police must produce schedules as soon as practicable after the case has been sent to the Supreme Court.

7.1. The disclosure officer must send the schedules to the prosecutor. Wherever practicable, this should be at the same time as the officer sends the file containing the material for the prosecution case.

7.2. The disclosure officer should draw the attention of the prosecutor to any material that an investigator has retained (including material to which paragraph 6.13 applies) which may satisfy the test for prosecution disclosure in the Ordinance, and should explain why the officer has come to that view.

7.3. At the same time as complying with the duties in paragraphs 7.1 and 7.2, the disclosure officer must give the prosecutor a copy of any of the following (unless it has already been given to the prosecutor as part of the file containing the material for the prosecution case) —

(a) information provided by an accused person which indicates an explanation for the offences with which he or she has been charged;

(b) any material casting doubt on the reliability of a confession;

(c) any material casting doubt on the reliability of a prosecution witness;

(d) any other material which the investigator believes may satisfy the test for prosecution disclosure in the Ordinance.

7.4. If the prosecutor asks to inspect material which has not already been copied to the prosecutor, the disclosure officer must allow the prosecutor to inspect it. If the prosecutor asks for a copy of material which has not already been copied to the prosecutor, the disclosure officer must give the prosecutor a copy. This does not apply if the disclosure officer believes, having consulted the officer in charge of an investigation, that the material is too sensitive to be copied and can only be inspected.

7.5. If material consists of information which is recorded other than in writing, whether it should be given to the prosecutor in its original form as a whole, or by way of relevant extracts recorded in the same form, or in the form of a transcript, is a matter for agreement between the disclosure officer and the prosecutor.

8. Subsequent action by disclosure officer

8.1. At the time a schedule of non-sensitive material is prepared, the prosecutor may not have given advice about the likely relevance of particular items of material. Once these matters have been determined, the disclosure officer must give the prosecutor, if necessary, an amended schedule, listing any additional material which —

(a) may be relevant to the investigation;

(b) does not form part of the case against the accused;

(c) is not already listed on the schedule; and

(d) the officer believes is not sensitive,

unless the officer is informed in writing by the prosecutor that the prosecutor intends to disclose the material to the defence.

8.2. Section 224 of the Ordinance imposes a continuing duty on the prosecutor, for the duration of criminal proceedings against the accused, to disclose material which meets the tests for disclosure (subject to public interest considerations). To enable the prosecutor to do this, any new material coming to light should be treated in the same way as earlier material.

8.3. In particular, after a defence statement has been given, the disclosure officer must look again at the material which has been retained and must draw the attention of the prosecutor to any material which might reasonably be considered capable of undermining the case for the prosecution against the accused, or of assisting the accused; and the officer must reveal it to the prosecutor in accordance with paragraphs 7.4 and 7.5.

9. Certification by disclosure officer

9.1. The disclosure officer must certify to the prosecutor that to the best of the officer's knowledge and belief, all relevant material which has been retained and made available to the officer has been revealed to the prosecutor in accordance with this Code. The officer must sign and date the certificate. It will be necessary to certify not only at the time when the schedule and accompanying material is submitted to the prosecutor, and when relevant material which has been retained is reconsidered after the accused has given a defence statement, but also whenever a schedule is otherwise given or material is otherwise revealed to the prosecutor.

10. Disclosure of material to the accused

10.1. If material has not already been copied to the prosecutor, and the prosecutor requests its disclosure to the accused on the grounds that —

(a) it falls within the test for prosecution disclosure; or

(b) the court has ordered its disclosure after considering an application from the accused,

the disclosure officer must disclose it to the accused.

10.2. If material has been copied to the prosecutor and it is to be disclosed, the decision as to whether it is disclosed by the prosecutor or the disclosure officer is a matter for agreement between the two of them.

10.3. The disclosure officer must disclose material to the accused person, whether by giving the person a copy or by allowing the person to inspect it. If the accused person asks for a copy of any material which the person has been allowed to inspect, the disclosure officer must give it to the person, unless in the opinion of the disclosure officer that is either not practicable (for example because the material consists of an object which cannot be copied, or because the volume of material is so great), or not desirable (for example because the material is a statement by a child witness in relation to a sexual offence).

10.4. If material which the accused has been allowed to inspect consists of information which is recorded other than in writing, the decision as to whether it should be given to the accused in its original form or in the form of a transcript is a matter for the discretion of the disclosure officer. If the material is transcribed, the disclosure officer must ensure that the transcript is certified to the accused as a true record of the material which has been transcribed.

10.5. If a court concludes that an item of sensitive material satisfies the prosecution disclosure test and that the interests of the defence outweigh the public interest in withholding disclosure, it will be necessary to disclose the material if the case is to proceed. This does not mean that sensitive documents must always be disclosed in their original form; for example, the court may agree that sensitive details still requiring protection should be blocked out, or that documents may be summarised, or that the prosecutor may make an admission about the substance of the material under section 361 of the Ordinance.

SCHEDULE 4
(section 239(2))

DISCLOSURE APPLICATIONS

Contents

1. Prosecution disclosure

If, pursuant to section 216 of the Ordinance, the prosecutor —

(a) discloses prosecution material to the defendant; or

(b) serves on the defendant a written statement that there is no such material to disclose,

the prosecutor must at the same time so inform the appropriate officer of the court.

2. Prosecutor's application for public interest ruling

(1) This rule applies if the prosecutor —

(a) without a court order, would have to disclose material; and

(b) wants the court to decide whether it would be in the public interest to disclose it.

(2) The prosecutor must —

(a) apply in writing for such a decision; and

(b) serve the application on —

(i) the appropriate officer of the court;

(ii) any person whom the prosecutor thinks would be directly affected by disclosure of the material; and

(iii) the defendant, but only to the extent that serving it on the defendant would not disclose what the prosecutor thinks ought not be disclosed.

(3) The application must —

(a) describe the material, and explain why the prosecutor thinks that —

(i) it is material that the prosecutor would have to disclose;

(ii) it would not be in the public interest to disclose that material; and

(iii) no measure such as the prosecutor's admission of any fact, or disclosure by summary, extract or edited copy, would adequately protect both the public interest and the defendant's right to a fair trial;

(b) omit from any part of the application that is served on the defendant anything that would disclose what the prosecutor thinks ought not be disclosed (in which case, sub-paragraph (4) of this paragraph applies); and

(c) explain why, if no part of the application is served on the defendant.

(4) If the prosecutor serves only part of the application on the defendant, the prosecutor must —

(a) mark the other part, to show that it is only for the court; and

(b) in that other part, explain why the prosecutor has withheld it from the defendant.

(5) Unless already done, the court may direct the prosecutor to serve an application on —

(a) the defendant; and

(b) any other person who the court considers would be directly affected by the disclosure of the material.

(6) The court must determine the application at a hearing which —

(a) is in private, unless the court otherwise directs; and

(b) if the court so directs, may take place, wholly or in part, in the defendant's absence.

(7) At a hearing at which the defendant is present —

(a) the general rule is that the court will receive, in the following sequence —

(i) representations first by the prosecutor and any other person served with the application, and then by the defendant, in the presence of them all;

(ii) further representations by the prosecutor and any such other person in the defendant's absence; but

(b) the court may direct other arrangements for the hearing.

(8) The court may only determine the application if satisfied that it has been able to take adequate account of —

(a) such rights of confidentiality as apply to the material; and

(b) the defendant's right to a fair trial.

(9) Unless the court otherwise directs, the appropriate officer of the court —

(a) must not give notice to anyone other than the prosecutor —

(i) of the hearing of an application under this rule, unless the prosecutor served the application on that person; or

(ii) of the court's decision on the application;

(b) may —

(i) keep a written application or representations; or

(ii) arrange for the whole or any part to be kept by some other appropriate person,

subject to any conditions that the court may impose.

3. Defence disclosure

If —

(a) pursuant to section 218 of the Ordinance, the defendant gives a defence statement; or,

(b) pursuant to section 221 the defendant gives a defence witness notice,

the defendant must serve the statement or notice on the prosecutor and on the appropriate officer of the court.

4. Defendant's application for prosecution disclosure

(1) This rule applies if the defendant —

(a) has served a defence statement given under section 218 of the Ordinance; and

(b) wants the court to require the prosecutor to disclose material.

(2) The defendant must serve an application on the prosecutor and on the appropriate officer of the court.

(3) The application must —

(a) describe the material that the defendant wants the prosecutor to disclose;

(b) explain why the defendant thinks there is reasonable cause to believe that —

(i) the prosecutor or some department of the government has that material; and

(ii) it is material that the Ordinance requires the prosecutor to disclose; and

(c) ask for a hearing, if the defendant wants one, and explain why it is needed.

(4) The court may determine an application under this rule —

(a) at a hearing, in public or in private; or

(b) without a hearing.

(5) The court must not require the prosecutor to disclose material unless the prosecutor —

(a) is present; or

(b) has had at least 14 days in which to make representations.

5. Review of public interest ruling

(1) This rule applies if the court has ordered that it is not in the public interest to disclose material that the prosecutor otherwise would have to disclose, and —

(a) the defendant wants the court to review that decision; or

(b) the court reviews that decision on its own initiative.

(2) If the defendant wants the court to review that decision, the defendant must —

(a) serve an application on the prosecutor and the appropriate officer of the court; and

(b) in the application —

(i) describe the material that the defendant wants the prosecutor to disclose, and

(ii) explain why the defendant thinks it is no longer in the public interest for the prosecutor not to disclose it.

(3) The prosecutor must serve any such application on any person whom the prosecutor thinks would be directly affected if that material were disclosed.

(4) The prosecutor, and any such person, must serve any representations on —

(a) the appropriate officer of the court; and

(b) the defendant, unless to do so would in effect reveal something that either thinks ought not be disclosed.

(5) The court may direct —

(a) the prosecutor to serve any such application on any person whom the court considers would be directly affected if that material were disclosed;

(b) the prosecutor and any such person to serve any representations on the defendant.

(6) The court must review a decision to which this rule applies at a hearing which —

(a) is in private, unless the court otherwise directs; and

(b) if the court so directs, may take place, wholly or in part, in the defendant's absence.

(7) At a hearing at which the defendant is present —

(a) the general rule is that the court will receive, in the following sequence —

(i) representations first by the defendant, and then by the prosecutor and any other person served with the application, in the presence of them all;

(ii) further representations by the prosecutor and any such other person in the defendant's absence; but

(b) the court may direct other arrangements for the hearing.

(8) The court may only conclude a review if satisfied that it has been able to take adequate account of —

(a) such rights of confidentiality as apply to the material; and

(b) the defendant's right to a fair trial.

6. Defendant's application to use disclosed material

(1) This rule applies if a defendant wants the court's permission to use disclosed prosecution material —

(a) otherwise than in connection with the case in which it was disclosed; or

(b) beyond the extent to which it was displayed or communicated publicly at a hearing.

(2) The defendant must serve an application on the prosecutor and on the appropriate officer of the court.

(3) The application must —

(a) specify what the defendant wants to use or disclose; and

(b) explain why.

(4) The court may determine an application under this rule —

(a) at a hearing, in public or in private; or

(b) without a hearing.

(5) The court must not permit the use of such material unless —

(a) the prosecutor has had at least 28 days in which to make representations; and

(b) the court is satisfied that it has been able to take adequate account of any rights of confidentiality that may apply to the material.

7. Unauthorised use of disclosed material

(1) This rule applies if a person is accused of using disclosed prosecution material in contravention of section 238 of the Ordinance.

(2) The court must not exercise its power to forfeit material used in committing the offence unless the prosecutor, and any other person directly affected by the disclosure of the material, is present, or has had at least 14 days in which to make representations.

8. Court's power to vary requirements under Part 14

The court may —

(a) shorten or extend (even after it has expired) a time limit under Part 14 or this Schedule;

(b) allow a defence statement, or a defence witness notice, to be in any written Form, as long as it contains what Part DM requires;

(c) allow an application under Part 14 to be in any form, or to be presented orally; and

(d) specify the period within which —

(i) any application under Part 14 must be made; or

(ii) any material must be disclosed, on an application to which rule 4 applies (defendant's application for prosecution disclosure).

SCHEDULE 5
(section 271)

FORMS FOR PLEAS OF GUILTY IN ABSENCE

Form 1
FALKLAND ISLANDS MAGISTRATE'S COURT/SUMMARY COURT
GUILTY PLEA IN ABSENCE - NOTICE TO DEFENDANT

To:
Address:

Read this notice and everything sent with the summons carefully before you fill in any forms

With this notice you will find a summons. It lists the offences which the prosecutor says you have committed. The evidence for this is in the enclosed statement of facts. This notice tells you about the Court procedure and the choices open to you. It also tells you how to fill in the plea form and the other forms enclosed with the summons.

Warning: If you do not reply to the summons, the court may find you guilty in your absence.

Your decisions
After reading all the papers, you must decide which course of action to take. You can –

- plead guilty by post (Section 1 explains what to do);
- attend court and plead guilty (Section 2 explains what to do); or
- plead not guilty (Section 3 explains what to do).

Decide how you want to plead. If you need help with this, see a lawyer or advice agency at once. If you need general help about the summons contact the court office. The address and telephone number are on the summons.

Section 1: Pleading guilty by post
If you admit the offences, you may plead guilty in writing without attending court. If this is your decision, sign in box 1 on the plea form.

Fill in the enclosed *statement of means form* (about your income and expenses) and send it to the court with your plea form. Giving these details helps the court decide the right amount of fine. If you do not give these details, you may be ordered to pay a fine which is more than you can afford.

You should also tell the court anything about the offences or yourself which you feel the court should know when deciding what sentence to give you. To do this fill in the enclosed *mitigation form.* Send the completed form to the court with the plea form and your statement of means.

You must send your driving licence to the court if the summons says you should. If you do not, then (unless you satisfy the court that you have applied for a new licence and not yet received it)

you will be guilty of an offence and the licence will be suspended from the time its production was required until it is produced to the court.

At the hearing the court will only hear –

- The statement of facts sent with these papers, or a summary of them;
- Any other details (such as a claim for costs) which came with the summons;
- Details of your driving record; and
- Anything you write on the plea, statement of means form, and the mitigation form.

If you want to plead guilty in writing, you must act quickly. Fill in the plea form, statement of means form and the mitigation form. Then send them to the court so that they get there at least 3 days before the hearing date shown on the summons.

If you plead guilty by post you will normally be convicted by the court on the hearing date shown on the summons. The court will write to you soon after the hearing to tell you what sentence has been given to you. If the court decides not to accept your guilty plea, it will tell you why in writing and give you a fresh hearing date.

Changing your plea: If you have sent the plea form to the court saying that you want to plead guilty, you can change your mind at any time before the hearing. If you do change your mind you must tell the court in writing as soon as possible that you want to plead not guilty.

Section 2: Pleading guilty at court

If you admit the offences and want to plead guilty, you can do this in person at court. If this is your decision, sign in box 2 on the plea form and return it to the court**.** You must attend court at the time and on the date shown in the summons. You must bring your driving licence to court if the summons says that you should.

Complete the statement of means form and send it to the court so that it reaches court at least 3 days before the hearing or bring it with you to court so that it can be handed to the Clerk of the court at the hearing.

At the court hearing, you will be asked to say that you still want to plead guilty. The court will hear –

- The statement of facts sent with these papers, or a summary of them;
- Any other details (such as a claim for costs) which came with the summons; and
- Details of your driving record.

The court will listen to anything you say about the offences and your income and expenses, and then decide what sentence to give you.

Attending court to plead guilty lets you tell the court things, in your own words, which might be difficult to explain in writing. For example, if an offence was committed in very unusual circumstances or if your income and expenses are complicated.

Section 3: Pleading not guilty
If you do not admit the offences and you want to plead not guilty, sign in box 3 on the plea form and return it to the court.

You may attend court on the date shown on the summons but this hearing will not be the trial date. The court will tell you in writing of a fresh date for a trial hearing when you must attend with any witnesses and any documents you want the court to see. You should bring the original documents not photocopies. If your trial is expected to occupy some time or involve a lot of witnesses, the court may ask you to attend a pre-trial hearing to review your case so that the trial can be planned and arrangements made for the witnesses so that they do not have to wait at court longer than necessary.

Your Witnesses
It is important that you tell the court the number and the names of the witnesses you want to give evidence for you and when you or any of your witnesses cannot attend in the next 3 months. Fill in the relevant part of the Plea Form to give the court this information. The court will try and use it when fixing the date of your trial hearing.

The Prosecutor's Witnesses
At the trial hearing, the prosecutor may read out any witness statements sent to you unless you tell them that you want the witnesses to come to the court to give evidence. If you want any of these witnesses to give oral evidence, you should tell the prosecutor, whose name and address is on the notice accompanying the statements, as soon as possible. If you do not do this within 7 days of receiving the statements, you will lose your right to prevent the statements being tendered in evidence and you will be able to require the attendance of the witnesses only with the court's permission.

What will happen if you do not reply to the summons
If you do not reply to the summons, the court may deal with your case in your absence on the date shown in the summons. The prosecutor will read statements served upon you to the court or give a summary of them. Having heard what is in the witness statements, the court will find you either guilty or not guilty of each of the offences in the summons. If you are found guilty of any offence, the court may sentence you in your absence.

Prosecution costs
If you plead guilty or are found guilty, the prosecutor will normally ask the court to order the prosecution costs for bringing the case. The amount is normally £85.

If you intend to consult a legal practitioner you should do so before taking any action in response to this notice. Please note that you will be responsible for any fees that they may change for advising you. The legal practitioners in the Falkland Islands are:

[Insert contact details of law firms]

Return all the completed Forms to -

Clerk of the Magistrate's Court/Summary Court
Magistrate's Court
Town Hall
Stanley

If you want any more information you may get in touch with the Clerk of the Magistrate's Court/Summary Court. The phone number is 27271, and the fax number is 27270. Office hours are 8 a.m. to 12 noon and 1 p.m. to 4:30 p.m. Monday to Friday.

Always quote the case number shown on the summons.

Form 2

FALKLAND ISLANDS MAGISTRATE'S COURT/SUMMARY COURT
GUILTY PLEA IN ABSENCE - PLEA FORM

Read the attached notice Form 1 and everything sent with the summons carefully before you fill in this form. Make sure that you sign the correct box, using your usual signature.

1. Sign in box 1 to plead guilty by post

- I/We confirm that I/We have received –
  - The summons and statement of facts
  - The Notice to Defendant Form 1

- I/We plead guilty to all the charges on the summons and ask the court to deal with my case in my absence.
- I have filled in the statement of means form and mitigation form.

OR

- We have provided the tax accounts for the last 3 years (if a corporation).

- I confirm that I will be in the Falkland Islands for at least 28 days after the date of the hearing. [Not needed if a corporation]
  OR
  I will be leaving the Falkland Islands on ……..[date]

[*Not needed if a corporation*]

Signature

Position (in case of a corporation)

Date

2. Sign in box 2 to plead guilty at court

- I/We plead guilty and will come to [be represented in] court on the date shown in the summons.
- I have filled in the statement of means form.

OR

- We have provided the tax accounts for the last 3 years (if a corporation).

Signature

Position (in case of a corporation)

Date

3. Sign in box 3 to plead not guilty

I/We intend to plead not guilty. I/We have read all the documents sent to me. I/We understand the court will not hear the case on the date shown in the summons but will write to me/us with a fresh date for a trial hearing. I/We understand that I/we must attend the trial hearing with my/our witnesses and my/our lawyer (if I am/we are represented).

Signature

Position (in case of a corporation)

Date

Whichever Box is completed:
Full name:
Address:

Telephone number:
E-mail address (if any)

For an individual –
Date of birth:
Gender: Male/Female

For a corporation: Name and position of person signing the form.

If you have signed Box 3 to plead not guilty, fill in this part
Will you be represented by a legal practitioner? YES/ NO
My/our witnesses are:

Please avoid the dates below when arranging the trial hearing:

Form 3

FALKLAND ISLANDS MAGISTRATE'S COURT/SUMMARY COURT
GUILTY PLEA IN ABSENCE - MITIGATING CIRCUMSTANCES

Read the attached notice Form 1 and everything sent with the summons carefully before you fill in this form. Make sure that you sign the correct box, using your usual signature.

Use the space below to write what you want the court to know about the offences and yourself. Mitigating circumstances are facts about the offences or yourself/your company which tend to make the offence less serious. The Clerk of the court will read out to the court everything you write in the space below.

Mitigating circumstances

Signature
Full name:
Address:

Telephone number:
E-mail address (if any):
Date:

If a corporation: Name and position held

Form 4

FALKLAND ISLANDS MAGISTRATE'S COURT/SUMMARY COURT
GUILTY PLEA IN ABSENCE - DRIVING LICENCE

Read the attached notice Form 1 and everything sent with the summons carefully before you fill in this form. Make sure that you sign the correct box, using your usual signature.

Does your summons say you must send your driving licence? YES/NO

If you must send your licence to the court have you enclosed it with this form? YES/NO

Write your driver number in full here:
(this is the number on your licence)

If you have not enclosed your licence, say why in the space below.

Signature:

Full name:
Address:

Telephone number:
E-mail address (if any):

Date:

Form 5

FALKLAND ISLANDS MAGISTRATE'S COURT/SUMMARY COURT
GUILTY PLEA IN ABSENCE - STATEMENT OF MEANS

Read the attached notice Form 1 and everything sent with the summons carefully before you fill in this form. Make sure that you sign the correct box, using your usual signature.
(This Form is for an individual only. A corporation should send its last 3 years' tax accounts to the court)

Warning: It is an offence to provide false information to the court

Income, net of any tax, pension contributions and medical services levy in £ per month
Main employment
Other employment
Welfare benefits
Child benefits
Rental income
Spouse or partner's income
Other income (please specify)
Total Income

Expenditure in £ per month
Mortgage
Rent
Fuel bills
Food
Loans (how much outstanding and for what purpose)
Car expenses
Telephone
Other expenses (please specify)
Total Expenditure

Total Savings (excluding real property)
£

I confirm that the above information is true to the best of my knowledge and belief and understand that I commit a separate and serious offence if I deliberately provide information that I know to be false or do not believe to be true.

Signature:

Full name:
Address:

Telephone number:
E-mail address (if any)
Date

SCHEDULE 6
(sections 316 and 323)

INELIGIBILITY AND DISQUALIFICATION FOR AND EXCUSAL FROM JURY SERVICE

PART 1 –
PERSONS INELIGIBLE

Group A - The Governor [and the Legislative Assembly]

The Governor

[Members of the Legislative Assembly]

[The Clerk to the Assembly]

[Any person employed in the Governor's Office]

Group B - The judiciary and the courts

The President and Justices of the Court of Appeal

The Chief Justice

The Senior Magistrate

The Registrar General

The Registrar of the Supreme Court

The Clerk to the Magistrate's Court

The Clerk to the Summary Court

Justices of the Peace

Group C - Others concerned with the administration of justice

The Attorney General

[Any person authorised by the Legal Practitioners Ordinance to practise as a legal practitioner in the Falkland Islands, whether or not in actual practice as such]
Any person employed in or about the practice of a legal practitioner in actual practice as such or employed in the Attorney Generals Chambers of the Falkland Islands Government and not included in Group B.

[Any member of the Board of Visitors of the prison]

The probation officer

Any member or reserve member of the Royal Falkland Islands Police Force

Any prison officer

Any civilian employed by the Government of the Falkland Islands whose personal emoluments are wholly or partly paid out of the head of expenditure relating to the Royal Falkland Islands Police Force.

A person who at any time within the last 6 months has been a person falling within any description specified in this Group.

Group D - Mentally disordered persons
A person who suffers from mental disorder which requires the person to —

(a) reside in a hospital or similar institution; or

(b) regularly attend for treatment by a medical practitioner, if the practitioner certifies that the person is not capable of serving as a juror by reason of the disorder.

A person who has been determined by the Supreme Court to be incapable, by reason of mental disorder, of managing and administering his or her property and affairs.

PART 2 –
PERSONS DISQUALIFIED

A person who has at any time been sentenced in the Falkland Islands —

(a) to imprisonment for life, custody for life, or to imprisonment or detention of 5 years or more; or

(b) to be detained at Her Majesty’s pleasure.

A person who at any time during the last 10 years has in the Falkland Islands —

(a) served any part of a sentence of imprisonment or detention

(b) had passed on him or her or had made in respect of him or her a suspended sentence of imprisonment or order for detention.

[PART 3 - PERSONS EXCUSABLE AS OF RIGHT]

[Medical and other similar professions
The following if actually practising their profession and registered under any enactment of the Falkland Islands requiring them to be so registered –

(a) medical practitioners

(b) dentists

(c) nurses

(d) midwives

(e) veterinary surgeons and veterinary practitioners

(f) pharmaceutical chemists]

[Members of certain religious bodies
A practising member of a religious society or order the tenets or beliefs of which are incompatible with jury service]

SCHEDULE 7
(section 377)

CATEGORIES OF OFFENCES THAT ESTABLISH A PROPENSITY

Part A
Theft category

1. An offence under section 348 of the Crimes Ordinance 2014 (Theft).

2. An offence under section 354 of that Ordinance (Robbery).

3. An offence under section 355 of that Ordinance (Burglary) if it was committed with intent to commit an offence of stealing anything in the building or part of a building in question.

4. An offence under section 355 of that Ordinance (Burglary) if the offender stole or attempted to steal anything in the building or that part of it.

5. An offence under section 356 of that Ordinance (Aggravated burglary) if the offender committed a burglary described in paragraph 3 or 4.

6. An offence under section 357 of that Ordinance (Going equipped for stealing).

7. An offence under section 360 of that Ordinance (Handling stolen goods).

8. An offence under section 364 of that Ordinance (Aggravated vehicle-taking).

9. An offence under section 366 of that Ordinance (Making off without payment).

10. An offence as described in any of paragraphs 1 to 10 committed before the commencement of the Crimes Ordinance 2014 under the equivalent provision of the UK Theft Act 1968.

11. An offence under section 30(2) of the Road Traffic Ordinance (Taking motor vehicles, etc. without authority).

12. An offence of —

(a) attempting to commit an offence so specified in this Part of this Schedule; or

(b) encouraging, or aiding and abetting, the commission of an offence so specified.

Part B

Sexual offences (persons under the age of 16) category

1. An offence under any of sections204 to 207 of the Crimes Ordinance 2014 (Rape, etc.) if it was committed in relation to a person under the age of 16.

2. An offence under any of sections 208 to 211 of that Ordinance (Rape, etc. against children under 13).

3. An offence under section212 of that Ordinance (Sexual activity with a child).

4. An offence under section 213 of that Ordinance (Causing or encouraging a child to engage in sexual activity).

5. An offence under section 217 of that Ordinance if doing it will involve the commission of an offence under section 212 or 213 of that Ordinance (Arranging or facilitating the commission of a child sex offence).

6. An offence under any of sections 219 to 222 of that Ordinance (Abuse of position of trust) if the child is under 16.

7. An offence under section 227] of that Ordinance (Sexual activity with a child family member) if the child is under 16.

8. An offence under section 228 of that Ordinance (Encouraging a family member to engage in sexual activity) if the family member is under 16.

9. An offence under section 232 of that Ordinance (Sexual activity with a person with a mental disorder impeding choice) if the person is under 16.

10. An offence under section 233 of that Ordinance (Causing or encouraging a person with a mental disorder impeding choice to engage in sexual activity) if the person is under 16.

11. An offence under section 236 of that Ordinance (Inducement, etc. to procure activity with a person with a mental disorder) if the person is under 16.

12. An offence under section 237 of that Ordinance (Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception) if the person is under 16.

13. An offence under section 240 of that Ordinance (Care workers: Sexual activity with a person with a mental disorder) if the person is under 16.

14. An offence under section 241 of that Ordinance (Care workers: Causing or encouraging sexual activity) if it was committed in relation to a person under the age of 16.

15. An offence as described in any of paragraphs 1 to 15 committed before the commencement of the Crimes Ordinance 2014 under the equivalent provision of the UK Sexual Offences Act 2003 as applied to the Falkland Islands, in relation to a person under the age of 16.

16. An offence of —

(a) attempting or conspiring to commit an offence specified in this Part of this Schedule; or

(b) encouraging, or aiding and abetting, the commission of an offence so specified.

SCHEDULE 8
(section 590)

STANDARD SCALE OF FINES FOR OFFENCES

The standard scale of fines is:

Level	*Amount £*
1	250
2	500
3	1,000
4	2,000
5	4,000
6	10,000
7	17,500
8	25,000
9	50,000
10	125,000
11	250,000
12	625,000

SCHEDULE 9
(section 599)

MAXIMUM PERIODS OF IMPRISONMENT OR DETENTION IN DEFAULT OF PAYMENT

An amount exceeding £50 but not exceeding £100	7 days
An amount exceeding £100 but not exceeding £400	14 days
An amount exceeding £400 but not exceeding £1,000	30 days
An amount exceeding £1,000 but not exceeding £2,000	45 days
An amount exceeding £2,000 but not exceeding £5,000	3 months
An amount exceeding £5,000 but not exceeding £10,000	6 months
An amount exceeding £10,000 but not exceeding £20,000	12 months
An amount exceeding £20,000 but not exceeding £50,000	18 months
An amount exceeding £50,000 but not exceeding £100,000	2 years
An amount exceeding £100,000 but not exceeding £250,000	3 years
An amount exceeding £250,000 but not exceeding £1,000,000	5 years
An amount exceeding £1,000,000	10 years

SCHEDULE 10
(section 630)

TABLE OF REHABILITATION PERIODS

Sentence	End of rehabilitation period for adults	End of rehabilitation period for youths
A custodial sentence of more than30 months up to 48 months	7 years after completion of the sentence, including any licence period	42 months after completion of the sentence, including any licence period
A custodial sentence of more than 6 months up 30 months	48 months after completion of the sentence, including any licence period	24 months after completion of the sentence, including any licence period
A custodial sentence of 6 months or less	24 months after completion of the sentence, including any licence period	18 months after completion of the sentence, including any licence period
A fine	12 months after the date of conviction	6 months after the date of conviction
A compensation order	When payment is made in full	When payment is made in full
A community or youth rehabilitation order*	12 months after the order ceases to have effect	6 months after the order ceases to have effect
A conditional discharge or a binding over	When the order ceases to have effect	When the order ceases to have effect
An absolute discharge	No rehabilitation period	No rehabilitation period
Any other sentence not provided for in this Table	No rehabilitation period	No rehabilitation period

*If no provision is made by or under a community or youth rehabilitation order or a relevant order for the last day on which the order is to have effect, the rehabilitation period ends 24 months after the date of conviction.

SCHEDULE 11
(section 633)

EXCEPTIONS TO REHABILITATION

In this Schedule —

"care services" means —

(a) accommodation and nursing or personal care in a care home;

(b) personal care or nursing or support for a person to live independently in his or her own home;

(c) social care services; or

(d) any services provided in an establishment catering for a person with learning difficulties;

"firearms dealer" has the same meaning as in the Firearms and Ammunition Ordinance;

"judicial appointment" means an appointment to any office by virtue of which the holder has power (whether alone or with others) under any enactment or rule of law to determine any question affecting the rights, privileges, obligations or liabilities of any person;

"member of the judiciary" means persons appointed to any office by virtue of which the holder has power (whether alone or with others) under any enactment or rule of law to determine any question affecting the rights, privileges, obligations or liabilities of any person;

"personal information" means any information which is of a personal or confidential nature and is not in the public domain and includes information in any form but excludes anything disclosed for the purposes of proceedings in a particular cause or matter;

"public service licence" means a licence for a public service vehicle granted under the Road Traffic Ordinance.

PART 1
EXCEPTED PROFESSIONS

1. Barrister or solicitor

2. Chartered accountant or certified accountant

3. Medical practitioner, dentist or pharmacist

4. Nurse, midwife or health visitor

5. Veterinary surgeon

6. Psychologist

7. Legal executive

8. Actuary

PART 2
EXCEPTED OFFICES AND EMPLOYMENTS

1. Judicial appointments

2. Any employment or engagement under the Crown in right of the Falkland Islands (including employment or engagement in the Falkland Islands Police Force or as a reserve police officer)

3. Any work with children, as defined in section 634, including —

Any office or employment concerned with the provision of care services to youths or vulnerable adults that enables a person in the course of normal duties to have access to persons receiving such services

Any work in an educational institution if the normal duties of the work involve regular contact with youths

Any employment concerned with monitoring, for the purpose of protecting youths, communications by means of the internet

Persons whose work in any Government department gives them access to sensitive or personal information about children or vulnerable adults

Any office, employment or other work concerned with the establishment or operation of a statutory database containing information about children, if the person has access to information included in the database

4. Any employment or other work concerned with the provision of health services that enables a person in the course of normal duties to have access to persons receiving such services

5. Any employment or other work which is normally carried out in a hospital used primarily for the provision of psychiatric services

6. Any employment which involves the humane killing of animals

7. Any office or employment concerned with the statutory control of liquor licensing or gambling.

PART 3
EXCEPTED OCCUPATIONS

1. Firearms dealer

2. Any occupation in respect of which a licence is required under the Liquor and Licensing Ordinance

3. Any occupation which is concerned with carrying on a nursing home in respect of which registration is required by law

4. Any occupation in respect of which the holder is required to obtain from the Chief Police Officer a certificate certifying the person to be a fit person to acquire and keep explosives.

PART 4
EXCEPTED LICENCES, CERTIFICATES AND PERMITS

1. Firearm certificates, shot gun certificates and permits issued under the Firearms and Ammunition Ordinance

2. Certificates issued by the Chief Police Officer as to the fitness of a person to acquire and keep explosives

3. Public service licences issued to owners and drivers of public service vehicles under the Road Traffic Ordinance

4. Licences issued under the Liquor and Licensing Ordinance.

PART 5
EXCEPTED PROCEEDINGS

1. Proceedings on an application for a permit or licence for a firearm or for registration as a firearms dealer under the Firearms and Ammunition Ordinance

2. Proceedings on an application for a licence to sell intoxicating liquor

3. Proceedings on an application under the Immigration Ordinance

4. Proceedings on an application to enlist in Her Majesty's Armed Forces or to become a member of the Falkland Islands Defence Force

5. Proceedings in respect of a person’s admission to, or disciplinary proceedings against a member of, any profession specified in Part 1 of this Schedule

6. Disciplinary proceedings against a police officer

7. Proceedings under the Mental Health Ordinance before any tribunal

8. Proceedings in respect of an application for, or cancellation of registration in respect of a nursing home under any law

9. Proceedings on an application to the Chief Police Officer for a certificate as to the fitness of the applicant to acquire and keep explosives

10. Proceedings relating to a public service licence under the Road Traffic Ordinance

11. Proceedings before the Advisory Committee on the Prerogative of Mercy

12. Proceedings under the Drug Trafficking Offences Ordinance

13. Proceedings by way of appeal against, or review of, any decision taken, by virtue of any of the provisions of this Schedule, on consideration of a spent conviction

14. Proceedings held for the receipt of evidence affecting the determination of any question arising in any proceedings specified in this Schedule.

SCHEDULE 12
(sections 745 to 750)

OFFENCES AGAINST YOUTHS TO WHICH PROTECTIVE PROVISIONS APPLY

1. Any offence listed in Schedule 3 to the Crimes Ordinance 2014 (Sexual offences for purposes of Part 11) and committed against or in respect of a youth.

2. Any offence listed in Schedule 4 to that Ordinance (Other offences for purposes of Part 11) and committed against or in respect of a youth.

3. Encouraging, or aiding and abetting, the suicide of a youth.

4. Common assault or battery.

5. Any other offence involving bodily injury to a youth.

6. An offence of —

(a) attempting or conspiring to commit any offence mentioned in paragraph 5; or

(b) encouraging, or aiding and abetting, the commission of any such offence.

SCHEDULE 13
(sections 775 and 777)

CRIMINAL JUSTICE COUNCIL AND SENTENCING GUIDELINES COMMITTEE

PART 'A' –
CRIMINAL JUSTICE COUNCIL
Composition of the Council

1. The Chief Justice is President of the Council.

2. The Council consists of the following persons by virtue of their office —

- The Senior Magistrate
- The Law Commissioner
- The Head of Courts and Tribunals
- The Attorney General
- The Chief of Police
- The Probation Officer.

3. The President of the Council, using an open and objective advertising and selection process, must select the following 6 additional persons to be members of the Council from among eligible persons —

(a) 2 justices of the peace;

(b) 2 legal practitioners providing criminal defence services in the Falkland Islands;

(c) 2 lay representatives who demonstrate an understanding of civic and community issues and human rights issues.

4. Members of the Council appointed by virtue of their office remain members for as long as they hold the office.

5. Members of the Council invited under paragraph 3(b) or (c) hold office for 3 years but can be removed from membership or have their membership extended by decision of the Council.

6. The President must appoint one member as Chair and one member as Deputy Chair of the Council.

7. The President, with the approval of the Council, may designate a member of the Council or a public officer as secretary to the Council. A secretary who is not a member of the Council does not have a vote at meetings of the Council.

Conduct of members

8. Every member of the Council is expected to —

(a) act in a corporate manner, rather than as a representative of any constituency or group;

(b) have strategic ability and ability to analyse complex data and information and identify the major issues;

(c) apply intelligence, knowledge and experience to the Council's advantage; and be an effective contributor to discussions at Council;

(d) observe the following principles:

- Selflessness - Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their families or their friends.

- Integrity - Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

- Objectivity - In carrying out public business, including making public appointments, awarding contracts or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

- Accountability - Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

- Openness - Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

- Honesty - Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

- Leadership - Holders of public office should promote and support these principles by leadership and example.

9. Council members should in all their work for the Council exercise such skills as they possess and such care and diligence as would be expected from a reasonable person in the circumstances.

Procedure of the Council

10. The Council must meet not less than 2 times a year but may meet more frequently by agreement or at the request of the President.

11. The business of the Council may be conducted by exchange of e-mails or by other electronic means provided that all e-mails or electronic messages are sent to all parties and all parties are copied into all exchanges.

12. Minutes of the decisions of the Council must be kept.

13. The location of a meeting is wherever the chairperson for that meeting is located.

14. The quorum of the Council is 7 members' present in person or by video link or telephone conference or similar means, provided that all participants can hear and be present throughout the meeting.

15. Decisions of the Council must be by a majority of those so present and voting.

16. If there is an equality of votes, the Chair, or in the absence of the Chair the Deputy Chair, has a casting vote.

17. The President does not sit on the Council but all recommendations of the Council made in accordance with section 776 require the approval of the President.

18. The Council may appoint sub-committees of its members to report to the Council on specific topics.

19. The Council and any sub-committee of the Council may invite advisors to attend its meetings in a non-voting capacity.

20. The Council's annual report must —

(a) include a summary of the Council's action plan for the reporting year detailing what has been achieved and assessing the effectiveness of the work completed in relation to the Council's aims and the use of budget allocations and resources deployed; and

(b) identify areas of work for the next financial year, with the resources required, the financial implications, a risks and benefits analysis and an assessment of how each area fulfills the Council's aims.

PART 'B' –
SENTENCING GUIDELINES COMMITTEE
Procedure of the Committee

21. Meetings of the Sentencing Guidelines Committee must be designated as such and held separately from meetings of the Council.

22. At a meeting of the Committee, the procedure is as for the Council, except that the Senior Magistrate, justices of the peace and Law Commissioner each have 2 votes.

23. The Committee's annual report must include —

(a) a summary of the sentencing guidelines that have been published during the financial year;

(b) a summary of the resources and budget allocations that have been employed by the Committee during the financial year; and

(c) a summary of the operation and effect of the sentencing guidelines as a whole, with an assessment of their effectiveness.

24. When the Committee has prepared guidelines it must publish them as draft guidelines and must consult the following persons about them —

(a) the Governor;

(b) any persons the Governor directs should be consulted;

(c) the members of the Legislative Assembly;

(d) any other persons the Committee considers appropriate to consult.

25. The Committee, having considered the responses to the consultation required by paragraph 24, and after making any amendments of the guidelines which it considers appropriate, may recommend them to the Council for publication as definitive guidelines.

26. The Council must publish any sentencing guidelines recommended to it by the Committee, in the Gazette and in other appropriate media, as well as in its annual report as required by section 778 of the Ordinance.

27. The Committee may, in accordance with the procedure set out in paragraphs 24 and 25, review the sentencing guidelines and may recommend the Council to publish revised guidelines from time to time.

Sentencing guidelines principles

28. When exercising functions under this Schedule, the Committee must have regard to section 482(2) and the following matters —

(a) the maximum sentences that may be imposed in the Falkland Islands for offences;

(b) the need to promote consistency in sentencing;

(c) the impact of sentencing decisions on victims of offences;

(d) the results of the monitoring carried out under paragraph 36.

29. When exercising functions under this Schedule, the Committee must ensure so far as practicable that sentencing guidelines which relate to a particular offence are structured in the way described in paragraphs 30 to 37.

30. The guidelines should, to the extent practicable given the nature of the offence, describe, by reference to one or more of the factors mentioned in this paragraph, different categories of case involving the commission of the offence which illustrate in general terms the varying degrees of seriousness with which the offence may be committed. Those factors are —

(a) the offender's culpability in committing the offence;

(b) the harm caused, or intended to be caused or which might foreseeably have been caused, by the offence;

(c) any other factors the Committee considers to be particularly relevant to the seriousness of the offence in question.

31. The guidelines should —

(a) specify the range of sentences ("the offence range") which, in the opinion of the Committee, it may be appropriate for a court to impose on an offender convicted of that offence; and

(b) if the guidelines describe different categories of case in accordance with paragraph 30, specify for each category the range of sentences ("the category range") within the offence range which, in the opinion of the Committee, it may be appropriate for a court to impose on an offender in a case which falls within the category.

32. The guidelines should also —

(a) specify the sentencing starting point in the offence range,; or

(b) if the guidelines describe different categories of case in accordance with paragraph 26, specify the sentencing starting point in the offence range for each of those categories.

33. The guidelines should —

(a) list any aggravating or mitigating factors which, by virtue of Part 23 of the Ordinance the court is required to take into account when considering the seriousness of the offence and any other aggravating or mitigating factors which the Committee considers are relevant to such a consideration;

(b) list any other mitigating factors which the Committee considers are relevant in mitigation of sentence for the offence; and

(c) include criteria, and provide guidance, for determining the weight to be given to previous convictions of the offender and such of the other factors within sub-paragraph (a) or (b) as the Committee considers relevant.

34. For the purposes of paragraph 33(b) the following are to be disregarded —

(a) reduction in sentences for guilty pleas;

(b) reduction in sentences in consequence of assistance given (or offered to be given) by the offender to the prosecutor or investigator of an offence;

(c) any rule of law as to the totality of sentences.

35. The sentencing starting point in the offence range —

(a) for a category of case described in the guidelines in accordance with paragraph 26, is the sentence within that range which the Committee considers to be the appropriate starting point for cases within that category —

(i) before taking account of the factors mentioned in paragraph 30; and

(ii) assuming the offender has pleaded not guilty, and

(b) if the guidelines do not describe categories of case in accordance with paragraph 30, is the sentence within that range which the Committee considers to be the appropriate starting point for the offence —

(i) before taking account of the factors mentioned in paragraph 34; and

(ii) assuming the offender has pleaded not guilty.

36. The Committee must monitor the operation and effect of its sentencing guidelines, and in particular assess —

(a) the frequency with which, and extent to which, courts depart from sentencing guidelines;

(b) the factors which influence the sentences imposed by courts;

(c) the effect of the guidelines on the promotion of consistency in sentencing; and

(d) the effect of the guidelines on the promotion of public confidence in the criminal justice system.

SCHEDULE 14
(section 789)

REPEALED AND DISAPPLIED LAWS

PART 'A'
REPEALED ORDINANCES

- Criminal Justice Ordinance (except Part IV on Confiscation Orders and any provisions of the Ordinance needed to give full effect to that Part, including the power in section 206 to make rules and regulations.)

- Administration of Justice Ordinance to the extent that it applies to criminal proceedings

- Criminal Procedure and Investigations Ordinance

- Criminal Jurisdiction (Offshore Activities) Order 1998

- Criminal Justice (Amendment) (Miscarriages of Justice) Ordinance 2006

- Criminal Justice (Evidence) Ordinance

- Jury Ordinance

PART 'B'
DISAPPLIED IMPERIAL ENACTMENTS

Criminal Jurisdiction Act 1802
Criminal Procedure Act 1853
Criminal Law Amendment Act 1867
Courts (Colonial) Jurisdiction Act 1874 to the extent that it applies to criminal proceedings
Remission of Penalties Act 1859
Trial of Lunatics Act 1883
Criminal Procedure Act 1865
Criminal Evidence Acts 1898 and 1979
Criminal Justice Administration Act 1914

Indictments Act 1915
Criminal Justice Act 1925
Administration of Justice Acts 1925 to 1982 to the extent that they apply to criminal proceedings
Criminal Justice Acts 1925 to 2003
Criminal Procedure (Insanity) Act 1964
Criminal Procedure (Right of Reply) Act 1964
Criminal Procedure (Attendance of Witnesses) Act 1965
Criminal Law Act 1967
Criminal Law Act 1977
Courts Act 1971 to the extent that it applies to criminal proceedings
Supreme Court Act 1981 to the extent that it applies to criminal proceedings
Police and Criminal Evidence Act 1984
Prosecution of Offences Act 1985
Criminal Justice Act 1988
Criminal Procedure (Insanity and Unfitness to Plead) Act 1991
Criminal Procedure and Investigations Act 1996
Powers of Criminal Courts (Sentencing) Act 2000

SCHEDULE 15
(section791)

CONSEQUENTIAL AMENDMENTS

In section 4 of the Interpretation and General Clauses Ordinance —

(a) insert after the definition “Crown lease” the following new definition —

“Criminal Justice Council” means the Council of that name established by section 775 of the Criminal Procedure and Evidence Ordinance 2014”;

(b) in the definition of “judge”, replace “section80(1)” by “section 89(1)”;

(c) in the definition of “police officer” delete “Falkland Islands Police Force” and substitute “Royal Falkland Islands Police”.

CRIMINAL PROCEDURE AND EVIDENCE BILL 2014

DERIVATION TABLE

CHAPTER 1 - PRELIMINARY

PART 1 - PRELIMINARY

Clause	*Derivation*
1	--
2(1)	
‘criminal investigation’	UK CPI Act 1996 s.22
‘premises’	UK PACE Act 1984 s.23 am.CJPAct 2001 s.66(1); Energy Act 2004 s.103(2)
‘programme service’	UK Broadcasting Act 1990 s.201
‘statement’	UK PACE Act 1984 s.72 and Sched. 3
2(4)	UK PACE Act 1984 s.118;
2(5)	UK Crime & Security Act 2010
2(7)	UK YJCE Act 1999 s.53
3 to 5	--

CHAPTER 2 – POLICE POWERS

PART 2 – POWERS TO STOP AND SEARCH OR ENTER AND SEARCH

6	CJ Ord. s.168; UK PACE Act 1984 s.1; CJ Act 1988 s.139
7	CJ Ord. s.169; UK PACE Act 1984 s.2
8	UK CJPO Act 1994 s.60 (part) and s.60AA
9	UK CJPO Act 1994 s.60 (part)
10	CJ Ord. s.170; UK PACE Act 1984 s.3
11.	UK PACE Act 1984 s.4
12	UK PACE Act 1984 s.5
13 to 23	CJ Ord. ss.179 to 189;
24	UK PACE Act 1984 ss.8 to 18

PART 3 – POWERS OF SEIZURE

25	UK CJP Act 2001 s.66
26	UK CJP Act 2001 s.63
27 to 30	CJ Ord. ss.190 to 193; UK PACE Act 1984 ss.19 to 22
31 to 43	UK CJP Act 2001 ss.51 to 62

PART 4 – POWERS OF ARREST WITHOUT WARRANT

44	CJ Ord. ss.198 & 199; UK PACE Act 1984 s.24
45	UK PACE Act 1984 s.24A; common law
46	CJ Ord. s.201; UK PACE Act 1984 s.26 adapted
47	UK PACE Act 1984 s.27
48	CJ Ord. s.202; UK PACE Act 1984 s.28
49	CJ Ord. s.203; UK PACE Act 1984 s.29
50 to 56	UK PACE Act 1984 ss.30 to 30D
57	CJ Ord. s.204; UK PACE Act 1984 s.31

58	CJ Ord. s.205; UK PACE Act 1984 s.32

PART 5 – POLICE DETENTION

59	CJ Ord. s.151; UK PACE Act 1984 s.36 adapted; CJ Act 2003 s.24B
60	CJ Ord. s.150; UK PACE Act 1984 s.34
61	CJ Ord. s.152; UK PACE Act 1984 s.37
62 to 64	UK PACE Act 1984 ss.37A to 37D
65	CJ Ord. s.153; UK PACE 1984 s.38
66	CJ Ord. s.154; UK PACE 1984 s.39
67	UK PACE Act 1984 s.40
68	UK PACE Act 1984 s.40A
69	UK PACE Act 1984 s.41
70 to 74	CJ Ord. ss.157 to 161; UK PACE Act 1984 ss.42 to 46
75	UK PACE Act 1984 s.46A
76	CJ Ord. s.162; UK PACE Act 1984 s.47 (part)
77	CJ Ord. s.142 modified; UK Bail Act 1976 ss.3A and 5A adapted
78	UK PACE Act 1984 s.47 (part)
79	UK PACE Act s.50
80	CJ Ord. s.163; UK PACE Act 1984 s.51
81	CJ Ord.s.152 (part)

PART 6 – QUESTIONING AND TREATMENT OF PERSONS BY POLICE

82	--
83	CJ Ord. s.165; UK PACE Act 1984 s.53
84	CJ Ord. s.166; UK PACE Act 1984 s.54
85	UK PACE Act 1984 s.54A
86	CJ Ord. s.167; UK PACE Act 1984 s.55
87	UK PACE Act 1984 s.55A
88	CJ Ord. s.171; UK PACE Act 1984 s.56
89	UK PACE Act 1984 s.57; CYP Act 1933 s.34
90	CJ Ord. s.172; UK PACE Act 1984 s.58
91	CJ Ord. s.173; UK PACE Act s.61
92	UK PACE Act 1984 s.61A
93	CJ Ord. s.174; UK PACE Act 1984 s.62
94	CJ Ord. s.175; UK PACE Act 1984 s.63
95 to 114	UK PACE Act 1984 ss.63A to 63U am. by Protection of Freedoms Act 2012; Anti-social Behaviour, Crime & Policing Act 2014
115	UK PACE Act 1984 s.64A
116 and 117	--

PART 7 – CODES OF PRACTICE

118	UK PACE Act 1984 s.66
119	UK PACE Act 1984 ss.60 & 60A

120	CPI Ord. ss.25 and 26; UK CPI Act 1996 ss.23 and 24
121	UK CPI Act 1996 s.21A
122	CPI Ord. s.27; UK PACE Act 1984 s.67 (part); CPI Act 1996 s. 25
123	CPI Ord. s.28; UK PACE Act 1984 s.67 (part); CPI Act 1996 s. 26
124	--

CHAPTER 3 - CAUTIONING

PART 8 – SIMPLE AND CONDITIONAL CAUTIONS

125	--
126	UK CJ Act 2003 ss.22 and 23 (part) adapted
127	--
128	UK CJ Act 2003 ss.22 and 23 (part) adapted
129	--
130 to 135	UK CJ Act 2003 ss.23A to 25
136	UK Rehabilitation of Offenders Act 1974 s.8A and Sched. 10 (part) adapted
137	UK Rehabilitation of Offenders Act 1974 s.9A and Sched. 10 (part) adapted

CHAPTER 4 – BAIL

PART 9 – BAIL IN CRIMINAL PROCEEDINGS

138	CJ Ord. ss.139 and 140; UK Bail Act 1976 ss.1 and 2 & Sched.
139	--
140	UK Magistrates' Courts Act 1980 ss.128 and 129 adapted
141	CJ Ord. s.143; UK Bail Act 1976 s.4 (part)
142	UK Bail Act 1976 s.4 (part) & Sched.
143	CJ Ord. s.141 (part) modified; UK Bail Act 1976 ss.3(6) and 3(6ZAA) and Sched. adapted]
144	UK Bail Act 1976 s.3AA
145	UK Bail Act 1976 Sched. simplified
146	CJ Ord. s.144 (part); UK Bail Act 1976 s.5 (part)
147	CJ Ord. s.141(1) to (7); UK Bail Act s.3(7)
148	CJ Ord. s.141(8); UK Magistrates' Courts Act 1980 ss.43 and 43B modified
149	UK Bail Act 1976 ss.3(8) and 5B (part)
150	CJ Ord. s.145; UK Bail Act 1976 ss.3(8) and 5B (part)
151	UK Bail (Amendment) Act 1993 s.1 adapted
152	UK Criminal Justice Act 1948 s.37; CJ Act 2003 s.16; Senior Courts Act 1981 s.81 (part)
153	UK Magistrate's Courts Act 1980 s.113
154	UK Senior Courts Act 1981 s.81 (part)
155	CJ Ord. s.148; UK Bail Act 1976 s.8; Magistrates' Courts Act 1980 s.119

156	CJ Ord. s.144 (part); UK Bail Act 1976 s.5 adapted
157	CJ Ord. ss.141(1) and 146; UK Bail Act 1976 ss.2 and 6
158	CJ Ord. s.147; UK Bail Act 1976 s.7
159	CJ Ord. s.149; UK Bail Act 1976 s.9
160	UK Senior Courts Act 1981 s.81 (part); CPR Rule 68.8
161	CJ Ord. s.143; UK Bail Act 1976 s.3(6A) and (6B); Magistrate's Courts Act 1980 s.41; CJPO Act 1994 s.25 (part) adapted; Coroners and Justice Act 2009 s.115
162	UK CJPO Act 1994 s.25 (part)
163	UK Magistrates' Courts Act 1980 s.117; Senior Courts Act 1981 s.81(4)]
164	UK Bail Act 1976 passim; CPR 2012 Rule 19

CHAPTER 5 – JURISDICTION

PART 10 – CONTROL OF PROSECUTIONS

165 and 166	Common law
167	UK Prosecution of Offences Act 1985 s.6 adapted
168	UK Prosecution of Offences Act 1985 ss.25 and 26
169	UK Prosecution of Offences Act 1985 s.22 (part) adapted; Prosecution of Offences (Custody Time-Limits) Regulations 1987 adapted
170	UK Prosecution of Offences Act 1985 s.22 (part) adapted
171	UK Prosecution of Offences Act 1985 s.22A
172	UK Prosecution of Offences Act 1985 s.22B
173	Common law
174	UK Prosecution of Offences Act 1985 s.23
175	UK Prosecution of Offences Act 1985 s.23A

PART 11 – CRIMINAL JURISDICTION

176	AOJ Ord. s.38 and s.48(2) and (3
177	AOJ Ord. ss.28 and 29
178	AOJ Ord. ss.11 and 12 and 48(5)
179	Criminal Jurisdiction (Offshore Activities) Order 1998
180	CJ Ord. s.4 am. by s.14 of AOJ (Am) Ord. 2013
181 and 182	--
183	AOJ Ord. s.41 am. by AOJ (Am)(No.2) Ord. 2013
184 and 185	--
186 to 188	AOJ Ord. s.35A modified

PART 12 – SENDING FOR TRIAL

189	--
190	UK Crime & Disorder Act 1998 ss.51 and 51A
191	AOJ Ord. s.48A
192	AOJ Ord. Sched. 4 (part)

193	AOJ Ord. Sched. 4 (part); UK Criminal Justice Act 1987 s.5; Criminal Justice Act 1991 Sched.6 para.4; Crime & Disorder Act 1998 Sched. 3 para.1, etc.
194	AOJ Ord. Sched. 4 (part); UK Criminal Justice Act 1987 s.5 (part); Criminal Justice Act 1991 Sched. 6 para.2; Crime & Disorder Act 1998 ss.51E and 52
195	AOJ Ord. Sched. 4 (part); UK Criminal Justice Act 1987 s.5 (part); Criminal Justice Act 1991 Sched. 6 para.4; Crime & Disorder Act 1998 Sched. 3]
196	UK MC Act 1980 s.6 (part) adapted
197	UK Criminal Justice Act 1991 Sched. para.7 adapted
198	SH Criminal Procedure Ordinance ss.171 and 177 and common law
199	AOJ Ord. Sched. 4 (part); UK Criminal Justice Act 1987 s.6; Crime & Disorder Act 1998 Sched. 3
200	UK MC Act 1980 s.8; Crime & Disorder Act 1998 s.52A
201 to 209	AOJ Ord. Sched. 4 (part); UK Crime & Disorder Act 1998 Sched. 3 (part)

PART 13 – COMMITTAL FOR SENTENCE

210	UK PCC(S) Act 2000 s.3
211	UK PCC(S) Act 2000 s.6
212	UK PCC(S) Act 2000 ss.5 & 7
213	CJ Ord.s.58 modified
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PART 14 – DISCLOSURE OF MATERIAL

215	CPI Ord. ss.2 and 3; UK CPI Act 1996 s.1
216	CPI Ord. s.5; UK CPI Act 1996 s.3
217	CPI Ord. s.6; UK CPI Act 1996 ss.4 & 13
218	CPI Ord. s.7; UK CPI Act 1996 s.5
219 to 223	UK CPI Act 1996 ss.6A to 6E
224	UK CPI Act 1996 s.7A
225	CPI Ord. s.10; UK CPI Act 1996 s.8
226	CPI Ord. s.12; UK CPI Act 1996 s.10 adapted
227	CPI Ord. s.13; UK CPI Act 1996 s.11
228	CPI Ord. s.14; UK CPI Act 1996 s.12; Defence Disclosure Time Limits Regulations 1997
229	UK SO (PM) Act 1997 ss.1 & 2
230 to233	UK SO (PM) Act 1997 ss.3 to 6
234	UK SO (PM) Act 1997 s.8
235	CPI Ord. s.16; UK CPI Act 1996 s.14
236	CPI Ord. s.17; UK CPI Act 1996 s.15
237	CPI Ord. s.19; UK CPI Act 1996 s.17
238	CPI Ord. s.20; UK CPI Act 1996 s.18

239 CPI Ord. s.18; UK CPI Act 1996 s.16
240 CPI Ord. s.21; UK CPI Act 1996 s.19
241 CPI Ord. s.22; UK CPI Act 1996 ss.20 & 21; UK SO (PM) Act 1997 s.9
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244 CPI Ord. s.31; UK CPI Act 1996 s.29
245 CPI Ord. s.32; UK CPI Act 1996 s.30
246 CPI Ord. s.33 (part); UK CPI Act 1996 s.31
247 CPI Ord. s.33 (part) & 34; UK CPI Act 1996 s.33
248 CPI Ord. s.35; UK CPI Act 1996 s.34
249 CPI Ord. s.41; UK CPI Act 1996 s.40
250 CPI Ord. s.36; UK CPI Act 1996 s.35
251 CPI Ord. s.37; UK CPI Act 1996 s.37
252 CPI Ord. s.42; UK CPI Act 1996 s.41
253 CPI Ord. ss.38 & 43; UK CPI Act 1996 ss.38 & 43

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254 --
255 AOJ Ord. ss.2 and 3 modified; UK MC Act 1980 s.121 (part) adapted
256 UK MC Act 1980 s.121 (part) adapted
257 Common law
258 UK MC Act 1980 s.1 (part); CJ Act 2003 ss.29, 30
259 UK MC Act 1980 s.14
260 UK MC Act 1980 s.123
261 UK MC Act 1980 ss.124 & 125
262 UK MC Act 1980 s.50
263 UK Criminal Proc. Rules adapted
264 UK MC Act 1980 ss.17C & 18 adapted
265 UK MC Act 1980 s.9
266 UK MC Act 1980 s.10
267 UK MC Act 1980 s.15
268 UK MC Act 1980 s.11
269 UK MC Act 1980 s.13
270 UK MC Act 1980 s.16
271 UK MC Act 1980 s.12
272 UK MC Act 1980 s.12A
273 UK MC Act 1980 s.128 (part)
274 UK MC Act 1980 s.128 (part) & 128A
275 UK MC Act 1980 s.128 (part)
276 UK MC Act 1980 s.129

277	UK MC Act 1980 s.131
278	Common law; UK Criminal Proc. Rules r.28 adapted
279	UK MC Act 1980 s.97
280	UK MC Act 1980 ss.115 & 118
281	UK MC Act 1980 s.116
282	UK MC Act 1980 s.119
283	UK MC Act 1980 s.120 adapted
284	UK MC Act 1980 s.46 & Sched. 3 (part)
285	UK MC Act 1980 s.46 & Sched. 3 (part)
286	UK MC Act 1980 s.142
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288	Common law; UK Criminal Justice Act 1967 s.17
289	SH Criminal Procedure Ord. s.46 adapted
290	UK AOJ (Miscellaneous Provisions) Act 1933 s.2 (part)
291	UK Indictments Act 1915 s.3
292	UK Indictments Act 1915 s.4; Criminal Justice Act 1988 s.40 adapted
293	UK Indictments Act 1915 s.5 (part)
294	UK Indictments Act 1915 s.5 (part)
295	UK Criminal Law Act 1925 s.6
296	UK Criminal Law Act 1925 s.33
297	UK Criminal Justice Act 1988 s.122
298	Jury Ord. s.16
299	Jury Ord. s.17
300 to 307	UK CP (Attendance of Witnesses) Act 1965 ss.2 to 4
308	UK Costs in Criminal Cases (General) Regulations 1986 Part V
309	AOJ Ord. Sched..4; UK Criminal Justice Act 1988 s.41; Crime & Disorder Act 1998 Sched. 3 adapted
310	AOJ Ord. Sched. 4 (part); Crime & Disorder Act 1998 Sched. 3 (part)
311	AOJ Ord. Sched. 4 (part); Crime & Disorder Act 1998 Sched. 3 (part)
312	UK Senior Courts Act 1981 ss.80, 81 (part)
313	Common law; see cases in Archbold para.4-71
314	UK AOJ (MP) Act 1933 s.2 (part)]

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315	Jury Ord. s.2
316	Jury Ord. s.3; UK Juries Act 1974 s.1
317	Jury Ord. s.3B
318	Jury Ord. ss.3A & 9
319	Jury Ord. ss.4 (part) and 6 modified; UK Juries Act 1974 ss. 2, 4 (part)

Jury Ord. s.4 (part)
Jury Ord. s.7; UK Juries Act 1974 s.5
Jury Ord. s.10; UK Juries Act 1974 s.8
Jury Ord. s.11; UK Juries Act 1974 s.9
Jury Ord. ss.12 & 13; UK Juries Act 1974 ss.9B & 10
Jury Ord. s.20
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Case law
Case law; UK Criminal Procedure Rules 2012 Part 62
UK Criminal Evidence Act 1898 ss.1 (part) and 2
CJ Ord. s.106; UK PACE Act 1984 s.79
UK MC Act 1980 s.98 adapted
CJ (Evidence) Ord. ss.3(3) and 40; UK YJCE Act 1999 s.53
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CJ (Evidence) Ord. s.42; UK YJCE Act 1999 s.55
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CJ Ord. s.106A; UK Criminal Justice Act 1982 s.72
UK Criminal Evidence Act 1898 s.1 (part)
CJ Ord. s.107 (part); UK PACE Act 1984 s.80
CJ Ord. s.107 (part); UK PACE Act 1984 s.80A
UK MC Act 1980 s.104
CJ Ord. s.101; UK PACE Act 1984 s.73; Evidence Act 1851 s.7
CJ Ord. s.102; UK PACE Act 1984 ss.74 and 75
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361	UK Criminal Justice Act 1967 s.10
362	CJ Ord. s.103; UK PACE Act 1984 s.76
363	UK PACE Act 1984 s.76A
364	CJ Ord. s.104; UK PACE Act 1984 s.77
365 to 369	UK CJPO Act 1994 ss.34 to 38
370	UK DVCV Act 2004 s.6 adapted
371	UK CJ Act 2003 s.112
372 to 385	UK CJ Act 2003 ss.98 to 111
386	UK Criminal Justice Act 1988 s.30
387	UK Criminal Justice Act 1988 s.31
388	UK CJ Act 2003 s.127
389	CJ Ord. s.108; UK PACE Act 1984 s.81
390	UK MC Act 1980 s.99 adapted

PART 20 – HEARSAY AND DOCUMENTARY EVIDENCE

391	UK CJ Act 2003 s.133
392 to 3970	UK CJ Act 2003 ss.114 to 119
3981	UK Criminal Procedure Act 1865 s.3
399	UK Criminal Procedure Act 1865 ss.4 & 5
400 to 405	UK CJ Act 2003 ss.120 to 126
406	UK CJ Act 2003 s.129
407	UK CJ Act 2003 s.132
408	UK Criminal Justice Act 1967 s.9
409	UK Criminal Justice Act 1948 s.41
410	UK CJ Act 2003 s.133
411	UK CJ Act 2003 s.139
412	UK PACE Act 1984 s.71
413	UK MC Act 1980 s.5F
414	Common law
415	UK CJ Act 2003 s.137
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417	UK CJ Act 2003 s.56 adapted; YJCE Act 1999 s.33B
418	UK Criminal Justice Act 1988 s.32 (part)
419	UK CJ Act 2003 s.51
420	UK CJ Act 2003 s.52
421	UK CJ Act 2003 s.54
422	UK CJ Act 2003 s.55 (part)
423	UK CJ Act 2003 s.55 (part)
424	UK Criminal Justice Act 1988 s.32 (part)

PART 22 – VULNERABLE WITNESSES

425	CJ (Evidence) Ord. s.21; UK YJCE Act 1999 ss.33, 62, 65
426	CJ (Evidence) Ord. s.4; UK YJCE Act 1999 s.16
427	CJ (Evidence) Ord. s.5; UK YJCE Act 1999 s.17

428	CJ (Evidence) Ord. s.6; UK YJCE Act 1999 s.18
429	CJ (Evidence) Ord. s.7 (part); UK YJCE Act 1999 s.19
430 to 438	CJ (Evidence) Ord. ss.8 to 15; UK YJCE Act 1999 ss.20 to 27
439	UK Practice Direction [2002] 1WLR 2870
440 to 444	CJ (Evidence) Ord. ss.16 to 20; UK YJCE Act 1999 ss.28 to 32
445 to 448	UK YJCE Act 1999 ss.33A to 33BB
449 to 454	CJ (Evidence) Ord. ss.22 to 27; UK YJCE Act 1999 ss. 34 to 39
455 to 461	CJ (Evidence) Ord. ss.28 to 34; UK YJCE Act 1999 ss.41 to 47
462	CJ (Evidence) Ord. s.36; UK YJCE Act 1999 s.49
463	CJ (Evidence) Ord. s.37; UK YJCE Act 1999 s.50
464	CJ (Evidence) Ord. s.39; UK YJCE Act 1999 s.52
465	UK SO (Am) Act 1992 ss.1 & 2
466	UK SO (Am) Act 1992 s.3
467	UK SO (Am) Act 1992 s.5
468	UK Criminal Evidence (Witness Anonymity) Act 2008 s.1
469 to 475	UK Coroners and Justice Act 2009 ss.86 to 93
476	CJ (Evidence) Ord. s.7 (part); UK YJCE Act 1999 ss.33C & 63

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PART 23 – SENTENCING: GENERAL PRINCIPLES

477	UK CJ Act 2003 s.142 adapted
478	UK CJ Act 2003 ss.143, 145, 146
479	UK CJ Act 2003 s.144 (part); PCC (S) Act 2000 s.152 (part)
480	CJ Ord. ss.5 to 8; UK MC Act 1980 s.34 adapted
481	UK CJ Act 2003 s.166 adapted
482	UK CJ Act 2003 ss.171, 172
483	UK CJ Act 2003 s.174 adapted
484 to 486	UK CPI Act 1996 ss.58 to 60
487	UK PCC (S) Act 2000 s.154 adapted
488	UK PCC (S) Act 2000 s.155 adapted
489 to 492	CJ Ord. s.17; UK PCC (S) Act 2000 ss.1 to 2
493	CJ Ord. s.61; UK CJ Act 2003 s.156 (part); MC Act 1980 s.10(3)
494	UK CJ Act 2003 ss.156 (part) & 158
495	UK CJ Act 2003 s.157 adapted
496	CJ Ord. s.62; UK CJ Act 2003 s.159
497	UK CJ Act 2003 s.161
498	UK Practice Direction (Crim. Proc.) 2009 para. III.28 and Code of Practice for Victims of Crime Oct 2013

499	UK Practice Direction (Crim. Proc.) 2009 para. III.28
500	UK Practice Direction (Crim. Proc.) 2009 para. III.28 (part) and CJ's Protocol
501	UK Immigration Act 1971 ss.3, 7, 8 etc. adapted

PART 24 – ABSOLUTE OR CONDITIONAL DISCHARGES

502	CJ Ord. s.24; UK PCC (S) Act 2000 ss.12 and 150 adapted
503	CJ Ord. s.27
504	CJ Ord. s.25 modified; UK PCC (S) Act 2000 s.13 adapted
505	CJ Ord. s.29; UK PCC (S) Act 2000 s.14 adapted
506	CJ Ord. s.26
507	CJ Ord. s.28; UK PCC (S) Act 2000 s.15 adapted

PART 25 – COMMUNITY SENTENCES

508	UK CJ Act 2003 s.147; CJI Act 2008 s.7
509	UK CJ Act 2003 s.177
510	UK CJ Act 2003 s.199 & 200
511 to 513	UK CJ Act 2003 ss.201 to 203
514	UK CJ Act 2003 s.204; PCC (S) Act 2000 s.37
515 to 519	UK CJ Act 2003 ss.205 to 208 adapted
520	UK CJ Act 2003 s.209; CJI Act 2008 Sched. 1 para.2
521 to 524	UK CJ Act 2003 ss.210 to 212A
525	UK CJI Act 2008 Sched.1 para.24
526	UK CJ Act 2003 s.213
527	UK CJ Act 2003 s.215
528	UK CJI Act 2008 s.1 and Sched.1
529	UK CJI Act 2008 Sched.1 para.2 adapted
530	UK CJI Act 2008 Sched.1 para.36; Sched.2 para.7
531	UK CJI Act 2008 Sched.2 para.2
532	UK CJ Act 2003 s.198
533	UK CJ Act 2003 s.217
534	UK CJ Act 2003 s.219 and Sched.8 para.27
535	UK CJ Act 2003 s.220
536	UK CJ Act 2003 Sched.8 paras.5 and 6
537 to 541	UK CJ Act 2003 Sched.8 paras.7 to 11
542	UK CJ Act 2003 Sched.8 paras.13 & 14
543 to 550	UK CJ Act 2003 Sched.8 paras.17 to 23
551	UK CJ Act 2003 ss.148 and 149
552	UK CJ Act 2003 Sched.8 para.24
553	UK CJ Act 2003 Sched.8 para.25
554	UK CJ Act 2003 s.222
555	UK CJ Act 2003 Sched.8 para.25A
556	UK CJ Act 2003 s.178
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PART 26 – CUSTODIAL SENTENCES

558	CJ Ord. s.31 (part); UK PCC (S) Act 2000 s.79; CJ Act 2003 s.152
559	CJ Ord. s.31; UK CC (S) Act 2000 s.83 adapted
560	CJ Ord. s.32; UK CJ Act 2003 s.156 (part)
561	UK CJ Act 2003 s.153
562	CJ Ord. s.30; UK PCC (S) Act 2000 s.77 adapted
563	CJ Ord. s.95; UK CJ Act 2003 ss.240 to 242 adapted
564	Gibraltar CPE Act s.178 adapted; SH CPE Bill
565	CJ Ord. s.45 (part); PCC (S) Act 2000 s.118
566	CJ Ord. s.45 (part)
567	CJ Ord. s.45 (part) and Sched.2 (part)
568	CJ Ord. s.46; PCC (S) Act 2000 s.119
569	CJ Ord. s.47 and Sched. 2 (part); PCC (S) Act 2000 s.120 adapted
570	CJ Ord. s.48 modified; PCC (S) Act 2000 s.121 adapted
571	CJ Ord. s.49; PCC (S) Act 2000 s.122; CJA 2003 ss.189, 190
572	CJ Ord. s.50; PCC (S) Act 2000 s.123 and Sched. 8 by analogy
573	Gibraltar CPE Act s.174; SH CPE Bill; Common law
574	CJ Ord. Schedule 2 (part)
575	CJ Ord. s.51
576	CJ Ord. s.52
577	UK CJ Act 2003 s.269 adapted, s 277 and Sched.21 (part)
578	UK CJ Act 2003 Sched.21 (part)
579	UK CJ Act 2003 s.270 adapted
580 to 584	CJ Ord. ss.90 to 94 modified
585 and 586	Gibraltar CPE Act; SH CPE Bill
587 and 588	--

PART 27 – FINES AND RECOGNISANCES

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590	CJ Ord. s.11(1) to (4)]
591	CJ Ord. s.11
592	UK CJ Act 2003 s.164
593	UK CJ Act 2003 s.162
594	UK MC Act 1980 s.85 adapted; CJ Act 2003 s.165
595	CJ Ord. s.14(1); UK MC ss.75(3) and 85A; PCC (S) Act 2000 s.139 (part)
596	UK MC Act 1980 s.75
597	UK Courts Act 2003 Sched.5; Collection of Fines (Final Scheme) Order 2006]
598	UK MC Act 1980 s.76
599	CJ Ord. s.14(2 to (11); UK MC Act 1980 s.82 (part); PCC (S) Act 2000 s.139 (part)]

600	UK PCC (S) Act 2000 s.140
601	UK MC Act 1980 s.82 (part)
602	UK MC Act 1980 s.78
603	UK MC Act 1980 s.79
604	UK MC Act 1980 s.80; PCC (S) Act 200 s.142
605	CJ Ord. s.16 modified; UK MC Act 1980 ss.139, 140 adapted
606	UK LASPO Act 2012 s.85

PART 28 – COMPENSATION, RESTITUTION, DEPRIVATION, ETC.

607	Gibraltar & St Helena CPE Bill adapted
608	CJ Ord. s.53 (part); UK PCC (S) 2000 s.130 (part)
609	CJ Ord. s.53 (part); UK PCC (S) 2000 s.130 (part)
610	CJ Ord. s.53 (part); UK PCC (S) 2000 s.130 (part); ss. 131 and 141 adapted
611	CJ Ord. s.54 (part); UK PCC (S) Act 2000 s.132
612	CJ Ord. s.55; UK PCC (S) Act 2000 s.133
613	CJ Ord. s.56; UK PCC (S) Act 2000 s.134
614	CJ Ord. ss.15 & 57; UK PCC (S) Act 2000 s.14 adapted
615	UK PCC (S) Act 2000 ss.148 & 149 (part)]
616	UK PCC (S) Act 2000 ss.149 (part)
617	CJ Ord. s.59 modified; UK PCC (S) Act 2000 s.143
618	CJ Ord. s.60; UK PCC (S) Act 2000 s.147
619	UK Safeguarding Vulnerable Groups Act 2006 ss.3 and 5 adapted
620	UK Safeguarding Vulnerable Groups Act 2006 Sched. 4 adapted
621	PCC (S) Act 2000 s.144 adapted
622	UK Police Property Act 1897 s.1
623	PCC (S) Act 2000 s.145
624 to 626	--

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627	CJ Ord. s.132; UK RO Act 1974 s.1
628	CJ Ord. s.133; UK RO Act 1974 s.4 (part)
629	CJ Ord. s.134(1); UK RO Act 1974 s.5(1)
630	CJ Ord. s.134(2); UK RO Act 1974 s.5(1A) to (11)
631	CJ Ord. s.135; UK RO Act 1974 s.6
632	CJ Ord. s.136 modified; UK RO Act 1974 s.7
633	CJ Ord. RO (Exceptions) Order 1989; UK RO Act 1974 s.4 (part); UK RO Act 1974 (Exceptions) Order 1975 (part);
634	UK RO Act 1974 (Exceptions) Order 1975 (part)
635	CJ Ord. s.137; UK RO Act 1974 s.8
636	CJ Ord. s.138; UK RO Act 1974 s.9
637	UK Practice Direction (Criminal Proceedings: Consolidation) 2002 para.1.6

638	UK RO Act 1974 (Exceptions) Order 1975 (Am) (E & W) Order 2013 Art.2A
639 to 645	UK Protection of Freedoms Act 2012 ss. 92 to 100

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646	UK Prosecution of Offences Act 1985 s.21 (part)]
647	UK Prosecution of Offences Act 1985 ss.16 to 18 adapted
648	UK Prosecution of Offences Act 1985 s.19 adapted
649	UK Prosecution of Offences Act 1985 s.19A
650	UK Prosecution of Offences Act 1985 s.19B
651	--
652	UK Prosecution of Offences Act 1985 ss.16 (part) & 21 (part)
653	CJ Ord s.15; UK PCC (S) Act 2000 s.141 adapted
654	UK Prosecution of Offences Act 1985 s.20
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657	UK CPR 2005 rule 63
658	UK MC Act 1980 s.109
659	Court of Appeal Ord. (part) by analogy; SH Criminal Procedure Ord.; Gibraltar CPE Ac]
660	Court of Appeal Ord. (part) by analogy
661	Court of Appeal Ord. (part) by analogy AOJ Ord. s.48(2) adapted
662	Court of Appeal Ord. (part) by analogy
663	Court of Appeal Ord. (part) by analogy
664	Court of Appeal Ord. s.16 by analogy
665	SH Criminal Procedure Ord.; Gibraltar CPE Act
666	UK MC Act 1980 s.110
667	AOJ Ord. s.57 (part); Court of Appeal Ord. ss.4(1)(f), 17, 18 and 20 by analogy; UK Mental Health Act 1983 s.45
668	Court of Appeal Ord. ss.12 and 13 by analogy; UK Criminal Appeal Act 1968 ss.12 & 13
669	SH Criminal Procedure Ord; Gibraltar CPE Act adapted
670	UK Criminal Justice Act 2003 ss.58 to 61
671	UK Criminal Justice Act 2003 ss.58 to 61 by analogy; SH Criminal Procedure Ord. ss.242 and 251]
672	UK MC Act 1980 s.111; Senior Courts Act 1981 s.28; CPR 2012 para.64.2, 3
673	UK Senior Courts Act 1981 s.28A (part)
674	UK MC Act 1980 s.112; Senior Courts Act 1981 s.28A (part)

675	UK CPR 2012 Rule 63.9; Court of Appeal Ord. s.23(3); Gibraltar CPE Act s.306
676	AOJ Ord. s.50; SH Criminal Procedure Ord. s.244; Gibraltar CPE Act
677 and 678	UK Criminal Appeals Act 1968 s.44A adapted
679 to 681	--
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683	SH Criminal Procedure Ord. s.262
684	SH Criminal Procedure Ord. ss.263 & 264
685	UK Senior Courts Act 1981 s.31

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687 to 694	UK CJ Act 2003 ss.76 to 83
695	UK CJ Act 2003 s.84 (part)
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697 to 702	UK CJ Act 2003 ss.85 to 90
703	--
704 to 706	UK CPI Act 1996 ss.54 to 56
707	UK CP Rules 2012 Pt.40
708	UK CJ Act 1988 ss.35 and s.36 (part)
709	UK CJ Act 1988 s.36 (part)]
710	UK CJ Act 1988 Sched. 3
711	UK CJ Act 1972 s.36 (part)
712	UK CJ Act 1972 s.36 (part)]; CP Rules 2012 Pt.70
713	CJ (Am) (Miscarriages of Justice Ord. s.2 modified
714	CJ (Am) (Miscarriages of Justice Ord. s.3
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PART 33 – YOUNG OFFENDERS AND YOUTH PROTECTION

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721	UK CYP Act 1933 ss.45 and 47 adapted
722	UK CYP Act 1933 s.46
723	UK CYP Act 1933 s.48
724	UK PCC (S) Act 2000 ss.8 & 150(11)
725	UK PCC (S) Act 2000 s.9
726	CJ Ord. ss.33 & 37; UK PCC (S) Act 2000 s.89
727	UK PCC (S) Act 2000 ss.101 & 102 adapted (part)
728	CJ Ord. s.35; UK PCC (S) Act 2000 ss.101 & 102

	adapted (part)
729	CJ Ord. s.39; UK PCC (S) Act 2000 ss.90 & 91
730	CJ Ord. s.38; UK PCC (S) Act 2000 ss.93 & 94
731	CJ Ord. s.40 modified
732	CJ Ord. s.36
733	UK PCC (S) Act 2000 s.135 adapted; MC Act 1980 s.37
734	UK PCC (S) Act 2000 s.137 adapted; MC Act 1980 s.81 (part) adapted
735	UK PCC (S) Act 2000 s.136 adapted; MC Act 1980 s.81 (part) adapted
736	UK PCC (S) Act 2000 s.138 adapted; MC Act 1980 s.81 (part) adapted
737	UK PCC (S) Act 2000 s.150
738	CJ Ord. s.115; UK CYP Act 1933 s.34
739	UK PCC (S) Act 2000 s.73
740	UK PCC (S) Act 2000 s.74
741	UK PCC (S) Act 2000 Sched.8 para.2
742 to 744	UK PCC (S) Act 2000 Sched.8 paras.5 to 7
745	UK CYP Act 1933 s.99 (part)
746 to 78	UK CYP Act 1933 ss.41 to 43
749	UK CYP Act 1933 s.14
750	UK CYP Act 1933 s.40
751	UK CYP Act 1933 s.31
752	CJ Ord. s.114; UK CYP Act 1933 s.36
753	CJ Ord. s.111; UK CYP Act 1933 s.37
754	UK CYP Act 1933 s.38
755	UK CYP Act 1933 s.49
756	UK CYP Act 1933 s.39
757	CJ Ord. s.116; UK CYP Act 1933 ss.16 & 29
758	CJ Ord. s.117; UK CYP Act 1933 s.99 (part)
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CHAPTER 12 – MENTALLY DISORDERED OFFENDERS

PART 34 – MENTALLY DISORDERED OFFENDERS

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762	UK Crim. Proc. (Insanity) Act 1964 ss.4 & 4A (part)
763	--
764	UK Crim. Proc. (Insanity) Act 1964 s.4A (part);
765	UK Trial of Lunatics Act 1883 s.2; Crim. Proc. (Insanity) Act 1964 s.1; Crim. Proc. (Insanity and Unfitness to Plead) Act 1991 s.1
766	UK Crim. Proc. (Insanity) Act 1964 s.5 (part)
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768	UK Crim. Proc. (Insanity) Act 1964 s.5 (part) & Sched.1A (part)
769 to 772	UK Crim. Proc. (Insanity) Act 1964 Sched.1A (part)
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CHAPTER 13 - SUPPLEMENTARY PROVISIONS

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781	UK PACE Act 1984 s.107
782	UK PACE Act 1984 s.117; Criminal Law Act 1967 s.3
783	Crimes Ord. s.51; UK Public Order Act 1986 s.28; Knives Act 1997 s.10 etc.
784 to 789	--
790	UK CJPO Act 1994 s.35
791	--
792	--

Note:

CJ Ord.	Criminal Justice Ordinance
CJ (Am) (Miscarriages of Justice) Ord.	Criminal Justice (Amendment) (MC) Ord
CJ (Evidence) Ord	Criminal Justice (Evidence) Ordinance
CJ Ord. RO (Exceptions) Order	
CPI Ord	Criminal Procedure & Investigations Ordinance
AOJ Ord.	Administration of Justice Ordinance
AOJ (Am) Ord. 2013	Administration of Justice (Amendment) Ordinance 2013
AOJ (Am) (N0.2) Ord. 2013	Administration of Justice (Amendment) (N0.2) Ordinance 2013
Jury Ord	

UK AOJ (MP) Act	Administration of Justice (Miscellaneous Provisions) Act 1933
UK CJ Act	Criminal Justice Act 1972, 1988 or 2003, as indicated
UK CJP Act	Criminal Justice & Police Act 2001
UK CJPO Act	Criminal Justice & Public Order Act 1994
UK CP (Attendance of Witnesses) Act	Criminal Procedure (AW) Act 1965
UK CPI Act	Criminal Procedure & Investigations Act 1996
UK CPR	Criminal Procedure Rules 2012
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 PCC (S) Act	Powers of Criminal Courts (Sentencing) Act 2000
UK RO Act	Rehabilitation of Offenders Act 1974
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 Procedure Ordinance or the CPE Bill
Gibraltar	Gibraltar CPE Bill or the CPE 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, Protection of Freedoms Act 2012, Coroners & Justice Act 2009, Anti-social Behaviour, Crime and Policing Act 2014. See original Parts for details of amendments.

CRIMINAL PROCEDURE AND EVIDENCE BILL 2014
DESTINATION TABLE

Most of the criminal procedure 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 listed in Part A of Schedule 14 can be found. Some are derived directly from the FI law, others are substantially modified. Individual sections of the Ordinances are identified in the Derivation Table under the relevant Part of the CPE Bill.

The second column below shows where in the CPE Bill an equivalent provision can be found. The third column shows the titles of existing provisions.
A blank against a section means there is no equivalent in the CPE Bill.

The destination of disapplied UK enactments listed in Part B of Schedule 14 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.)

Criminal Justice Ordinance

PART I – PRELIMINARY

1.	Part 1	Short title and commencement
2.	-do-	Interpretation
3.	Part 10	Prosecution of offences
4.	Part 11	Trial of offences

PART II - PENALTIES, ETC.

5.	Part 23	Penalties prescribed to be deemed maximum penalties
6.	-do-	Statement of penalty at end of provision
7.	-do-	Certain penalties may be cumulative
8.	-do-	Imposition of penalty not to bar civil action
9.	Part 28	Award of compensation
10.	Part 23	Abolition of enhanced penalties on subsequent conviction of summary offences
11.	Part 27	Standard scale for summary offences
12.	-do-	Variation of existing fines
13.	-do-	General power of court to fine convicted offender
14.	-do-	Powers of court in relation to fines and recognizances
15.	-do-	Power of court to allow time for payment, or payments by instalments, of fine, costs or compensation
16.	-do-	Disposal of fines

PART III - POWERS OF COURTS TO DEAL WITH OFFENDERS

17.	Part 23	Deferment of sentence
18.	--	Probation
19.	Part 1	Appointment of Probation Officer
20.	Part 34	Probation orders requiring treatment for mental condition
21.	--	Requirements in probation orders

57.	-do-	Provisions as to enforcement of compensation
58.	-do-	Powers of Supreme Court at committal for sentence
59.	-do-	Power to deprive offender of property used, or intended for use, for purposes of crime
60.	-do-	riving disqualification where vehicle used for purposes of crime
61.	Part 23	Social inquiry report before sentence
62.	-do-	Reports of probation officers

PART IV - CONFISCATION ORDERS

[See now the Proceeds of Crime Ordinance]

PART V - RELEASE OF PRISONERS, ETC.

Replaced by Part 26

PART VI - EVIDENCE IN CRIMINAL PROCEEDINGS – GENERAL

Replaced by Part 19

PART VII - CHILDREN AND YOUNG PERSONS

110.	[*Repealed*]	
111.	Part 22	Power to clear court while child or young person is giving evidence in certain cases
112.	[*Repealed*]	
113.	Part 22	Supplementary to section 111
114.	Part 33	Prohibition against children being present in court during trial of other persons
115.	-do-	Attendance at court of parent or guardian
116.	-do-	Provisions in relation to offences committed by children or young persons
117.	-do-	Presumption and determination of age
118.	--	General power to make a supervision order in respect of child or young person

[For equivalent to supervision see Youth Rehabilitation orders in Part 25

119.	--	Power to include requirements in supervision orders
120.	--	Young offenders
121.	Part 25	Requirement for young offender to live in accommodation provided by Crown
122.	-do-	Requirements as to mental treatment
123.	-do-	Requirements as to education
124.	-do-	Duty of court to state in certain circumstances that requirement in place of custodial sentence
125.	--	Selection of supervisor
126.	--	Duty of supervisor
127.	--	Variation and discharge of supervision orders
128.	--	Provisions supplementary to section 127
129.	--	Termination of supervision
130.	--	Supplementary provisions in relation to supervision orders

131.	--	Supplementary provisions in relation to requirements under section 120(2)

PART VIII - REHABILITATION OF OFFENDERS

Replaced by Part 29

PART IX – BAIL

Replaced by Part 9

PART X – DETENTION

Replaced by Part 5

PART XI - QUESTIONING AND TREATMENT OF PERSONS BY POLICE

Replaced by Part 6

PART XII - POWERS OF ENTRY, SEARCH AND SEIZURE

Replaced by Parts 2 and 3

PART XIII – ARREST

Replaced by Part 4

PART XIV – GENERAL

206.	Part 36	Power to make rules and regulations
207.	--	Adoption of Criminal Justice Act 1988, Parts II and III, and Schedule 2

SCHEDULES

Schedule 1: --	Discharge and amendment of probation orders
Schedule 2: --	Matters ancillary to section 45
Schedule 3: [*Repealed*]	
Schedule 4: Part 4	Serious arrestable offences
Schedule 5: --	Special procedure
Schedule 6: Schedule 2	Preserved powers of arrest

Administration of Justice Ordinance

<u>Note:</u> The AOJ Ord is only repealed in respect of the sections identified as replaced below.

1.	Short title
2.	Interpretation

PART II - JUSTICES OF THE PEACE AND THE SUMMARY COURT

3.	Not repealed	Appointment and removal of justices of the peace
3.	-do-	List of justices and supplemental list of justices
5.	-do-	Removal of name from supplemental list
6.	-do-	Effect of entry of name on supplemental list
7.	-do-	Persons disqualified

8.	-do-	Immunity for acts within jurisdiction and for certain acts beyond jurisdiction
9.	-do-	General provision as to powers and jurisdiction of justices of the peace
10.	-do-	Constitution of Summary Court
11.	Part 11	Criminal jurisdiction of Summary Court
12.	Part 26	Consecutive terms of imprisonment
13.	Part 27	General limitation on power of Summary Court to impose fines
14.	Part 13	Committal for sentence where Summary Court considers its powers inadequate
15.	-do-	Further provisions in relation to committal for sentence
16.	Part 12	Power of Summary Court to commit for trial before Supreme Court
17.	Not repealed	Issue of summons on complaint
18.	-do-	Procedure on hearing
19.	Part 31	Right of appeal to Supreme Court in criminal proceedings
20.	-do-	Abandonment of appeal
21.	-do-	Enforcement of decision of Supreme Court
22.	See Note	Statement of case by Summary Court
23.	-do-	Effect of decision of Supreme Court on case stated by Summary Court
24.	-do-	Application of provisions of Magistrates' Courts Act 1980
25.	-do-	Application of certain provisions of Part III to Summary Court

[Note: Insofar as these provisions relate to criminal proceedings they are replaced by provisions in Parts 11, 16 and 17.]

PART III - MAGISTRATE'S COURT

26.	Not repealed	Constitution of Magistrate's Court
27.	Part 11	General criminal jurisdiction
28.	-do-	Supplemental to section 27
29.	See Note	Application of Magistrates' Courts Act 1980 in respect of Magistrate's Court
30.	Not repealed	Civil jurisdiction of Magistrate's Court
31.	See Note	Application of certain provisions of Part II to Magistrate's Court
32.	Not repealed	Clerk
33.	See Note	Assessors
34.	Not repealed	Appeal in civil cases
35.	See Note	Time for appeal

[Note: Insofar as these provisions relate to criminal proceedings they are replaced by provisions in Parts 11 and 16. Section33 (Assessors) is repealed in respect of criminal proceedings without being replaced; but see clause 184 as to Observers]

PART IV - SUPREME COURT

36.	Not repealed	Appointment of Chief Justice
37.	-do-	Acting judges

38.	See Note	Jurisdiction
39.	See Note	Assessors
40.	Part 18	Juries
41.	See Note	Sittings of the courts

[Note: Insofar as sections 38, 39 and 41relate to criminal proceedings they are replaced by provisions in Parts 11 and 16. Section39 (Assessors) is repealed in respect of criminal proceedings without being replaced; but see clause 184 as to Observers]

PART V – JURIES

42.	Part 18	Offences

PART VI – CORONERS

43.	Not repealed	Coroner
44.	-do-	Law as to Coroners, etc.

PART VII - OFFICERS OF THE SUPREME COURT

45.	Not repealed	Appointment of Registrar, etc.
46.	-do-	Legal Practitioners to be Officers of Supreme Court
47.	-do-	Notary public

PART VIII – PROCEDURE

48.	See Note	Practice and procedure
49.	See Note	Errors in proceedings
50.	See Note	Want of form not to invalidate
51.	Part 11	Time for commencement of criminal proceedings
52.	Not repealed	Summons in civil cases
53.	See Note	Absconding defendants
54.	See Note	Reasons for judgment to be given
55.	Part 23	Sentences
56.	See Note	Rehearing
57.	Part 31	Powers of Supreme Court on criminal appeal
58.	See Note	Review
59.	Not repealed	Powers of Supreme Court on civil appeal

PART IX – GENERAL

60.	Rules
61.	Enforcement of judgments and orders
Schedule 1: --	Application of Magistrates' Courts Act 1980
Schedule 2: Not repealed	Application of Coroners Act 1988
Schedule 3: See Note	Enforcement of judgments and orders

Criminal Procedure and Investigations Ordinance

PART I – INTRODUCTORY

Replaced by Part 1

PART II – DISCLOSURE

Replaced by Part 14 and Schedule 5

PART III - CRIMINAL INVESTIGATIONS

Replaced by Part 7 and Schedule 4

PART IV - PRELIMINARY HEARINGS

Replaced by Part 15

PART V – RULINGS

Replaced by Part 15

Criminal Jurisdiction (Offshore Activities) Order 1998
Replaced by clause 179

Criminal Justice (Amendment) (Miscarriages of Justice) Ordinance
Replaced by clauses 711 to 716 in Part 32

Criminal Justice (Evidence) Ordinance
Part II Chapters I to IV replaced by Part 22
Part II Chapter V replaced by Part 19
Other sections not required

Criminal Justice (Revised Standard Scale of Fines) Order 2011
Replaced by Part 27 and Schedule 9

Criminal Justice Act 2003 (Sections 29 and 30) (Disapplication) Order 2006
Effect is spent; not reproduced in the CPE Bill

Jury Ordinance
Replaced by Part 18
To the extent that Juries can be used in civil matters under the AOJO Ord., they will be constituted under this Part.

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